ombudsman **news**

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

Financial Ombudsman Service

talking change

I didn't have to look far for something to back up the point I wanted to make – that the future isn't easy to predict. Looking over old issues of *ombudsman news*, I found that issue four – back in 2001 – explained our approach to a particular type of insurance we had concerns about.

At the time, few people anticipated what "loan protection insurance" – or "PPI" – would mean for financial businesses and the ombudsman nearly ten years later.

But on reflection – despite the unprecedented and unforeseen scale of PPI – I think it's developments *outside* financial services over that time that have had even bigger implications for the work we do at the ombudsman.

Given how widely they're now used and talked about, it's hard to believe that relatively few people had social media accounts a decade ago. But things have moved on rapidly. And many people now find these informal, online networks the most convenient way to express their dissatisfaction – and the most effective way to get their problem sorted out.

The rise in popularity of social media – and the way it's changed the way people behave – shouldn't only be a game-changer for businesses. I think it's a major consideration for every "public-facing" organisation – the ombudsman included.

A particular challenge for us is that unlike a commercial business – which can choose its customer base – we were set up as a service for everyone across the UK.

This means we have a responsibility to be ready to sort out whatever the number and nature of problems that consumers refer to us. And this isn't easy to accurately forecast.

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in April we're in:

- **Nottingham**
- **Lincolnshire**

for more events see page 27

scan for previous issues

Caroline Wayman

We also have a responsibility, of course, to respond and adapt to our customers' needs. Part of this constantly adapting means keeping pace with changes in communications and technology. If we don't, then we risk missing out on important conversations. And if our decisions were to seem out of touch, it's unlikely they'd feel fair.

But in responding to general trends, we need to avoid jumping to conclusions. Contacting organisations through social media might be second nature to some customers. But others might not even have internet access. Even among social media users, some people might expect an online reply, while others might prefer a more formal paper trail.

In the same way, we'd never assume that people contacting us through our new webchat service are always from younger age groups. Instead, we need to understand the personal and practical reasons why people – whatever their age or location – prefer to contact us this way.

The point is that we're not all the same – and people increasingly expect to see that reflected in the way they access services. For the ombudsman, this means we need to understand different people's lives and livelihoods. For example, this month's case studies show some of the range of issues faced by people working in farming and agriculture.

By not assuming – and by listening instead – I'm determined that our service will remain relevant and accessible to everyone.

In fact, this month's *ombudsman focus* is all about listening to and learning from experts. I'm very grateful to Jane Vass of Age UK, Gavin Terry of Alzheimer's Society, Baroness Sally Greengross OBE, Graeme Whippy of Business Disability Forum and Lloyds Banking Group, and Martin Wheatley of the Financial Conduct Authority for sharing their thoughtful insight on powers of attorney.

Caroline

... the rise in popularity of social media – and the way it's changed the way people behave – shouldn't only be a game-changer for businesses

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Exchange Tower
London E14 9SR

switchboard 020 7964 1000

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

technical advice desk
020 7964 1400
Monday to Friday 9am to 5pm

farming and insurance

Each year we receive a number of complaints from people working in rural and agricultural communities.

Many of these complaints involve specialist insurance policies that are designed to cover machinery, produce and livestock – the activities and liabilities that relate to agricultural businesses.

Insurance disputes can be stressful and upsetting – whatever the claim is for. Where businesses are concerned – in these cases, farming businesses – significant amounts of money can be involved. And unsettled claims can have a big impact on the business's ability to take stock and move on from what's happened.

As with other specialist insurance policies, the often long and detailed documentation relating to policies held by agricultural businesses can cause particular confusion.

But our approach to resolving complaints is the same as for any other type of insurance – which we explain in detail in our online technical resource.

Financial Ombudsman Service

… it turned out that their engineer hadn't carried out a full inspection

case study
124/1

consumer complains that insurer has rejected claim after combine harvester engine freezes over winter

Ms L, a farmer, had recently replaced her combine harvester with a new one.

Before the winter, she drained it of water and stored it in one of her farm buildings with the rest of her machinery.

When Ms L tried to use the combine harvester again, she found the engine had been damaged. She called out an engineer – who said the damage had been caused by freezing. The engineer showed Ms L a second compartment for water, which Ms L hadn't known about. The engineer explained that this should also have been drained before the combine harvester was stored away.

Ms L thought that her specialist insurance policy covered damage caused by freezing, so she contacted her insurer to tell them what had happened. The insurer then sent out their own engineer.

But this engineer didn't think that the damage had been caused by freezing. Instead, they said that the combine must have been damaged before Ms L stored it away.

The insurer's engineer also said that it appeared the combine harvester had previously been using up to a litre of water a day – which usually indicated a fault with the cooling system.

Based on what their engineer found, Ms L's insurer refused to cover the damage. They told her that she should have added anti-freeze to the combine harvester's water compartments – and by not doing so, she'd breached the policy condition about taking:

"*reasonable precautions to prevent loss, destruction or damage … and to maintain … machinery, plant and equipment in a satisfactory state of repair*"

Ms L complained about the insurer's decision. She said she hadn't had any issues with the combine harvester during the previous harvest season. She also pointed out that the manufacturer's manual advised topping up the water every ten hours – and she had followed these instructions. She said that if she'd known about the second water compartment – or about adding anti-freeze – she would have done everything she needed to.

However, the insurer wouldn't change their position – so Ms L asked us to step in.

complaint upheld

We asked the insurer for their engineer's report following their inspection of Ms L's combine harvester. But it turned out that their engineer hadn't carried out a full inspection because the engine hadn't been "stripped" (taken apart). So they couldn't provide any detailed information.

Ms L sent us the notes made by the engineer she'd called out herself. She also sent us some pictures of the damage. From these, we could see that four "core plugs" – sealing holes in parts of the engine – had been forced out.

From our experience of dealing with motor insurance complaints, we knew this could happen when water expanded – and was a strong indication that freezing had taken place. And damage caused by freezing was clearly covered by Ms L's policy – unless the insurer could prove that she'd "*failed to take reasonable precautions*".

Ms L sent us a copy of the manual that came with her combine harvester. We found that there was no mention of the second water compartment – or of the need to use anti-freeze after draining.

We didn't think it was reasonable to expect Ms L to know any more about the combine harvester than the information that was included in the manual.

And Ms L had been able to complete her previous harvest. We thought it was unlikely that she would have been able to do so if the combine harvester's engine had been that badly damaged at the time.

In light of this information, we decided that the insurer had unfairly rejected Ms L's claim – and told them to pay it, adding 8% interest.

case study 124/2

consumer complains after insurer rejects claim for stolen pick-up truck under "keys in car" exclusion

Mr G ran a farming business – and was also a volunteer gardener for his village church. While he was cutting the church green one day, his pick-up truck was stolen.

Mr G had to walk the three miles home, and as soon as he got back he phoned his insurer. When the insurer asked for more detail about what had happened, he explained that he'd driven as close to the church as possible and parked just outside the vestry door, as usual. And he'd left his keys inside the truck – underneath a jacket.

The insurer told Mr G that they wouldn't pay his claim – as the policy excluded claims where keys had been left "in or around the vehicle". Mr G told the insurer he hadn't known about this exclusion – and that if he had, he would have taken his keys with him.

But the insurer wouldn't change their mind – saying that Mr G should have read all the policy terms and conditions. Frustrated, Mr G contacted us.

complaint upheld

We asked the insurer for a copy of their policy documentation – so we could see how the exclusion about leaving keys in vehicles was presented.

The exclusion wasn't mentioned at all in the "key facts" documents – which just referred the policyholder to the terms and conditions. Mr G's policy was a specialist farming policy, which covered the buildings and machinery at his farm, his livestock and his truck. We eventually found the exclusion – 130 pages into the 150-page policy document.

We told the insurer we didn't think it was reasonable for them to expect people to read such a long document to find such a significant exclusion. So we didn't think that it was fair for the insurer to rely on that exclusion to reject Mr G's claim.

The insurer then told us they felt that Mr G had been "reckless" in leaving his keys in the truck. We accepted that, in covering his keys, it seemed that Mr G had realised there would be a risk in leaving them on show. But to decide whether he'd been reckless, we'd have to consider whether he'd taken adequate steps to avoid that risk.

Mr G told us he'd only left the keys in his truck in case they fell out of his pocket when he was mowing the grass. He'd parked the truck right by the vestry door week in week out – without ever having seen anybody else around. And he'd taken the step of covering the keys with his jacket – so they hadn't been on show.

... Mr G had to walk the three miles home, and as soon as he got back he phoned his insurer

Looking at the bigger picture, we disagreed that Mr G had been reckless. And in our view – given he hadn't been made aware of the exclusion about leaving his keys inside his truck – the insurer's decision to reject the claim was unfair. So we told the insurer to pay the claim, adding 8% interest.

... he said that at the time, the death of the calf had slipped his mind

case study 124/3

consumer complains that insurer has rejected claim for cattle stolen from farm

Mr K kept a herd of cattle on his small family farm. One morning, he discovered that the cattle shed had been broken into – and that several cows had gone missing.

Mr K had recently changed his insurer. Immediately after speaking to the police, he contacted this new insurer to make a claim for the lost cattle. The insurer told Mr K that they'd look into the claim.

When Mr K heard back from the insurer two days later, they told him they wouldn't pay out, because he hadn't told them about an ongoing claim he had with his previous insurer.

Mr K was very surprised by this. He explained that he'd taken out his new policy through an insurance adviser – who he'd told about the other claim, both over the phone and by email. Mr K said he'd told the adviser he'd made the claim six months before his old policy expired – after one of his calves had died while being transported from one farm site to another.

However, the insurer maintained that they hadn't known about Mr K's previous claim – and so would be "*voiding his policy from inception*". Baffled, Mr K contacted us.

complaint upheld

It looked to us that something could have gone wrong when Mr K took out the new policy. We needed to know what questions he'd been asked about his previous claims.

We asked Mr K to tell us about the meeting he'd had with the insurance adviser – who had been acting on the new insurer's behalf. We also asked the new insurer for their records. We established that Mr K had been asked to fill out a short questionnaire. One of the questions asked whether "any losses had occurred in the last three years" – and Mr K had answered "no".

Mr K told us he remembered filling in the form. He said that at the time, the death of the calf had slipped his mind.

But he told us that he'd discussed it with the adviser shortly afterwards – and sent us emails showing the conversations he'd had.

We could see from the emails that Mr K had clearly told the adviser about the previous claim once he'd remembered it. And the emails indicated that it had been discussed in a phone call as well.

We explained that as the adviser was acting for the insurer, it was their adviser's responsibility to pass on any relevant information to the insurer alongside Mr K's questionnaire.

From the evidence we'd seen, we didn't think that Mr K had intentionally withheld information. It looked like he'd quickly cleared up the position with the adviser. And it was reasonable for him to think that the insurer would be aware of his previous claim.

In these circumstances, we decided that it was unfair for the insurer to "void" Mr K's policy. We told the insurer to reinstate his policy – and deal with the claim as they usually would, adding 8% interest to the settlement.

case study 124/4

consumer complains that insurance policy he took out for his work as a potato harvester didn't provide the cover he thought it would

Mr B ran a potato farming business. One year, while he was helping to harvest potatoes on a neighbouring farm, he noticed that his machinery wasn't working properly.

When Mr B got down from the machinery to find out what was wrong, he found that most of the potatoes he had already harvested had been damaged. His neighbour's potato crop was now worth far less – and the neighbour claimed compensation from Mr B.

Mr B tried to claim this money back under the "liability" section of his farm insurance policy. However, his insurer said that the cost of replacing his neighbour's potatoes wasn't covered.

Mr B didn't think this could be right – and complained to the insurer. He told them that, harvesting other farmers' fields made up a significant part of his work – so he wouldn't have knowingly taken out insurance that didn't cover this.

When the insurer refused to change their position, Mr B brought a complaint to us on behalf of his business.

complaint upheld

Mr B explained the kinds of activities involved in his business. He sent us his account that around half his income from the previous year had come from harvesting other farmers' fields.

We asked the insurance company for a copy of the terms and conditions of Mr B's insurance policy – so we could see what was covered and what wasn't.

... his neighbour's potato crop was now worth far less

… the insurer couldn’t provide any evidence that they had brought the exclusions to his attention

We found that the “product liability” section of the policy said that Mr B was “indemnified” for:

“*all sums which you are legally liable to pay … for damage to property … not arising from products other than products remaining in your custody or control.*”

The insurer told us that part of the reason they’d turned down Mr B’s claim was that he wasn’t claiming for damages he’d paid out for damaging his neighbour’s “property” – but for damaging his neighbour’s “products”.

Looking at the policy definitions, we noted that “products” were defined as “any commodities or goods” that the policyholder sold, processed or transported. “Property” was simply defined as “material property”.

When we asked the insurer what they meant by “property”, they told us that they meant buildings. We explained that this wasn’t obvious – and that we didn’t think the definition in the policy was clear enough.

In our view, by the current definition, Mr B’s neighbours’ potatoes could be defined both as “products” and “property”. And because the wording was so unclear, we didn’t think it was fair for the insurer to apply that exclusion.

However, there were other exclusions in the policy document that affected Mr B’s claim. These said that the insurer wouldn’t pay for:

- “*damage to property … which is in your custody or control …*
- *the costs of … or making a refund for the price paid of any products*
- *damage to any property on which you have been working where the damage is the direct result of such work.*”

We pointed out to the insurer that these exclusions cancelled out any cover that Mr B might otherwise have had when he was working for other farmers. From the information Mr B had provided, it was clear that this contract work accounted for a large proportion of his business. So in our view, the policy didn’t meet his needs.

The insurer didn’t dispute that Mr B had accurately described the nature of his business when he took out the policy. But they couldn’t provide any evidence that they had brought the exclusions to his attention. We thought that if Mr B had known about the exclusions, it was very unlikely that he would have taken the policy out.

In all the circumstances, we decided that the insurer had unfairly rejected Mr B’s claim – and told them to pay it in line with the policy terms. Mr B said he would be approaching an insurance broker to help him find him another, appropriate policy.

case study 124/5

consumer complains after insurer disputes damage to tractor after an accident

Mr W, a tractor driver, was involved in an accident with a speeding car while towing a load of fertiliser. Although he swerved and avoided a head-on collision, the tractor ended up getting stuck in a ditch.

Mr W claimed on his insurance for the damage to the tractor's bodywork and engine – and the insurer sent out an independent engineer to inspect the damage. But the engineer reported that only the bodywork damage was related to the accident – whereas the engine damage was down to long-term wear and tear.

Based on this report, the insurer only offered to pay for repairs to the bodywork. But Mr W disagreed. He complained, telling the insurer that he hadn't been able to turn off the engine when he was stuck in the ditch. The engine had run dry of oil – which he thought had caused the damage to the braking system.

The independent engineer responded that if this had happened, then other parts of the tractor would also have been damaged – not only the braking system. When the insurer sent a second independent engineer to inspect the damage, they came to the same conclusion.

But Mr W maintained that the engineers were wrong – and brought his complaint to us.

complaint not upheld

We asked the insurer for the two engineers' reports. It was apparent from these that both engineers had carried out very detailed inspections of Mr W's tractor. We also noted that, unlike some cases we see, the engineers involved were *independent* of the insurer. And these two independent engineers had reached the same conclusion about the damage.

We explained to Mr W that we couldn't say for sure what had happened – and we appreciated how upsetting the accident had been. But in light of the two expert views about the cause of the damage, we thought the insurer's offer was fair.

... It was apparent that both engineers had carried out very detailed inspections

case study 124/6

consumer complains that his policy didn't cover him for putting down dangerous livestock

Mr and Mrs M owned and managed a large dairy farm. In late November, they began the yearly process of moving their 200 cows from the fields to their special housing for the winter.

As in previous years, some of the herd were at first reluctant to leave the fields. So Mr and Mrs M left them for a few more days. But one cow still refused to move into the winter housing – and was uncharacteristically aggressive.

A well-used public footpath ran through the field where the cows grazed. Worried about the possibility of the distressed cow causing someone harm, Mr and Mrs M sought the advice of their vet – and it was decided that it was safest to put the cow down.

Mr and Mrs M then made a claim for the vet's fees under the liability section of their livestock insurance policy. But the insurer told them that the policy didn't include cover for action taken to prevent liabilities arising in the first place – and refused to pay out.

Mr and Mrs M complained – saying they thought they'd done the responsible thing, and felt they'd lost out because of it. When the insurer wouldn't change their position, Mr and Mrs M asked for our view.

complaint not upheld

We needed to establish what cover Mr and Mrs M's policy provided – and whether the insurer had considered the claim fairly.

We asked the insurer for a copy of the policy terms and conditions. In our view, it was clear that only actual liabilities were covered – rather than any sort of action to stop liabilities arising in the first place.

When we explained this to Mr and Mrs M – and pointed out the relevant part of the policy – they said they understood. But they told us that they'd now looked through all their paperwork again. And they thought that their recently-renewed policy included cover for animals "straying", which they might be able to use.

We asked the insurer about this. They confirmed that the claim would fall under their cover for "straying" – but Mr and Mrs M didn't actually have this optional cover.

The insurer explained that they'd recently changed their "straying" cover to include more situations. And they'd used their renewal letters to make people aware of this. They said they'd sent the same letter to all customers – whether or not those customers had "straying" cover.

When we looked at the letter in question, we found that it mostly referred to the policy renewal. But there was also a highlighted section – clarifying that the wording of the "straying" cover had been updated.

So we understood why Mr and Mrs M might have remembered reading something about "straying". In our view the letter – and the accompanying policy documents – made it clear that they hadn't chosen to pay for this extra cover.

In light of everything we'd seen – and although we were sorry that Mr and Mrs M had lost their cow – we decided that the insurer had acted fairly. Mr and Mrs M were disappointed, but told us that they would add "straying" cover to their policy from now on.

... one cow still refused to move into the winter housing

... it "couldn't be ruled out" that the damage had been caused by a rock or stone

case study 124/7

consumer complains after insurer rejects claim for damaged harvester – on grounds that damage is due to wear and tear

Mr A ran a small business that used special machinery to harvest "forage" – mainly grass and other plants – to be used as food for farm animals. When he damaged the cutting blades of his machine, he made a claim on his business's insurance policy.

The insurer sent an engineer to look at the damage. And a couple of days later, they phoned Mr A to tell him that they weren't willing to pay his claim. According to the insurer, their engineer thought that the damage had been caused by "general wear and tear" – which Mr A's policy didn't cover.

Unhappy with this answer, Mr A complained – and called out a local engineer. Mr A told the insurer that this engineer thought that the damage could have been caused by a rock or stone.

The insurer then asked a second engineer to take a look. This engineer's report backed up their first engineer's findings – that the damage was due to wear and tear. At this point, we were asked us to step in to the dispute.

complaint not upheld

We asked Mr A and the insurer for copies of the three engineers' reports.

According to the report of the first engineer sent by the insurer, there wasn't any evidence that a solid object had got into the machine. So they'd concluded that the damage was caused by a worn metal blade coming loose within the harvester.

Turning to the second report the insurer had sent us, we noted that this time they had instructed a forensic specialist. This specialist engineer had also said that they couldn't see any signs that a "foreign object" had got into the harvester. But they had found that some parts of the machine were very worn out – and concluded that the damage was very likely caused by "metal fatigue cracking".

We then considered the report of the engineer called out by Mr A. This engineer had said that it "couldn't be ruled out" that the damage had been caused by a rock or stone. But they'd also found considerable wear to the harvester's metal blades.

We appreciated that Mr A's engineer thought that a stone could have caused the damage. But all three engineers – including a specialist – had found evidence of significant wear and tear. So we thought that wear and tear was the more likely cause.

We explained to Mr A that, in the circumstances, we didn't think the insurer had acted unfairly in turning down his claim.

powers of attorney

Complaints involving powers of attorney are among the most distressing that we see each year. This is understandable – as the inevitably stressful process of escalating a complaint comes at a time when people are often already dealing with the upset of losing – or seeing someone else lose – their mental capacity.

Recognising the importance of minimising the impact of mistakes and complaints – by putting things right fairly and quickly – we recently published practical tips for businesses' frontline staff, as well as for customers. We also updated our online technical resource with an overview of our approach to complaints involving powers of attorney.

Our own information complements guidelines and resources from official bodies like the Office of the Public Guardian, financial services regulators and trade associations, and independent experts on issues faced by older people.

In this *ombudsman focus*, we share the perspectives of some of these organisations and experts – on the challenges that powers of attorney present to financial businesses and their customers.

Jane Vass

Jane Vass

Head of Public Policy, Age UK

The decision to seek a power of attorney reflects or anticipates a difficult situation in the life of the person concerned and their circle of immediate family and friends. Loss of mental and/or physical capacity is distressing for the affected person and for those close to them. It may also exacerbate other problems such as shortage of money, cost of care and strained relationships.

Frequently the decision to seek a power of attorney is preceded by a period of informal assistance with banking and paying bills, including the use of the affected person's bank card and PIN, which breaches their contract with their bank and voids protection from loss.

Calls to Age UK's information and advice service suggest there can be practical difficulties in using powers of attorney because of the need to formally identify the parties involved, which often means making visits to banks and service providers with photo identification. "*The new company took a lot of trouble to accept that I was who I said I was,*" said one participant at an Age UK workshop.

The difficulties arise from the inherent complexity of the situation or from shortcomings in organisational procedure and/or staff training. Organisations are generally better at doing things they do all the time – but can stumble when a staff member is carrying out a procedure they haven't used before or have used only rarely.

Some of the challenges raised with Age UK arise from the fact that the dependent person has already lost significant mental capacity, so it may be too late to set up a power of attorney. Instead, carers may need to go the Court of Protection – a more costly procedure – for a deputy to be appointed (different rules apply in Scotland).

So Age UK advises that it's better to have a lasting power of attorney in place. While banks and service providers will already have procedures in place to support people who are no longer able to manage their own money, our evidence shows that customer experience is very variable.

Ongoing work is needed to ensure that all staff and branches are made aware of the legal rights attaching to powers of attorney and have a consistent system for helping customers use them – including procedures that take account of the practical challenges faced by carers and dependents when trying to comply with systems of identification and verification.

Service providers also need to make sure they have a clear system for recording powers of attorney so that customers and their attorneys aren't inconvenienced in subsequent transactions.

Graeme Whippy

Disability consultant at the Business Disability Forum and Lloyds Banking Group representative on the Prime Minister's Dementia Friendly Communities Champion Group

I think historically, there's been a perception that banks are being obstructive when they deal with customers with dementia and other forms of mental incapacity. But it's not as straightforward as that – it's a two-way thing. Financial businesses have to work within the law and given rules in order to minimise risk both to themselves and their customers. And for their part, customers have an important responsibility to put in place mechanisms for managing their affairs if and when they're no longer able to.

Graeme Whippy

I've definitely seen a shift in perceptions and awareness over the last two to three years, where collaboration between financial services and key organisations – like the Office of the Public Guardian and Alzheimer's Society – has made good progress in communicating to customers the need to plan for the future. So customers are becoming increasingly aware of the significance of powers of attorney.

But there's still work to do to dispel the myths and fears that exist. For example, we need to put to rest people's worries that powers of attorney are a last irrevocable step in losing control over your finances – and promote the idea that they're a powerful tool for managing your affairs in a safe way.

One big remaining challenge I see is the process of setting up a power of attorney – which I know some people find cumbersome, time-consuming and expensive. The mechanics of setting it up should be made much easier.

And although it would take time to integrate individual systems, financial businesses could work together to create a universal registration form. That way, customers wouldn't have to repeatedly fill out nearly identical information for each business – when they've already gone through the bureaucracy of getting the power of attorney in the first place.

In my role as a Dementia Friends Champion – and working within financial services – I've seen initiatives that really make a difference for customers. For example, "walk out working" models allow customers to register and use powers of attorney with that particular business within an hour of visiting a branch.

It's also important to integrate dementia awareness into mandatory refresher and induction training for frontline staff. And local branches can play an active part in dementia-friendly communities – for example, by supporting local Dementia Action Alliances.

Baroness Sally Greengross OBE

Crossbench peer, chair of the all-party parliamentary group on dementia, and Chief Executive of International Longevity Centre UK

Complaints about powers of attorney – whether they involve lost documents, administration or misunderstandings – can be very upsetting. But with the support of the Financial Ombudsman's guidance, these could be resolved quickly.

However, some issues with lasting powers of attorney (LPAs) are more worrying. Recently a Select Committee of Parliament conducted a review of the working of the Mental Capacity Act 2005. Having read the report, I have a concern about the way the existence of an "advance decision", in the form of an LPA, is recorded and communicated.

As the report reminds us, advance decisions are an essential means of allowing people to determine their care in the event that they lose capacity. If such decisions aren't recorded and shared with relevant bodies, they are likely to be ineffective.

The report contains ample evidence of poor understanding among consumers, businesses and health and care staff – and this needs to be addressed.

The report recommends the promotion of early engagement between businesses, health and care staff and patients about advance decisions.

The Committee found similarly poor levels of understanding of LPAs among professional groups. They recommended that the government, working with a new independent oversight body and the Office of the Public Guardian, consider how best to ensure that information concerning registered LPAs can be shared. The Committee also recommended that the government consider how attorneys and deputies faced with non-compliance by public bodies or private companies can be supported.

There are currently 800,000 people with dementia in the UK, and with an ageing population there will be more instances where attorneys who live and work away from the donor's home will be required to discuss options with public and private bodies by phone and email. It must be feasible for bodies such the NHS to have a central repository for LPAs so any NHS trust can access the records to ascertain the validity of attorneys.

The position with private businesses, including financial businesses, may be even more challenging. But if an individual, having thought the matter through, has decided to give someone they trust the legal authority to make decisions on their behalf, then the least they can expect is that such wishes will be acknowledged, recorded and respected.

Gavin Terry

Policy manager, Alzheimer's Society

Gavin Terry

Following the launch of the Prime Minister's Challenge on Dementia in 2012, Alzheimer's Society has been leading a group looking at the way personal information and data is used by and for people with dementia.

According to a poll we carried out among people with dementia, their carers and their family and friends, only 22% feel that businesses and organisations understand people's rights around lasting powers of attorney.

There are times when families or friends may need to access or share information on behalf of a person with dementia. The law in this area can be complex and often people are prevented from doing this due to the Data Protection Act. We want people to feel confident and empowered with the right knowledge to exercise their rights.

That's why we've collaborated with Office of the Public Guardian and various organisations to create a booklet about accessing and sharing information. Our aim is that it will act as a catalyst for more dementia friendly policies across service industries – not least financial services.

As Martin Lewis pointed out when we launched our booklet, any difficulties the people caring for us might have in getting access to our cash – even possibly to pay for treatment – compound the other more obvious issues around losing mental capacity.

We'd encourage customers with questions or concerns about dementia or powers of attorney to read our guidance – or to phone our free helpline on 0300 222 1122.

Martin Wheatley

chief executive, Financial Conduct Authority (FCA)

We recently published a paper on the treatment of consumers in vulnerable circumstances. We want to spark a vital conversation that financial businesses, regulators and consumers need to have. One in eight people in the UK act as a carer, the number of dementia patients is due to double over the next 40 years and someone is diagnosed with cancer every two minutes.
We should also note that vulnerability is not binary – it is not simply a permanent classification. Some become vulnerable at various points in their lives due to a change in circumstance surrounding their job, home or marriage, for example. So it's vital that firms think about how they can serve all of their customers – including the most vulnerable in society – fairly.

As we are all more than aware, our industry has come under significant pressure in the last few years to rediscover its sense of social purpose.
We believe that vulnerability is an issue that should be at the centre of that debate – and it's clear that this is becoming an increasingly significant issue for consumers too.

Giving vulnerable consumers a good service requires company-wide commitment to doing the right thing. That does not have to mean a wholesale redrawing of processes and systems but, rather, the flexibility to adapt if the strict application of those processes could result in a bad result for those in vulnerable circumstances.

We've recently worked closely with the financial ombudsman and public guardian on preventing complaints about power of attorney before they spiral out of control. It's clear from our joint work in this area that people from across all walks of life are providing support for someone who might be losing the mental capacity to act on their own behalf. Yet too many times, we hear that misunderstandings and mistakes are being made by firms that have contributed to exacerbating the situation.

Front line staff are vital. We do not expect customer-facing staff to become social workers able to deal with a variety of situations they are unused to but we do expect firms allow staff to treat customers as they would like a member of their own family to be treated.

The moral case for supporting vulnerable customers is clear but so is the business case. In getting it wrong, firms potentially put their business at risk.
Firms have legal responsibilities and a duty under our rules to ensure customers are treated fairly. More than that, firms should ask themselves what loyalty they can expect from a customer – or their family – given poor service in their hour of need. ✪

Martin Wheatley

ISAs and savings accounts

For six years now, the Bank of England base interest rate has been historically low. This has received a lot of media attention – including concerns about the impact on savers and questions about whether it's worth putting money away at all.

In this environment, we've seen savings providers offering a variety of deals on individual savings accounts (ISAs) and other savings accounts – including introductory and "bonus" interest rates for some products, and better rates on online-only or telephone-only products. While it isn't our role to take a view about products and interest rates that businesses choose to offer in general, we can look into whether individual customers have been treated fairly.

For example, if someone complains that a business has changed the interest rate on a long-held savings account, we look for evidence about how the change was handled. As well as checking that the business followed the relevant rules and guidance, we also look at how they considered their customer's particular concerns.

The majority of complaints we see about savings accounts relate to administrative issues. Whether they're down to "human error" or the result of a system going wrong, these problems can have a significant impact on people's savings. But they can often be resolved fairly easily – for example, by making up the interest that would have been earned while a money transfer was delayed. In our experience, a well-handled query or complaint can save a long-standing customer relationship.

In other cases, putting things right can be more complex. For instance, if someone complains they've lost out on the chance to invest their money, it's important to establish whether the business is at fault – and if so, what that customer would have done if the business hadn't made a mistake. And if someone has lost their tax-free savings allowance for the financial year, careful thought needs to be given to how to put things right – bearing in mind the possible tax implications.

Financial Ombudsman Service

... Ms A quickly moved her savings to a different account with a higher interest rate

case study 124/8

consumer complains that she hasn't been personally notified about fall in interest rate

Ms A had saved with the same building society for almost 20 years – and had built up around £50,000.

Looking back over her statements one day, Ms A noticed that the interest rate on her savings account had dropped considerably over the past two years. Disappointed, she rang the building society to ask why she hadn't been told. The person she spoke to said that all changes to interest rates were advertised on the building society's website – and that all customers had been sent a letter telling them this.

Ms A quickly moved her savings to a different account with a higher interest rate – and then complained to the building society. She explained that she remembered receiving the standard letter about interest rates being shown online. But she didn't have a computer – and felt that, given the big impact on her savings, the building society should have written to her when the interest rate changes happened.

However, the building society said that the change was so small that they didn't have to "personally" notify Ms A. Unhappy with this response, Ms A contacted us.

complaint upheld

The building society felt very strongly that they'd acted in line with the rules – which said they didn't have to notify their customers if an interest rate change wasn't "material".

The rules they were referring to said that if a customer has more than £500 in their savings account, then a fall of more than 0.25% would be considered "material". And so would a total fall of 0.5% over a 12-month period. They pointed out that Ms A's interest rate hadn't ever fallen by more than 0.25%. In two years, it had fallen twice by 0.25% and twice by 0.24%.

However, we explained that the fact that the rules give £500 as a guide doesn't mean that businesses can ignore customers' individual concerns. And we felt the building society hadn't given enough thought to the considerable size of Ms A's balance – particularly as the interest rate changes they'd applied were at the threshold for notifying (or not notifying) their customers.

Following the building society's current approach, if they changed their interest rate by 0.26%, they'd personally notify someone with £500 in their account – who would lose out by £1.30. But they wouldn't notify someone in Ms A's position – where a rate change of 0.25% would mean a gross loss of £125 each year.

Given this, we decided that the change in the building society's interest rate was "material" in Ms A's case. So, in line with the rules, she should have been notified in a "durable medium" like a personal letter or email.

It appeared that Ms A had moved her savings as soon as she found out about the interest rate changes. So the return on her savings was clearly important to her. We thought that if she'd been personally notified when her interest rate changed, she would have changed accounts at that point.

So to put things right, we told the building society to make up the difference between the interest she'd actually received and the interest she would have received. This meant looking at how much she would have earned if she'd put her money into the higher-interest account she'd chosen – but at the time the interest rate first changed.

... we explained that the bank hadn't done anything wrong in choosing to lower their interest rate

case study 124/9

consumer complains that "introductory bonus" interest rate on his ISA was removed early

Mr F was planning on taking a gap year trip around the world – and had been trying to save as much as he could during his last year at college.

As well as moving back in with his parents, Mr F also sold his car. His parents told him that if he put the money from the car into a savings account, he'd earn some interest on it. So he opened a savings account with the bank he had a current account with. The account came with an "introductory bonus rate" which was due to end just before Mr F was planning to travel.

But six months after Mr F opened the account, he got a letter from the bank saying they were lowering the interest rate by 1%. Two months later, they wrote again to say they were removing the introductory bonus rate altogether – around four months earlier than originally advertised.

Disappointed, Mr F phoned the bank to complain – explaining that the high interest rate was the main reason he'd opened the account. The bank offered to move his money to a different savings account with a better interest rate – but still lower than the rate Mr F had originally expected. Unhappy with this, Mr F contacted us.

complaint upheld

We asked the bank for the terms and conditions of the savings account in question – to see what these said about changes to the interest rate. The terms and conditions said that the bank could change the interest rate at any time – as long as they wrote to customers to tell them.

In our view, this information was clearly set out – rather than being hidden in the small print. And Mr F had shown us the letter the bank had sent him to let him know what was happening – which we also thought was clear.

Taking all this information into account – and although we understood Mr F's frustration – we explained that the bank hadn't done anything wrong in choosing to lower their interest rate.

However, we also checked the terms and conditions to see if they mentioned completely removing the 12-month introductory bonus rate. And we couldn't find anything to say that the bank was allowed to do this.

In light of this, we decided it was unfair for the bank to remove the bonus rate early – and told them to make up the interest that Mr F had lost out on.

... when the bank said that was just their policy, she contacted us

case study 124/10

consumer complains that bank branch won't give her information about online savings account

Mrs P had been saving money for some time to help her grandson with the costs of university. Knowing the bonus rate on her savings account was coming to an end soon, she asked her daughter, Mrs K, to help her find a better deal. Mrs K saw an online advert for a different account – and drove her mother to the nearest branch of that bank to open one.

But when she got there, Mrs P was told that it was an "online only" account – so she could only open one through their website. Mrs P said that she didn't have a computer – and asked if the cashier could just talk her through the account. She explained that her daughter would help her open it online later on, if they both thought it was a good deal.

But the cashier told Mrs P that they couldn't give her any advice in the branch about any of their online accounts. Mrs P complained to the bank – saying that she thought the situation was inconvenient and unfair. When the bank said that was just their policy, she contacted us.

complaint not upheld

When we looked at the part of the bank's website advertising the online account, we found that it said this particular account couldn't be opened in a branch. But it seemed to us that the bank hadn't been very sympathetic to Mrs P – and she felt frustrated as a result.

We explained to Mrs P that "advice" has a specific meaning when it comes to financial matters. And banks can choose not to offer "advice" about all the accounts they offer.

During our involvement, the bank offered to set up a meeting with Mrs P to talk about other ways she could save. They also sent her a bunch of flowers to recognise that she felt she'd been treated unfairly. Mrs P said she'd talk things through with the bank – but would also look for other, off-line offers elsewhere.

case study 124/11

consumer complains that bank's mistake caused him to miss ISA deadline

Mr and Mrs S lived in a remote part of Scotland, an hour's drive from the nearest bank branch. So they did most of their banking over the phone. At the very start of April, Mr S called his bank to transfer some money from his savings account to an ISA in Mrs S's name.

Although Mr S had used phone banking many times before, he'd never transferred more than a few hundred pounds. When he tried to transfer money into Mrs S's ISA, the adviser he spoke to told him that he could only move up to £2,000 in one go.

Mr S had been intending to put in the whole ISA allowance – more than twice this amount. However, he accepted what he'd been told and asked the bank to move £2,000 that day.

Two days later, the bank called Mr S to tell him that the payment had been stopped by their security system. Worried, and not sure what this meant, Mr S decided not to try again – and cancelled the transfer altogether.

By this time, the ISA deadline had passed for that year. Frustrated that he'd lost the chance to use his tax-free allowance, Mr S complained to the bank. But the bank said that it had been Mr S's choice to cancel the payment – and that he wouldn't have missed the deadline if he hadn't "left it to the last minute".

Although the bank offered him £20 to cover the cost of his phone calls, Mr S felt he'd been treated unfairly – and contacted us.

... Mr S decided not to try again – and cancelled the transfer altogether

… because Mrs S's ISA was with the same bank, another type of transfer was possible

complaint upheld

We asked the bank to explain their rules for transferring money between accounts. We also asked for recordings of their phone calls with Mr S.

Looking at the bank's internal rules, it appeared that different limits applied to different types of transfer. When we listened to Mr S's call to the bank, we heard the bank's adviser explain about the £2,000 limit.

But the adviser failed to explain that, because Mrs S's ISA was with the same bank, another type of transfer was possible – as long as they had her authorisation. Under the rules applying to an "internal" transfer, there wasn't a limit on the amount – and the money would have moved almost immediately.

We recognised that it had been Mr S's choice to cancel the payment after it was blocked by the bank's security systems. But we pointed out that the problem probably wouldn't have arisen if the adviser had arranged an internal transfer. And it was likely that Mr S would have been able to transfer all the money he had wanted to – before the tax-free savings deadline.

So in the circumstances, we didn't think it was fair for the bank to blame Mr S for missing the deadline. We told them that, in any case, if they didn't want their customers to transfer money close to the deadline, they would need to make this clear well in advance.

We told the bank to make up the lost interest on the savings Mr S had wanted to transfer.

case study
124/12

consumer complains that bank's mistake caused him to lose out on tax-free savings

Mr O had been trying to save up to buy an engagement ring for his girlfriend. He had been putting money aside in an ISA over the last year, but was disappointed with the interest he had earned. So he booked an appointment at the local branch of his bank to talk about other accounts – so he could get a better deal from now on.

Mr O did some research on the internet beforehand – and found a paid-for current account that would give him a higher interest rate. At the appointment, Mr O opened this account in joint names with his girlfriend.

... this indicated that Mr O had also been spending his savings

A few days later, Mr O's wages were due to be paid – and he checked his new bank account on his smartphone. But when he logged in, he realised that the bank had closed his ISA and transferred all his savings into his new current account.

Although Mr O notified his bank the same day, it took them over a month to respond. He then made a complaint – explaining that since the money had been in his bank account, his girlfriend had spent nearly half of it on furniture for their home, not realising that he'd been saving up.

The bank agreed to pay the interest he'd lost because his savings were no longer tax-free. But they refused to compensate him for any of the money spent by his girlfriend.

Mr O thought that they should pay this money back – because it was down to their mistake. Unhappy with the bank's offer, he brought his complaint to us.

complaint partially upheld

First, we needed to look into why Mr O's savings had been transferred into his current account.

We asked the bank for their records from Mr O's appointment in the branch – to see if these suggested he'd said anything that might have led them to think he'd wanted to put his ISA savings into his new current account. But in fact, we found the branch adviser had noted – as Mr O had told us – that he'd wanted to leave that money where it was for the time being.

We then looked into whether the bank's offer was fair. After considering how much Mr O had in his account at the time, how much he had saved in the past, and – based on this – how much we thought he would have continued to save, we decided that around three times as much would be a fairer offer. So we told the bank to make up the difference.

It was clear Mr O felt very strongly that the bank should repay the money he said that his girlfriend had spent. But when we looked at Mr O's current account history since the bank made their mistake, we saw that the extra money had been spent with a card in his name – as well as with one in his girlfriend's name.

This indicated that Mr O had also been spending his savings. So we explained that, in the circumstances, we didn't think it was fair to ask the bank to return it.

... they apologised, and said they'd pay Miss N's petrol costs for the unnecessary trip

case study 124/13

consumer complains that bank gave wrong information about ISA maturity date

Miss N had invested all her savings in a two-year ISA. Shortly before the ISA was due to mature, she received a letter from her bank giving the maturity date – and inviting her to visit the branch on that date so that she could discuss what to do next with her savings.

When Miss N was filing the letter away, she noticed the original "welcome" letter gave a different maturity date to the one in the bank's latest letter. After phoning the bank to check the dates, she arranged a meeting for the earlier of the two dates.

Miss N lived in a small village – and the closest branch was 45 minutes' drive from her house. When she got to the bank, the adviser told her that her ISA hadn't matured yet. They said they could take her instructions there and then – and reinvest the funds for her as soon as this was possible.

But Miss N told the adviser she felt they'd wasted her time – and went home. That afternoon, the branch phoned her to say that they could help if she came back two days later. Confused, Miss N returned on that day – and was told that her ISA had matured on the date of her original meeting with the adviser.

When Miss N wrote to complain, the bank said they "hadn't made an error". She didn't agree – and asked for our view.

complaint resolved

Miss N sent us the two letters she'd received from the bank – two years apart. We saw that these gave different maturity dates.

We asked the bank for recordings of Miss N's phone call to them. We found that they'd confirmed that the earlier of the two dates was the maturity date – and that Miss N should make her appointment for that day.

The bank told us that their customers couldn't reinvest their funds on the same day that their ISAs matured. We pointed out that, if this was the case, their letter to Miss N had been wrong. And they hadn't taken the chance to clarify the situation when she phoned them.

We recognised that the bank's adviser had given Miss N the option of not going to the branch again. But the follow-up phone call had suggested that she should – and as a result, she'd made a second, unnecessary trip.

During our involvement, the bank acknowledged that they'd made a series of mistakes. They apologised, and said they'd pay Miss N's petrol costs for the unnecessary trip. They also said that they'd make up any interest she'd missed out on because of the confusion they'd caused.

Miss N said she was glad the bank had apologised – and was willing to accept the offer.

... soon as the bank realised their mistake, they released the cheque and apologised

case study 124/14

consumer complains that compensation for missed ISA allowance is too low

Mr and Mrs C decided to each pay their full tax-free allowance into stocks and shares ISAs. So shortly before the tax year ended, they each arranged for a cheque to be paid from their joint bank account into two separate ISAs.

A couple of weeks into April, Mrs C got a letter confirming that her ISA had been set up – but Mr C didn't. After a series of phone calls, Mr C managed to establish that his cheque was held up in the bank's system – because it had been "flagged" for a security check. According to the bank, this was because Mrs C had previously signed most cheques from the couple's joint account – so they'd had problems verifying Mr C's signature.

As soon as the bank realised their mistake, they released the cheque and apologised. Acknowledging that that year's "ISA window" had now passed, they offered to pay Mr C the interest that his money would have earned over the year in the highest-rate cash ISA available.

Mr C didn't think this was fair. He pointed out to the bank that the interest rate on the cash ISA had been 2% – whereas the money he'd invested in a stocks and shares ISA in the previous year had earned more than 7%. When the bank wouldn't change their position, he contacted us.

complaint upheld

Mr C's financial adviser has sent us records showing that Mr C had invested in stocks and shares ISAs for the last few years – and was planning to do so for the foreseeable future. We noted that Mrs C's cheque for exactly the same amount had been used to fund a stocks and shares ISA.

In light of this, we decided that 2% interest, in line with a cash ISA, wasn't a fair offer. However, even though last year's investment had performed well, the future performance of Mr C's investment wasn't guaranteed – so we didn't think that 7% interest was fair either.

We suggested that the bank compensate Mr C based on a return of 5%, taxed at his normal rate and over a term of 10 years – given the evidence we had about his investment history and future plans. Both Mr C and the bank agreed that this seemed fair.

upcoming events …

for smaller businesses		
meet the ombudsman roadshow	16 April	Nottingham
	6 May	Belfast
	3 June	Newcastle
	23 June	Durham
for consumer advice workers		
working together with the ombudsman	22 April	Lincolnshire
	12 May	Leicester
	4 June	Carlisle
	16 June	Doncaster
national events for consumers		
Naidex	28-30 April	Birmingham
Balmoral	13-15 May	Belfast

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

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Q?&A

what does the European Directive on Alternative Dispute Resolution (ADR) mean for the ombudsman service?

The directive means that businesses across all kinds of sectors will be able to offer their customers a way of resolving disputes out of court – fairly and informally – like the service we've provided financial businesses and their customers for the last fifteen years.

As the largest provider in Europe of "alternative dispute resolution" for consumers, we welcome the ADR directive. Our statutory role – set out in the Financial Services and Markets Act – won't change. But before July, we'll need to be "certified" as an official ADR provider under the directive.

The financial services regulator, the Financial Conduct Authority (FCA), will be a "competent authority" under the directive. Over the next few months, we'll continue to work with the FCA and the Department for Business Innovation and Skills – the department responsible for implementing the directive in the UK – to show we can meet the directive's requirements.

does the directive mean that my business will need to work differently with the ombudsman?

The directive sets certain timeframes for sorting out complaints, but the importance of working together efficiently remains unchanged. It's in everyone's interests to put things right as soon as possible – whether or not any particular rule or European directive requires it.

All official "ADR providers" under the directive need to offer people the option of complaining online. But we do this already. You may already be dealing with a case where your customer has ticked a box online – rather than signed a paper form – to say they want us to look into their complaint. And you don't need to treat these complaints any differently.

Financial Ombudsman Service

ref: 849/pc