

Ombudsman news

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



Natalie Ceeney, chief executive and chief ombudsman

Looking forward

Three months into the job – and as I continue familiarising myself with the work of the ombudsman service, I'm still finding it hugely helpful to learn what our stakeholders think about us and what changes they would like to see. So far the feedback has been very positive.

Over the past month I have had the opportunity to meet many more stakeholders, at a wide range of formal – and not-so-formal – meetings and events. These events have included a fascinating day spent with one of the major insurance companies, being 'walked through' all aspects of their process – from sales to claims. It was particularly encouraging to see the importance they attach to resolving customer complaints.

I also travelled to Scotland this week where, at *Money Advice Scotland's* annual conference, I gave my first speech since becoming chief ombudsman. It was a great opportunity to meet a number of the delegates, including frontline money advisers, credit unions, debt collectors and insolvency practitioners. On the Q and As page of this month's *Ombudsman news* we provide an update about the ▶

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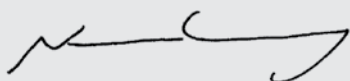
Financial
Ombudsman
Service

new arrangements we have set up, covering the way the ombudsman service liaises formally with both the financial services industry and the consumer world.

Just a few weeks ago we published our *annual review* covering the financial year 2009/2010. In that review I said that one of my priorities was to re-examine the operating model that has worked so successfully over the ombudsman's first ten years. We are now operating on a far larger scale than ever envisaged at the outset. So I need to make sure we have a sound structure in place to support whatever fresh challenges the coming decade may require of us. Over the coming months I will be discussing my plans in more detail with our stakeholders – and looking at how best we can invest to ensure we remain 'fit for purpose', whatever the future may hold.

This week marked a significant milestone at the ombudsman service, as we received our millionth case. And, as ever, *Ombudsman news* provides a snapshot of just a few of the cases we handle every day.

We focus in this issue on cases involving claims made under the *Consumer Credit Act*, where we frequently encounter common misunderstandings – on the part of businesses as well as consumers. We look too at some recent recession-related insurance cases. And on page 14 we provide a handy selection of some of the ombudsman facts and figures we are most-frequently asked about. This information is, in effect, the *annual review* 'in a nutshell'. I think it's a fascinating read in itself and I hope it will serve as a 'taster', tempting those of you who have not yet done so to take a look at the full review.



Natalie Ceeney
chief executive and chief ombudsman



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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.

Common misunderstandings about claims made under **section 75** of the *Consumer Credit Act*

We receive a significant number of complaints that involve section 75 of the *Consumer Credit Act 1974*. Under section 75, in certain circumstances, the provider of credit is equally liable with the provider of goods or services in cases where there has been misrepresentation or a breach of contract.

As we have noted in previous issues of *Ombudsman news*, the cases referred to us often reveal misunderstandings – on the part of credit providers as well as on the part of consumers – about what exactly section 75 covers. The following case studies illustrate some of the more common misunderstandings we continue to see in connection with claims made under section 75. ▶

■ **86/1**
card provider refuses claim made under section 75 for ‘misrepresentation’

Mrs J’s complaint concerned a payment she made over the phone using her credit card. She was keen to sell the timeshare in a holiday property that she and her late husband had bought some years earlier. She had therefore contacted a company that said it specialised in such sales. After a lengthy phone conversation with a sales representative, she used her credit card to pay the company £700.

Mrs J said she had understood from her conversation with the sales representative that the company already had a specific buyer lined up for her property. She said the representative had told her several times that it was a ‘*guaranteed sale*’ – and that she needed to pay £700 to meet the costs of completing that guaranteed transaction.

When she received the written contract a few days later, however, she saw that the terms differed from those she had agreed over the phone. In particular, there was no reference to any ‘*guaranteed sale*’, simply a statement that the company would ‘*endeavour*’ to sell her timeshare.

Mrs J wrote to the company asking it either to confirm that it already had a genuine buyer or to cancel the

transaction and refund her fee. In its response, the company told her it could ‘*not guarantee to find a buyer.*’ It also said it was unable to refund the fee and that Mrs J was ‘*bound by the terms of the written contract.*’

After a further unsuccessful attempt to cancel the transaction and get her money back, Mrs J made a claim to her credit card provider under section 75 of the *Consumer Credit Act*.

The card provider accepted what she said about how the timeshare company misled her into making the payment. But it said it was unable to meet her claim because section 75 only covered *written* misrepresentations. The misrepresentation in this case had been made over the phone. Unable to resolve the matter and get her money back, Mrs J brought the complaint to us.

complaint upheld

The card provider was unable to provide any legal authority for its claim that section 75 only covered written misrepresentations.

Mrs J provided credible evidence, including detailed hand-written notes that she said she made at the time of the phone conversation. We saw no reason to doubt that she had only agreed to pay the £700 fee because the company said it had a specific, guaranteed buyer for her timeshare.

... she was making a claim because of misrepresentation by the property developer.

We told the card provider we did not agree that Mrs J was unable to claim under section 75. We said it should refund Mrs J's £700 and add a payment of £100, to reflect the inconvenience she had been caused by its failure to deal with the matter correctly. ■

■ 86/2

consumer misinterprets the financial limits that apply to claims made under section 75

Miss L entered into an agreement to buy a holiday apartment on a new development in Cyprus. The apartment cost 125,000 euros and she was asked to pay a deposit of 5,000 euros.

She did this using two credit cards; one to pay 3,000 euros and the other to pay 2,000 euros.

She said the developer had assured her that a Cypriot mortgage company would provide a loan 'on guaranteed terms' for the remainder of the purchase price. But shortly after she had signed the agreement and paid the deposit, the mortgage company told her it was only

willing to lend up to 60% of the purchase price. Miss L could not afford to proceed, so she lost her deposit.

After discussing the situation with a colleague, she became convinced that the property developer had colluded with the mortgage company in making false promises about the mortgage, in order to get her to pay a deposit.

On her colleague's advice, Miss L contacted the providers of the two credit cards she had used. She outlined what had happened and said she was making a claim under section 75, on the basis of misrepresentation by the property developer.

Neither of the card providers was willing to refund the payment Miss L had made to the developer. And both of them insisted that her transaction was not covered by section 75.

They said this was because the total cost of the apartment exceeded £30,000 – the maximum limit under section 75 for the cash price of the goods or services bought. ►

Miss L thought this was unfair. She argued that her claim related to the *deposit* she had paid, not to the total purchase price of the apartment. As neither of the card providers would reconsider her claim, she then brought a complaint to us.

complaint not upheld

We could understand why Miss L had thought the dispute was about the 5,000 euros that she had paid for the deposit. However, what she had *bought* was not that deposit. She had bought an apartment, and had paid a deposit of 5,000 euros towards the 125,000 euro price of her apartment.

For section 75 to apply, it is a requirement that – among other things – the cash price of the goods or services bought must be no less than £100, and no more than £30,000. As 125,000 euros was considerably more than £30,000, it was clear that section 75 did not apply. So we told Miss L that the card providers were not under any liability to refund the money she had paid as a deposit on the apartment. ■

... we did not see why the card provider had argued that section 75 did not apply.

■ **86/3**

credit card provider misinterprets the financial limits that apply to claims made under section 75

Mr M started making regular trips to northern France to visit his elderly mother, after her health began to deteriorate. He bought a '*frequent traveller*' voucher offered by the channel-ferry company he used. The voucher cost £220 and covered a total of ten separate channel-crossings. This worked out cheaper than paying separately for each trip.

After Mr M had used the voucher for just three crossings, the ferry company went into administration. His voucher was not accepted by any other ferry company, so Mr M had to pay a different company 119 euros (at that time the equivalent of £102.31) in order to get home from France. He subsequently bought a *carnet* from that company, valid for six crossings, to replace the remaining crossings on his original voucher.

The *carnet* cost Mr M £192 and he calculated he had paid a total of £294.31 for trips that *would have been* covered by his original voucher, if the company concerned was still in business. As he had paid for the voucher by credit card, he put in a claim to the credit-card provider under section 75.

The card provider told Mr M that although he had used just three of the ten crossings covered by his voucher, it would ‘*refund the cost of eight crossings*’ (£174) to his account.

Mr M had claimed £294.31, so he was not happy to be paid less than that amount. When he complained to the card provider it said it considered it had already made a ‘*more than generous offer, in the circumstances.*’ This was because ‘*the individual cost of the crossings bought with the voucher was less than £100, which is the minimum level for section 75 to apply.*’ Unable to make sense of this, Mr M came to us.

complaint upheld

We looked at copies of the paperwork Mr M had sent the card provider, in connection with his claim.

These documents showed clearly that what Mr M had bought from the ferry company had been a voucher costing £220 – not ten individual crossings each costing £22.

So we did not see why the card provider had argued that section 75 did not apply. The ferry company had clearly been in breach of its contract with Mr M. And the evidence showed that Mr M had made every effort to minimise his loss by obtaining the best deals he could get when paying for the crossings that were no longer covered by his voucher.

We agreed with Mr M that the card provider was liable, under section 75, to make good his total loss of £294.31. We said the card provider should also pay him £100, to reflect the inconvenience he was caused by its failure to accept the clear legal position under section 75. ■

■ **86/4** **consumer claims refund on grounds of misrepresentation by carpet salesman**

Mrs B was so disappointed with her new carpet, once it was fitted in her living room, that she asked for a refund. She said the carpet ‘*spoiled the look*’ of the room. The carpet’s overall appearance was not at all as she had expected and the colour appeared to be ‘*patchy*’ in places.

Mrs B had paid for the carpet by credit card so she applied to the card provider for a refund of £570, the full price she had paid. She said this was ‘*a clear case of misrepresentation*’ as the salesman had not warned her that the actual carpet – when fitted – would look markedly different from the sample she had seen in the showroom.

The card provider refused to refund her money as it did not agree that there had been any misrepresentation. Mrs B then complained to us. ►

... we said the card provider was not liable for the cost of the carpet.

complaint not upheld

We were satisfied, from the evidence provided by Mrs B, that the carpet was not faulty in any way. It was a normal feature in carpets of this particular type for the pile to appear to have variations in shade, depending on which way each tuft, and the light, fell.

Legally, a ‘misrepresentation’ is an untrue statement of fact (which can be made by words or conduct) that causes someone to enter into a contract.

From looking at the carpet sample in the showroom, Mrs B may not fully have appreciated how the carpet would look when fitted in her home. But we did not agree with her that the salesman’s failure to ‘warn’ her about this amounted to misrepresentation.

So we said that the card provider was not liable to Mrs B for the cost of the carpet. ■

■ 86/5

credit-card provider misunderstands the extent of its liability under section 75

As a wedding anniversary present for her parents, Mrs K paid for them to join her and her husband, together with their two children, on a holiday in Florida. She used her credit card to buy six return flights, at a total cost of £2,890.50.

Just a few days before they were due to fly home at the end of their holiday, the family learned that their airline had gone into receivership. In order to get home, Mrs K had to book flights with a different airline – at a total cost of £1,980.60.

Once they were home, she made a claim to her credit card provider, under section 75, for the cost of the flights from the USA. In due course the card provider refunded £1,349.25 to her account.

Unhappy at receiving less than the amount she had claimed, Mrs K complained to the card provider. It told her the amount it had credited to her account was the exact amount it had recovered from the failed airline. It said the airline had confirmed that this sum *'represented the portion of the original payment that was attributable to the return flight'*.

Mrs K thought it was unfair to simply refund her the cost of the unused portion of her original tickets. However, the card provider was not prepared to reconsider the matter, so she brought her complaint to us.

complaint upheld

The failure of the airline with which she had booked return flights meant that Mrs K was obliged to buy tickets from a different airline to get her family home from their holiday. It was clear from the evidence that she had paid a reasonable price for these tickets.

The card provider's liability to Mrs K under section 75 was not limited to passing on any refund it was able to obtain from the airline. The card provider was *also* liable to her for the additional costs she had reasonably incurred as a result of the airline's breach of contract.

The flights from the USA had cost Mrs K £1,980.60, so the card provider's refund still left her out of pocket by £631.35. We upheld the complaint and told the card provider to pay her this amount. ■

■ **86/6** **consumer complains that credit card provider only partially met a claim made under section 75**

While Mr and Mrs A were visiting the USA they learned that the airline on which they had booked return flights was in serious financial difficulties and had suspended all its operations.

The couple booked flights home with a different airline and returned two weeks later than originally planned. Mr A had bought the original return flights with his credit card, at a total cost of £950.40. He made a claim to his credit card provider under section 75 for a total of £1,130.50. He said this included the cost of their flights home, together with the additional accommodation and other expenses *'made necessary'* because of the airline's failure.

The card provider agreed to pay the part of Mr A's claim that related to the cost of the flights home. However, it refused to pay the remainder of his claim, so Mr A referred his complaint to us. ►

... he said he could not ask for a receipt without '*suffering great embarrassment*'.

complaint not upheld

We asked Mr A why he and his wife had spent two more weeks in the USA than they had originally planned. He said they would not normally have considered staying away so long. However, they had thought it was '*reasonable*' to extend their trip '*as compensation for the inconvenience*' caused by the airline's failure.

We also asked about the additional expenses Mr A had claimed – and why he had not been able to provide receipts for all of these expenses. Mr A said that for most of their extended stay they had been able to use a private house that was owned as a holiday home by the parents of one of his wife's friends. Although Mr A and his wife had paid to stay in the house, they felt they could not ask for a receipt without '*suffering great embarrassment*'.

We were not satisfied, from Mr A's evidence, that the airline's failure had obliged him and his wife to remain in the USA for an extra two weeks. They had originally intended to spend four weeks in the USA, and the airline's failure had occurred early on during their stay. So there seemed no obvious reason why they could not simply have obtained flights home with a different airline for their original return date.

We accepted that it was only because of the airline's failure that the couple decided to extend their stay in the USA. But that did not make their additional accommodation and associated costs a *necessary consequence* of the airline's breach of contract. They would have needed to demonstrate that in order to claim for these costs under section 75.

The card provider had dealt promptly with Mr A's claim for the additional flight costs. We decided that it was not liable to him for any of the additional expenses he had claimed. ■

■ **86/7**
consumer claims for refund of payments made in connection with the re-sale of his timeshare

Mr D received an unsolicited phone call from company A. It said it was aware he was thinking of selling his timeshare on an apartment in Cyprus and it had a buyer who was prepared to offer £7,167 for it.

Mr D agreed to go ahead with the deal and to pay a fee of 900 euros to cover company A's costs in arranging it for him. Company A asked him to pay the fee by credit card to a separate company ('X Holiday Club'). Shortly afterwards, Mr D received a contract in the post from company A. This confirmed what had been agreed over the phone.

Several months passed but Mr D heard no more from company A and had no response to his letters and phone calls. Unexpectedly, he was then rung up by someone who said he worked for a company called '*Y Marketing*'. The caller said his company knew about Mr D's experience with company A and would help him to get his money back. In order to do this, however, it would need details of the credit card Mr D had used for the transaction. Mr D provided this information over the phone and was told that Y Marketing would get back to him in a few weeks.

He was still waiting to hear from Y Marketing when he received his credit card statement and saw that Y Marketing had debited his card with £974.86. Mr D then contacted his card provider, citing section 75 and claiming back the payments he had made to X Holiday Club and to Y Marketing.

The card provider refused to refund either of these payments – and it sent Mr D copies of two documents that appeared to have been signed by him. One was a contract between him and Y Marketing, authorising Y Marketing to charge him a fee of £974.86. The other document was a copy of a credit card slip for that amount.

Mr D insisted that he had never signed either of these documents – nor had he ever seen them before. But the card provider said there was no evidence that he had not entered into the contract with Y Marketing. As the card provider was unwilling to refund either of Mr D's payments, he brought his complaint to us. ▶

complaint upheld in part

Mr D's complaint involved two separate transactions on his credit card account, so we needed to consider them separately.

In the case of the payment he had made to X Holiday Club (as instructed by company A), we saw that there was a problem. Section 75 would only apply if the two companies were '*associates*' – a word which has a specific legal meaning for this purpose. However, we were unable to find any evidence that the two companies were '*associates*', in the way the law required them to be. So we said the card provider could not be held liable, under section 75, for that payment.

The situation was different for Mr D's payment to Y Marketing. He provided us with sufficient information to convince us of the accuracy of his account of what Y Marketing told him over the phone. This meant that, quite apart from any claim he could have made under section 75, he had never given his consent for the payment in the first place. We therefore told the card provider to refund it. ■

... she used her credit card to buy a dinner service from a homeware website.

■ 86/8

card provider refuses to consider claim under section 75 until consumer has first pursued the matter direct with the supplier

Miss V used her credit card to buy a dinner service from a homeware website. When it arrived, she was disappointed to find that it was not a properly matching set. Each item was decorated with an identical design, apart from two of the plates. These were decorated in a way that was *similar* to the rest of the set – but that had some noticeable differences.

She emailed the supplier and asked it to exchange the dinner service for one that comprised *matching* items.

The supplier told her it was unable to do this. It had sold out of sets in the design she had ordered and was unable to obtain further stocks. It offered instead to exchange her dinner service for anything that totalled the same price (£199) and that was currently available on its website.

Miss V did not see anything else on the website that she liked, so she asked for her money back. The supplier repeated its offer to exchange the dinner set for something else but it refused to give her a refund.

As Miss V had paid for the dinner service by credit card, she wrote to her card provider. She explained what had happened and asked for a refund, under section 75. She enclosed copies of her email exchanges with the supplier, including photographs showing the differences between the non-matching plates and the rest of the dinner set.

The card provider told Miss V that it had no liability to her under section 75. It said this was because she had *'failed to take sufficient steps to resolve the matter with the supplier.'* She had also failed to return the dinner set to the supplier to show that she was *'formally rejecting it.'* Miss V then referred her complaint to us.

complaint upheld

We were satisfied, from the evidence Miss V had provided, that the dinner service was not a matching set. So she had not been given what she had paid for with her credit card. Under section 75, she could seek redress from the supplier of *either* the goods *or* the credit.

We thought Miss V *had* taken reasonable steps to try to resolve matters with the supplier. Despite what the card provider appeared to believe, however, she was not obliged to have done this – or indeed to have returned the dinner service – before she could make a claim to the card provider.

We told the card provider that Miss V was not obliged to exhaust all possible avenues with the supplier before claiming under section 75. And we said we could see no reason why it should not pay the claim.

The card provider argued that if it gave Miss V a refund then she would still have the dinner set, as well as getting her money back. It did not think this was fair.

Miss V had already made it clear that she did not want to keep the dinner service. But we did not think it reasonable, in the circumstances, that she should be expected to arrange and pay for its return, particularly in view of its weight and fragile nature.

We told the card provider to refund the amount that Miss V had paid for the dinner set. We said that if it wanted her to return the dinner set then it should pay the courier costs and arrange a convenient time to have the dinner set collected from Miss V. ■

ombudsman focus: our 2009/2010 *annual review* – in a nutshell

In May we published our latest *annual review*, covering the financial year 2009/2010. As well as being our tenth anniversary *annual review*, it was also the most detailed we've yet produced – and the largest – with over 130 pages of facts and figures.

This reflected the fact that last year was our busiest ever, when we:

- resolved a record 166,321 disputes – a 46% annual increase – resulting in compensation for consumers in 50% of cases *and*
- handled 925,095 consumer enquiries – over 3,500 each working day.

The feedback we have received about the *annual review* has been very positive. As always, the document has been distributed widely across the financial services industry and the consumer advice world. The range of facts and figures that it contains reflects the diverse audience the document caters for – from overseas regulators to local credit unions – and from front-line complaints handlers to policy advisers.

Here, we present in just 3 pages the numbers from our *annual review* that we are most-frequently asked about throughout the year. For ease of reference we have drawn different figures together from various chapters of the *annual review* into single tables.

For more details, please refer to the full *annual review* available online on our website or as hard copy, free of charge, from our publications team (publications@financial-ombudsman.org.uk).

**our work – in numbers –
for the financial year 2009/2010 (selected key
statistics from our *annual review*)**

number of initial complaints and enquiries handled daily by our front-line customer-contact division	3,500
percentage of cases that we settled in less than six months	67%
number of complaints about the 4 most-complained about financial businesses	84,718
number of complaints about credit unions	14
% increase in the number of consumer credit complaints	110%
% decrease in the number of motor insurance complaints	13%
number of ombudsmen on our statutory panel of ombudsmen	55
average number of visitors to our website each month	210,000
number of enquiries to our technical advice desk	16,319
our income for the year	£98.4 million
our unit cost for the year	£555
number of cases where we told the financial business to pay the consumer for distress and inconvenience	18,511
% of our customers who described themselves as 'disabled'	14%
% demographic downward shift from socio-economic group AB in consumers using our service during the year	5%
percentage of complaints received from consumers aged under 25	4%

financial products complained about most frequently

	number of complaints in 2009/2010	as % of all complaints received	change on previous year	% upheld in 2009/2010	% upheld in 2008/2009
1. payment protection insurance (PPI)	49,196	30%	+ 58%	89%	89%
2. current accounts	25,252	15.5%	+ 85%	20%	61%
3. credit cards	18,396	11%	- 1%	68%	76%
4. mortgages	7,469	4.5%	- 2%	37%	40%
5. consumer-credit products and services	6,329	4%	+ 110%	58%	45%
6. unsecured loans	6,285	4%	+ 48%	48%	49%
7. motor insurance	5,451	3.5%	- 13%	38%	50%
8. mortgage endowments	5,400	3.5%	- 7%	38%	37%
9. savings accounts	5,033	3%	- 3%	51%	64%
10. whole-of-life products and savings endowments	4,199	2.5%	+ 19%	26%	34%
all other complaints	33,311		-	-	-
TOTAL	166,321		-	-	-

5 top web hits for the *annual review*

most-visited sections of the online version of the *annual review*

1 financial products and services most complained about
p30-31

2 outcome of complaints
p62-63

3 chief ombudsman's report
p11-16

4 payment protection insurance
p46-47

5 which industry sectors the complaints were about
p32-33



A selection of recent recession-related insurance cases

Over the past year we have noted a general increase in the number of complaints referred to us where the consumer is facing financial difficulties – reflecting the tough economic climate and the harsher times that many consumers and businesses are currently facing.

This selection of case studies illustrates some of the situations we have been starting to see more frequently in insurance complaints. They include cases where, after losing a job through redundancy, consumers complain that they have not received the cover they were expecting from policies they thought would cover their mortgage repayments – or the cost of cancelling a holiday – in such circumstances.

Some insurers have reported an increase in fraudulent claims that they think may be related to the recession. In response, they have been stepping up their measures to deal with instances where there is any suspicion of fraud. And as we show in case 86/13, they are subjecting such claims to closer scrutiny than usual. ▶

■ **86/9**
**consumer loses his job through
 redundancy – mortgage-protection
 policy fails to provide the cover
 he expected**

Mr G complained that his insurer refused to meet the claim he made under his mortgage-protection policy. The policy had been recommended to him when he took out a mortgage to buy a small house in the west of England. He and his wife intended to use the property as a holiday home until they retired, when they would move there permanently.

He said the adviser had assured him the policy would cover his mortgage repayments if he became unemployed as a result of redundancy or ill-health.

However, when Mr G unexpectedly lost his job through redundancy some eighteen months later, the insurer refused to pay out. It told him the policy terms only covered mortgages that were '*held against the policyholder's principal residential property.*' Mr G's mortgage was secured on a holiday home, so he was not eligible for cover.

Mr G said he had made it clear from the outset that he was taking a mortgage in order to buy a holiday home. So he could not understand why the adviser had recommended the policy – and why the insurer had collected premiums for it.

The insurer accepted that the policy had been mis-sold, and it offered to refund all the policy premiums Mr G had paid, plus interest. However, it said there were '*no grounds*' on which it could pay his claim. Mr G then brought his complaint to us.

complaint upheld

The fact that Mr G had been sold an inappropriate policy was not in dispute. The onus had been on the adviser to ensure that the policy he recommended would provide the cover Mr G needed. The adviser had already admitted having failed to check, at the time of the sale, whether the policy was suitable for Mr G. ▶

... when he unexpectedly lost his job through redundancy, the insurer refused to pay out.

We concluded that this was a serious mis-sale by the adviser, who had been acting on behalf of the insurer when selling Mr G the policy. Because Mr G was told that this particular policy would cover him, he had not looked for any alternative policies that would have covered his mortgage payments.

We told the insurer that instead of returning Mr G's premiums, it should meet his claim, subject to any other relevant terms and conditions. ■

■ **86/10** **travel insurer rejects claim for cost of cancelling holiday when consumer is made redundant**

Mr J planned to celebrate his 40th birthday by going on a holiday to the West Indies with his wife. He booked their trip almost a year in advance and took out travel insurance at the same time.

Just two months before the start of the holiday, Mr J lost his job because of redundancy. He put in a claim to his travel insurer for the cost of cancelling the trip, and said he was '*bewildered*' when the insurer told him it was unable to meet the claim.

He complained about unfair treatment, saying that he and his wife had bought the policy in good faith, believing that they would be covered for any '*legitimate reasons*' that forced them to cancel their holiday. As he had provided documents proving that his employer had made him redundant, he could not see that the insurer had any reason to refuse the claim.

When it first wrote to Mr J about his claim, the insurer had said it was unable to cover his cancellation costs because his '*circumstances*' did '*not comply*' with the section of his policy relating to redundancy.

The insurer had quoted the relevant section of the policy, which said: *'Reasons for cancellation which are covered by this insurance are ... If you are made redundant and are entitled to a payment under the Employment Protection (Consolidation) Act 1978 or any changes to that Act.'*

Mr J then contacted his insurer to complain about its decision and to ask for a *'proper explanation'*. The insurer told him it was unable to pay his claim because, at the time he was made redundant, he had only been working for his employer for 15 months.

The insurer said that its underwriters took the view that people who had worked for an employer for less than two years were at greater risk of being made redundant than more long-established employees. This was a risk that the insurer was not prepared to cover and it said the terms and conditions of the policy *'stated this clearly.'*

Mr J did not think the policy *was* clear on this point and he argued that his claim should therefore be paid. When the insurer refused to reconsider the matter, Mr J referred the complaint to us.

complaint upheld

Insurers are entitled to decide which risks they will – and will not – cover. However, they are required to set out this information clearly in their policy terms and conditions.

In this particular case, we said it was not unreasonable for the insurer to have decided it would not cover cancellation claims from policyholders made redundant after less than two years' continuous service. However, the insurer had not specifically stated this in the policy. It had referred to the *Employment Protection (Consolidation) Act 1978*, but had not explained the significance of this reference.

We thought it unlikely that the majority of policyholders would be aware that the *1978 Act* stated, among other things, that employees were only entitled to a redundancy payment from their employer if they had at least two years' continuous service with that employer. ►

**... he said he was
'bewildered' when the
insurer said it was unable
to meet the claim.**

... we raised concerns with the insurer about whether the clause was fair in law.

And we found it difficult to determine the real purpose of this particular policy term. It seemed to us that it could have been intended to ensure that no unacceptable risks were underwritten (as the insurer later asserted). But it could equally have been intended merely to ensure that claims were only paid where an employee had genuinely been made redundant, not where they had left a job voluntarily.

We said the insurer had not explained the exclusion clearly enough for ordinary policyholders to understand the nature and scope of the cover they were buying. We therefore upheld the complaint and told the insurer to pay Mr J's claim, in accordance with the other policy terms and conditions. ■

■ 86/11 consumer complains about unexpected and steep rise in premiums for mortgage-protection policy

Mrs N took out a mortgage-protection policy to cover her monthly mortgage payment of £1,250 if she was made redundant. Only a few months after she bought the policy, the insurer told her it was increasing her premiums from £25 to £45 a month.

When she complained about this 'unreasonable price rise', the insurer told her its decision to increase her premiums was taken 'following an annual review of premiums and in the light of increased claims by other holders of similar policies.' It also drew her attention to a clause in its policy terms and conditions, which stated: 'We reserve the right to change the terms and conditions of the policy and the premium amount. We will give you at least 30 days written notice of any change.'

... we concluded that the adviser had probably not understood the exclusions that applied to the policy.

Mrs N then referred her complaint to us. She was concerned that she would no longer be able to afford the premiums. She also said she would never have agreed to take out the policy if she had known the cost would rise so quickly and by such a large amount.

complaint upheld

It is good practice, before selling a policy, for insurers to draw a consumer's attention to any significant policy terms. This includes the possibility that the premium might vary during the period of cover.

When considering complaints such as this one, we therefore look to see what information the consumer was given before buying the policy.

As there are legal constraints on the ability of businesses to change the terms of standard contracts without the consumer's consent, we also review the legal status of the policy's 'variation clause'.

In this case, we raised concerns with the insurer about whether the clause had been specifically brought to Mrs N's attention and whether it was fair in law.

The insurer told us that, together with many other insurers, it had reached an agreement with the Financial Services Authority (FSA) that it would refund the additional amount it had been charging policyholders, following its review of premiums for mortgage-protection policies.

The insurer stressed that it did not '*formally accept*' that our concerns in connection with Mrs N's complaint were valid. However, it said it was willing to refund all the money she had paid over and above the monthly amount she had agreed at the outset. Mrs N was happy to settle her complaint on this basis. ■

... her insurer said she was not covered for '*pre-existing medical conditions*'

■ 86/12 insurer rejects claim made under income-protection policy when consumer becomes too ill to work

Miss M had worked for some years as an administrator at the head office of a large high-street retailer. She consulted a financial adviser because she was concerned about her overall financial security, particularly in view of the rumours at her workplace that redundancies might be made in the future.

On the adviser's recommendation she took out an income-protection policy. She said she was told this would pay benefit based on a percentage of her annual gross earnings, if she became unable to work through ill-health.

Miss M's employer eventually made a large number of staff redundant and substantially restructured its operations. Although Miss M's job was not directly affected, she had found it difficult to cope with the lengthy period of uncertainty about her future.

This, together with anxieties about adapting to the organisational changes, led to her becoming unable to work because of depression.

Her insurer rejected the claim she made under her income-protection policy. It said she was not covered for '*pre-existing medical conditions*' and it had seen medical evidence showing that, on several occasions before she took out the policy, she had been treated for depression.

Miss M told the insurer she thought its view was *'unreasonable and unacceptable.'* She said she had made the adviser fully aware of her medical history before he recommended this specific policy. And she said she would certainly never have taken out the policy if she had known it would not cover claims relating to her depression. Unable to reach agreement with the insurer, Miss M referred her complaint to us.

complaint upheld

Miss M provided clear and convincing recollections of her discussion with the adviser. She said she had given him full details of all her health problems, including her history of depression.

We were unable to obtain any information direct from the adviser, who appeared no longer to be in business. However, it was clear from the documents he completed at the time of the sale that Miss M had told him about the medical treatment she had received for depression.

We concluded that the adviser had probably not understood the exclusions that applied to the policy. He had therefore not provided Miss M with accurate information about the cover that would be available to her.

In our experience, few providers of income-protection policies offer cover for pre-existing medical conditions. It therefore seemed unlikely that Miss M would have been able to obtain cover elsewhere for claims relating to her depression.

Given this, and Miss M's assertion that she would not have taken out the policy if she had been correctly informed about it, we said the insurer should refund all the premiums she had paid since the start of the policy, together with interest. ■

... the adviser had not provided accurate information about the cover that would be available to her.

... the insurer was not satisfied that the damage had been caused accidentally.

■ 86/13 buildings insurer rejects claim for replacement of a bathroom suite after 'accidental damage'

Mr B phoned his insurer to claim for the cost of replacing his bathroom suite. He said he had accidentally dropped a hammer on the lid of the toilet cistern. The hammer had not only caused serious damage to the cistern, it had bounced into the bath and damaged that too.

The insurer sent him a claim form and asked him to complete and return it, together with quotations for the cost of repairing the damage, or of replacing the bathroom suite if repair was not possible.

When it received the completed form, the insurer noticed that what Mr B had said on the claim form about how the accident happened did not completely tally with what he had said on the phone. On the form, Mr B said that a stepladder, on which a box of tools was balanced, had been accidentally knocked over. The ladder and the toolbox fell on to the cistern lid and bath and seriously damaged them.

The insurer also noted that the quotations for the cost of replacing the suite appeared to have been altered – and they were all dated several weeks before the accident was said to have happened.

After arranging an inspection of the damage, the insurer rejected the claim. It said it had '*serious concerns*' that the damage had been caused deliberately – and that its extent had been exaggerated, in order to obtain new bathroom fittings.

Mr B strongly denied this and he complained that the insurer had acted unreasonably. In due course he brought the dispute to us.

complaint not upheld

We asked Mr B to explain the discrepancy in his accounts of how the damage occurred. He said his wife had filled in the claim form because he had been '*too busy*'. It had not occurred to him to check the form before signing it. He said his wife had not been at home on the day the accident happened and must have misunderstood what he told her about it.

In response to our questions about the quotations, Mr B said he had been thinking for some time of getting a new bathroom fitted.

Just a few weeks before the accident happened he had obtained several quotations. He had thought they were all too expensive, particularly as his wife had just found out that the firm where she worked part-time might soon be closing down. He had therefore decided simply to redecorate the bathroom and put up some new shelves.

It was while he was doing this work that the damage occurred. And as he still had the quotations he had obtained a few weeks earlier, he thought it would 'save time' if he 'altered them slightly' and sent them in with his claim.

Generally, the onus is on people who claim on an insurance policy to establish, at least on the balance of probabilities, that the loss or damage to which the claim relates was caused by 'an insured event' (something covered by their policy). In this case, the relevant 'insured event' was accidental damage to the building, which included the bathroom suite.

There was no dispute over the fact that some of Mr B's bathroom fittings were damaged. However, the insurer was not satisfied that the damage had been caused accidentally.

After considering all the evidence, we concluded that the insurer had acted reasonably in rejecting the claim. We did not uphold the complaint. ■ ■ ■



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the Q&A page

featuring questions that businesses and advice workers have raised recently with the ombudsman's technical advice desk – our free, expert service for professional complaints-handlers

Q. In issue 83 of *ombudsman news* (February/March 2010), you mentioned new arrangements covering the way the ombudsman service liaises formally with the financial services industry. Are you able to provide an update on this?

A. The newly-established industry steering-group, set up under these new arrangements, met for the first time in April – and then in June. This high-level steering group is chaired by our chairman, Sir Christopher Kelly, and it discusses high-level strategic issues relating to complaints and the ombudsman service. It comprises the following senior executives from key financial services institutions:

Deanna Oppenheimer, chief executive, Barclays UK retail banking

Helen Weir, group executive director – retail, Lloyds Banking Group

Brian Hartzler, chief executive officer, RBS UK retail banking

Keith Morris, chairman and chief executive, Sabre Insurance

John Pollock, group executive director (protection and annuities), Legal & General

David Richardson, managing director (life and health), Swiss Re

David Stewart, chief executive, Coventry Building Society

Simon Hudson, chief executive, Tenet Group

A new wider cross-sector industry panel has also been established, to replace the three sectoral liaison-groups for banking, insurance and investment that provided a channel for more formal communication between the ombudsman and the industry over the last few years.

We keep in touch regularly with the industry panel through a fortnightly email newsletter and a series of events, including focused '*meet the ombudsman*' sessions

After reviewing the structure for liaising more formally with consumer groups, we have also set up a forum for representatives from a wide range of consumer bodies to discuss complaints-handling and ombudsman issues.

Q. I heard that you have recently appointed a new independent assessor. Can you tell me more about this?

A. Our board recently appointed Linda Costelloe Baker OBE as the new independent assessor, to succeed Michael Barnes CBE, who retired at the end of May 2010 after eight years in the post.

The role of the independent assessor is to carry out a final review of the level of service provided by the Financial Ombudsman Service, in cases where a user of our service has already complained to us – and had their complaint reviewed – but remains dissatisfied.

Linda Costelloe Baker was the Scottish Legal Services Ombudsman for six years and the Independent Monitor for Entry Clearance for three years, following ten years as a management consultant specialising in service quality, complaints handling and organisational design and development.

She was recruited following an advertisement in the national press and a selection process involving non-executive board directors of the Financial Ombudsman Service and an independent public-interest observer.