Ombudsman news

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

Natalie Ceeney, chief executive and chief ombudsman

issue 90

page 3
Vehicle-related complaints

page 14
ombudsman focus: (second) quarterly account

page 20
Banking complaints involving the use of power of attorney

page 32
the Q&A page

Learning from complaints

I'm now seven months into the job, having become chief ombudsman and chief executive at the end of March. That's long enough for me to have got a feel for the organisation and the environment we operate in – but short enough to still have a fresh pair of eyes.

When talking to financial services businesses – large and small, one of the most marked differences I've observed is in their attitude towards the complaints they receive. The more astute amongst them realise that effective and well-managed complaints-handling pays dividends for *them* – not just for their customer. There's nothing new about this idea – and it's what a number of researchers have been saying for quite a while. So it's been a surprise to me to find some businesses still clinging to outdated and negative perceptions about customer complaints.

According to Dr Janelle Barlow of the University of California at Berkeley: '*Complaining customers give businesses a key opportunity to uncover problems. Resolving these problems can result in the conversion of these complaining customers into loyal ones who feel bonded to the company and will continue buying its products or services*'.

Financial Ombudsman Service

The Technical Assistance Research Project (TARP), who research customer service, have reported that customers who complain and are subsequently satisfied are 8% more loyal than if they had no problem at all. And some sources suggest that, on average, a customer whose complaint has been handled well will recommend the business to five other people.

On the other hand, customers who are dissatisfied are likely to tell eight to ten other people about the problem. Moreover, an average business may never even hear from over 90% of its unhappy customers. That's because instead of complaining to the business they tell their friends, family and colleagues.

So it's clear that the way to generate *positive* 'word of mouth' is to make it easy for customers to complain – and to handle those complaints well. Businesses that succeed in doing this are those that are smart enough to learn from their mistakes. This idea is behind the FSA's current consultation on the complaints-handling rules, where it is looking at:

- requiring firms to identify a senior individual responsible for complaints handling;
- abolishing the 'two stage' process – to shift the emphasis away from the mechanics of complaints-handling and on to the end result;
- requiring firms to identify and remedy any recurrent or systemic problems with complaints; *and*
- taking account of ombudsman decisions and previous customer complaints and learning from the outcome.

It seems to me it should now be clearer than ever before to financial services businesses that their relationship with their customers doesn't end as soon as they have done the deal or sold the product. Taking the trouble to handle complaints well is an important part of their ongoing relationship with their customers – and it is the key to providing really excellent customer service.

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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.

Vehicle-related complaints

We are regularly asked to help resolve complaints relating to the purchase or insurance of motor vehicles and we are aware that this is an area of considerable interest to many of our readers. Queries relating to disputes involving motor vehicles feature prominently among the topics most frequently raised by businesses and consumer advisers with our technical advice desk.

The following case studies illustrate some of the wide range of vehicle-related complaints that are referred to us.

90/1

consumer says new caravan bought on hire purchase was of unsatisfactory quality and that delay in carrying out repairs was unreasonable

Mr H bought a new caravan by hire purchase. With this type of arrangement, until the consumer has made their final payment, the vehicle does not belong to them but to their finance provider.

On the day the caravan was delivered to him, Mr H was concerned to find a number of faults in the interior fittings and parts of the décor. He contacted the dealer from whom he had bought the caravan and complained that none of these faults should have been present in a brand-new vehicle – particularly as it had been made to order.

The dealer arranged for three of the faults to be remedied almost immediately. However, eight months later Mr H was still waiting for the remaining repairs to be done. At that stage he contacted his finance provider and said he wished to reject the caravan on the grounds that it had been '*unfit for purpose*' when it was sold.

The finance provider told Mr H that it would contact the dealer to ensure the outstanding repairs were completed. Several attempts were then made to carry out the repairs but the remedial work was badly done and in a couple of instances it caused additional problems.

Mr H again complained to the finance provider, repeating his request to reject the caravan. The finance provider said it could not accept this. It said that, in its opinion, the caravan was '*of a satisfactory quality*'. The faults were cosmetic – not structural – and they had all been remedied except for the fitting of new flooring, which would be undertaken shortly.

Mr H then referred his complaint to us.

complaint upheld

Mr H told us that a number of repairs were still outstanding. He said the flooring had not yet been replaced, the kitchen work-surface trim remained loose, the seating was not bolted together as it should have been and a bracket was missing from the corner seating area.

On the basis of the evidence we saw, we concluded that the finance provider had failed to ensure the caravan was of a satisfactory quality when it was supplied. We said that the fact that most of the faults were not structural did not prevent Mr H from exercising his right to reject the caravan.

We noted that Mr H had acted reasonably in agreeing to allow time for the repairs to be carried out, rather than rejecting the caravan outright. And we accepted that the finance provider had not initially been aware of the faults, as Mr H had contacted the dealer direct. But we said that once the finance provider became aware of the problem, it should have ensured that matters were put right promptly.

We upheld the complaint and told the finance provider to allow Mr H to reject the caravan. Mr H had asked for a refund of all his payments. We did not agree to this, as we had seen evidence that he had been able to make use of the caravan – and had sub-let it on a number of occasions. We said the finance provider should release him from the finance agreement and return his deposit of £17,000, plus interest. ■

... it was nearly five months before the repairs to the car were finally completed.

90/2

consumer complains that used car bought on hire purchase was sold in an unsatisfactory condition

Mr G bought a second-hand car by means of a hire purchase agreement. At the time of the purchase the car was seven years old and had travelled 110,000 miles.

The day after Mr G collected the car from the dealer it broke down. He managed to get it working again – but the problem recurred several times over the next couple of weeks, so Mr G took the car to his local garage. He was told that repairs were needed, at an estimated cost of just under £3,000.

Mr G then contacted the firm that had provided the finance for the car. He said he wanted to exercise his right to reject the vehicle. However, the finance provider told him to return the car to the dealer and ask it to arrange the necessary repairs.

Mr G did this, but it was nearly five months before the repairs were finally completed. And when Mr G went to collect the car, the dealer asked him to pay £500 towards the repair costs. As he refused to pay, he was prevented from taking possession of the vehicle.

He therefore contacted the finance provider again and said he wanted to reject the car. The finance provider told him he had no grounds for this now that it had been repaired.

Mr G was far from happy about the situation. He thought the finance provider should at least pay the cost of the repairs. However, it said it was not responsible for these costs, as they had resulted from '*the kind of wear and tear to be expected with a used car*'.

Mr G then brought his complaint to us.

... he told the insurer its offer was '*ridiculous*' in view of the car's '*classic nature and fantastic condition*'.

complaint upheld

On the basis of the evidence, we concluded that the finance provider had breached the relevant *sale and supply of goods* legislation by supplying a vehicle that was evidently not of satisfactory quality.

In our view, Mr G should have been allowed to reject the vehicle after giving the dealer a reasonable amount of time to repair it. We did not think it reasonable that he was kept waiting five months for the repairs to be completed, nor did we think it reasonable that he should have been asked to pay £500 towards the cost.

We upheld the complaint. We told the finance provider to take back the vehicle and unwind the finance agreement, returning to Mr G the deposit and all the payments he had made except for the first one, as he had use of the car during the first month. We said the finance provider should also add interest to the amount it paid Mr G.

90/3

consumer dissatisfied with the value his insurer places on car which is uneconomical to repair

Mr Y's motor insurer decided that his car had been so badly damaged in a road traffic accident that it would not be economic to attempt a repair. It therefore offered him £500, which was what it considered the car to have been worth immediately before the accident.

Mr Y told the insurer its offer was '*ridiculous*' in view of the car's '*classic nature and fantastic condition*'. He thought the insurer had failed to take into account the modifications he had made and he believed the car's value to be nearer £3,000. Unable to reach agreement with the insurer, Mr Y eventually referred his complaint to us.

complaint upheld in part

To back up his view that the insurer had undervalued his car, Mr Y sent us copies of several press advertisements, together with extracts from website

forums. We explained to Mr Y that the '*evidence*' he had provided did not constitute proof of his car's value – and reflected 'asking' prices, rather than actual selling prices.

We also noted that all this material related to the *sports* version of that particular vehicle. The modifications Mr Y had made to his car included having a body kit professionally fitted. This gave his car the appearance of a sports model – and added value to the vehicle. However, it did not mean that the car had the same value as the sports version.

Mr Y's policy said that if it was not economical to repair the vehicle, the insurer would pay the vehicle's '*market value at the time of the loss*'. The policy definition of '*market value*' was ' ... *the replacement value of the same make and model of a similar age and condition vehicle, as determined by reference to standard trade guides*.'

Although the insurer was aware of the modifications Mr Y had made to his car, it did not appear to have taken them into account when assessing the car's value. We agreed with Mr Y that his car was worth more than he had been offered but we did not think his estimate of the value was correct. We said a fair price, based on the trade value, was £1,500 and we told the insurer to pay this amount.

90/4

motor insurer refuses to pay claim for damage on grounds that consumer had failed to disclose modifications to his car

Mr M's car was badly damaged after being stolen and used in a ram-raiding incident. His motor insurer refused to pay out on his claim, as it said he had failed to disclose that modifications had been made to the vehicle. Alloy wheels had been added and the air filter and exhaust system had been modified. The insurer said it would never have provided insurance at all if it had been aware of the modifications to the air filter and exhaust.

After failing to reach agreement with the insurer, Mr M brought his complaint to us. He said he thought the insurer's response was '*wholly unjustifiable*'. He told us that he had mentioned the alloy wheels when he applied for the policy but had not been aware of any other modifications.

complaint upheld

Mr M sent us a copy of the sales invoice he received when he bought the car. No modifications were noted on this – and the price he had paid did not suggest that he had been sold anything other than a standard model.

The insurer sent us its recording of the phone call in which Mr M applied for his policy. In answer to the insurer's question about any modification to his vehicle, he said he had changed the wheels but that nothing else had been modified.

We said that, on the balance of probabilities, we thought Mr M had not been aware of the modifications to his car's air filter and exhaust system. We upheld the complaint and said the insurer should meet the claim.

90/5

motor insurer refuses to pay claim on grounds of non-disclosure

Miss K complained that her insurer refused to pay her claim after her car was damaged in a road traffic accident. It said it had discovered that she had been involved in another accident several years earlier. She had failed to disclose this, and it said it would never have issued her policy if it had known about it. The insurer therefore declared the policy 'void' (in other words, treated it as if it had never existed).

Miss K thought the insurer was acting unfairly. She said she had been '*totally open and honest*' when answering the questions put to her when she applied for the policy. However, the insurer was not prepared to reconsider the matter, so she referred her complaint to us.

complaint upheld

As Miss K insisted that she had not been asked about any previous accidents, we obtained a recording of the call she made to the broker to arrange the insurance. We noted that she had said '*no*' in response to the question, '*have you made any claims in the past five years?*' She was not asked about any motoring accidents.

The insurer sent us a copy of the *statement of insurance* it had given to Miss K and that it said it had based on the information she gave the broker. In that statement a blank space had been left immediately under the words:

'*Give details below of any motoring accidents, claims or losses in the last 5 years, irrespective of blame.*'

The insurer told us that regardless of what questions the broker had asked her, Miss K should have checked carefully through the statement of insurance and amended it to provide details of her earlier accident.

We asked Miss K about that accident. She told us that four years earlier she had been involved in a minor incident that '*was merely a case of bumpers having touched, with no visible damage to either car*'.

She said she had noted at the time that the other driver's car showed signs of earlier damage. She had asked the

... the insurer said it would never have issued her policy if it had known about the accident.

driver, a Mr T, about this damage. He had said it resulted from a separate incident and that he had not so far found time to get his car repaired.

Some while after that, Mr T's insurer had written to Miss K in connection with a claim he had made following the incident with her car. In her reply she had denied all liability and stated that no damage had been caused to either car. She told us she had never heard any more in connection with this claim and presumed it had not been successful. She said she had not thought to mention the incident to the broker and did not think it was relevant.

We pointed out to the insurer that the insurance had been agreed on the basis of Miss K's answers to the questions put to her by the broker. These had not included any questions about previous accidents. We did not agree that the insurer could subsequently seek to change the terms of the insurance on the basis of a differently-worded question in the statement of insurance.

We said that, in the particular circumstances of this case, it was reasonable for Miss K to have assumed that the accident involving Mr T's car had not been worth mentioning – and that his claim had not succeeded.

We upheld the complaint and said the insurer had acted unfairly in treating Miss K's policy as 'void'. We told the insurer to reinstate Miss K's policy and deal with her claim for damage to her car, adding interest to the amount it paid her.

90/6

motor insurer refuses to pay for stolen motorbike on grounds that policyholder failed to disclose modifications

Mr L complained about his insurer's decision not to pay his claim after his motorbike was stolen.

When making the claim he had described the bike and mentioned that it had been decorated with a number of football emblems, painted on the sides. The insurer subsequently refused to pay the claim and declared his policy 'void', on the grounds that he had failed to disclose these '*modifications*'.

After lengthy correspondence with the insurer, Mr L brought his complaint to us.

complaint upheld

The insurer had taken longer than we would have expected to reach a decision on this claim. We noted that at one stage Mr L had said the insurer appeared to be treating him as if he had committed fraud.

The insurer's file revealed that it had some doubts about the validity of the claim. However, it had no evidence to back up its suspicions. One internal email about the claim said '*although we have concerns, nothing we can do except use the fact that insured has football logos all over his vehicle*.'

To be justified in turning down the claim on the grounds of non-disclosure, the insurer needed to show that Mr L had withheld information about the modifications, despite having been asked a clear question about them.

We looked at the proposal form that Mr L had completed when applying for the policy. The only question on the form that could be taken to refer to modifications was the one that asked: '*is the motorcycle a manufacturer's standard model?*' Mr L's response was '*yes*'.

We asked him what he understood the question to mean. He said it thought it referred to the bike's '*mechanical properties*'. He told us that he considered that he had answered the questions correctly, as he had never made any adaptations to the bike in order to enhance its performance.

The insurer had not made it clear that it required information about the type of '*modifications*' that Mr L had made to his bike, nor had it asked him any clear questions about '*modifications*'. We therefore said it could not reasonably refuse to pay his claim on the grounds of non-disclosure.

We upheld the complaint and said the insurer should pay the claim, together with interest, and reinstate the policy.

We noted that Mr L lived in a relatively remote rural area and that the motorbike was his only form of transport. He provided evidence of the practical difficulties he had been caused – and the extra expense he had incurred – while waiting for the insurer to settle the claim. We told the insurer that it should pay Mr L £400 in recognition of this.

90/7

motor insurer refuses claim for stolen car on grounds that policyholder failed to take reasonable care of his car keys

Mr E's car was stolen while he was watching his teenage son playing football in a local park. He said he had locked the car and put the keys in his bag, which he had placed on the ground by his feet while he was watching the game. Whoever had stolen the car had taken the keys from his bag at some stage during the match.

The insurer turned down Mr E's claim as it said he had '*failed to take reasonable care in safeguarding the vehicle's keys*'.

Mr E disputed this. He said he had put the keys in his bag because the clothes he was wearing that day did not have any pockets. He was aware that there were some lockers in the hut that the players used as a changing room. However, he had not wanted to leave his bag and keys there because his son had told him the lockers were frequently vandalised.

He said he had taken care to stand close to the bag throughout the match. He thought the thief must have seen him arrive and had taken advantage of a brief moment when his attention was distracted in order to steal the keys. It was only at the end of the game that he had realised the keys were missing – and he had then rung the police immediately.

The insurer remained adamant that it would not pay the claim, so Mr E came to us.

complaint upheld

Our general approach, in cases where the insurer has said the consumer failed to take reasonable care, is to decide whether the insured person identified that there was a risk – and then took what they considered to be reasonable steps to guard against it.

In this case we did not think there was any evidence that Mr E had failed to take reasonable care of the keys. He had identified that it was important to take care of them and he had decided that – in the circumstances – the safest place for them was in his bag, which he kept by his feet while he was watching the match.

We noted that he had provided consistent accounts of what had happened, both in his initial reporting of the theft to the police and subsequently, when answering questions put to him by the insurer and the loss adjuster.

We upheld the complaint and said the insurer should pay the claim.

90/8

motor insurer refuses to pay claim for damage to stolen car because policyholder left keys in the car

Mr D's insurer refused to meet the claim he made for damage to his car after it was stolen. The insurer said the policy only provided cover in cases where the car had been locked and the keys '*removed from its vicinity*'. In this instance it thought that he had left the car unlocked with the keys still in it.

Mr D strongly denied this and he eventually referred his complaint to us.

complaint not upheld

Mr D told us that the car had been stolen while he was visiting his local leisure centre. He said he had not brought a bag with him, so had nowhere to put his keys, wallet and mobile phone while he was in the leisure centre. He had placed these items in the door pocket on the driver's side of the car. He had then locked the car with his spare key.

He stressed that he had taken particular care to ensure his belongings would not have been visible to any passers-by – and he said he thought the insurer was being unreasonable in the circumstances.

We noted that when Mr D first reported the loss of his car he had not mentioned having left the keys and other items in the car. When asked to hand over his car keys he had only been able to produce the spare key, as he said he had '*temporarily mislaid*' the main set of keys. He was not subsequently able to find them.

When Mr D's car was eventually found there was no sign of forced entry or of any damage to the lock. It was only when faced with this evidence that Mr D had told the insurer that he had left the main set of keys – together with his other belongings – inside the car. However, he still maintained that he had locked the car with his spare key. He said he could '*only conclude that whoever stole the car must have used a self-made key*'.

We noted that the policy wording stated clearly that cover was only offered if '*the vehicle is locked and the keys removed from its vicinity when no one is in it.*'

In view of the inconsistencies in Mr D's version of events, and the lack of any evidence to the contrary, we thought it more likely than not that he had left his keys in the car and had forgotten to lock it. We did not uphold the complaint.

90/9

consumer disputes fairness of the price offered by motor insurer for vehicle it considers uneconomic to repair

Miss J complained about the actions of her motor insurer after her campervan was seriously damaged in a road traffic accident.

The insurer did not think it would be economical to carry out repairs, so it offered her £3,575, which it estimated to be the vehicle's '*full value*'. Miss J disputed the insurer's view that the campervan could not be repaired – and said she was more than willing to arrange the repairs herself. But she said that, in any event, the campervan was worth more than the sum offered.

Miss J was distressed to discover, at this stage, that the insurer had already disposed of the vehicle. When she complained about this, the insurer offered to pay her an additional £500 as '*compensation for premature disposal*'. However, it refused to accept that the campervan was worth more than the amount it had already offered.

Unable to reach agreement with the insurer, Miss J referred her complaint to us. She said she had been treated unfairly because the sum offered was not enough to enable her to replace the campervan on a '*like-for-like*' basis. She thought £5,000 would be a '*more realistic valuation*'.

complaint not upheld

After considering the available evidence, we concluded that the amount the insurer had offered was not unreasonable, in view of the vehicle's age and condition.

We noted from the information Miss J supplied that she had bought her campervan at a higher price than the market rate at the time. She had subsequently spent a considerable amount of time and money refurbishing the interior.

Although she clearly had a strong sentimental attachment to the vehicle, it did not have as high a market value as she thought it did. We explained to her that the insurer was only liable to pay the current trade value. We told her we thought that its offer to pay £3,575, together with £500 as compensation for the premature disposal of the vehicle, was a fair one. We did not uphold the complaint.

... she was distressed to discover that the insurer had already disposed of her campervan.

ombudsman focus:
(second) quarterly account

a snapshot of our complaint figures for the second quarter of the 2010/2011 financial year

In *ombudsman news* issue 87 (July/August 2010) we published a list of the financial products and services that accounted for over 90% of our complaints workload in the first quarter of the 2010/2011 financial year.

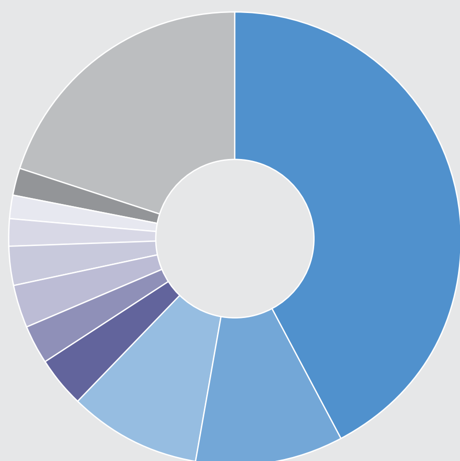
We showed how many new complaints we had received during the quarter for each of these categories – and what proportion we resolved in favour of consumers. And we gave figures for the previous year as a whole – for comparison purposes. This was the first time we had made this level of information available *throughout* the year rather than just annually, in our *annual review*, after the end of the financial year.

Feedback on our publication of these quarterly figures has been positive. A few concerns were expressed about *too much* data – and the risk that people might mis-interpret numbers and trends. But generally, the public availability of this information has been welcomed. Stakeholders have said that the data helpfully complements other information we publish – including the complaints data relating to named businesses that we now issue six-monthly on our website.

We will therefore continue to publish complaints figures quarterly in *ombudsman news*. The focus in this issue is our complaints workload in the second quarter of 2010/2011 (July, August and September).

what consumers complained about to the ombudsman service in July, August and September 2010

payment protection insurance (PPI)
current accounts
credit card accounts
house mortgages
overdrafts and loans
car and motorcycle insurance
deposit and savings accounts
'point of sale' loans
buildings insurance
mortgage endowments
travel insurance
specialist insurance
contents insurance
whole-of-life policies
portfolio management
personal pensions



the financial products that consumers complained about most to the ombudsman service in July, August and September 2010

product	share
payment protection insurance (PPI)	45%
current accounts	11%
credit card accounts	10%
mortgages	4%
overdrafts and loans	3%
car and motorcycle insurance	3%
deposit and savings accounts	3%
buildings insurance	2%
mortgage endowments	2%
'point of sale' loans	2%
complaints about other products	15%

number of new cases			% resolved in favour of consumer		
Q2 2010/11 (July to Sept)	Q1 2010/11 (April to June)	previous year 2009/10	**Q2 2010/11 (July to Sept)**	Q1 2010/11 (April to June)	previous year 2009/10
21,320	13,520	49,196	**73%**	81%	89%
5,246	5,420	24,515	**24%**	26%	20%
4,595	4,296	18,301	**55%**	62%	68%
1,789	1,721	7,452	**30%**	33%	37%
1,510	1,564	6,255	**40%**	43%	48%
1,399	1,436	5,451	**43%**	46%	38%
1,287	1,009	4,508	**40%**	40%	52%
875	622	1,735	**36%**	46%	52%
874	955	3,437	**39%**	43%	43%
756	944	5,400	**31%**	30%	38%
741	553	1,956	**37%**	55%	44%
459	397	1,070	**51%**	46%	50%
419	444	1,863	**38%**	37%	38%
375	409	1,690	**34%**	35%	28%
362	246	1,040	**72%**	46%	48%
326	357	1,359	**32%**	30%	29%

continued

from previous page

what consumers complained about to the ombudsman service in July, August and September 2010

hire purchase
warranties
investment ISAs
'with-profits' bonds
endowment savings plans
debit and cash cards
term assurance
share dealings
unit-linked investment bonds
income protection
debt collecting
catalogue shopping
credit broking
cheques and drafts
legal expenses insurance
private medical and dental insurance
direct debits and standing orders
interbank transfers
critical illness insurance
guaranteed bonds
pet and livestock insurance
annuities
self-invested personal pensions (SIPPs)
store cards

(second) quarterly account

number of new cases			% resolved in favour of consumer		
Q2 2010/11 (July to Sept)	Q1 2010/11 (April to June)	previous year 2009/10	**Q2 2010/11 (July to Sept)**	Q1 2010/11 (April to June)	previous year 2009/10
312	399	1,430	**40%**	44%	48%
261	219	863	**58%**	53%	53%
251	185	1,301	**51%**	46%	42%
220	233	1,056	**46%**	35%	28%
237	229	1,512	**32%**	31%	25%
226	220	964	**38%**	41%	43%
198	200	912	**23%**	32%	24%
191	485	1,105	**66%**	65%	52%
180	204	2,453	**76%**	62%	57%
171	188	740	**37%**	40%	39%
151	136	697	**49%**	37%	42%
148	196	755	**69%**	71%	79%
152	99	341	**48%**	57%	62%
148	148	773	**43%**	43%	49%
148	142	597	**27%**	21%	25%
137	140	652	**51%**	49%	35%
134	140	737	**45%**	38%	48%
126	124	606	**44%**	46%	43%
119	138	598	**24%**	35%	31%
117	104	595	**32%**	48%	37%
113	99	462	**25%**	44%	24%
111	95	501	**44%**	29%	33%
104	112	410	**47%**	47%	53%
103	100	574	**65%**	58%	74%

continued

from previous page

* This table shows all products and services where we received (and settled) at least 30 cases during the quarter. This is consistent with the approach we take on publishing complaints data relating to named individual businesses. This approach was agreed after public consultation.

We received and settled fewer than 30 cases about debt counselling in July, August and September of this year – which is why no figure for this is shown in this quarter.

what consumers complained about to the ombudsman service in July, August and September 2010

electronic money
spread betting
occupational pension transfers and opt-outs
commercial vehicle insurance
commercial property insurance
state earnings-related pension (SERPs)
debt adjusting
roadside assistance
hiring, leasing and renting
personal accident insurance
business protection insurance
guaranteed asset protection ('gap' insurance)
unit trusts
open ended investment companies ('oeics')
debt counselling
total
other products and services

ombudsman focus:

(second) quarterly account

number of new cases			% resolved in favour of consumer		
Q2 2010/11 (July to Sept)	Q1 2010/11 (April to June)	previous year 2009/10	**Q2 2010/11 (July to Sept)**	Q1 2010/11 (April to June)	previous year 2009/10
92	111	453	**32%**	40%	49%
82	62	191	**17%**	17%	19%
67	55	368	**55%**	48%	48%
65	52	290	**40%**	35%	35%
64	68	487	**34%**	34%	22%
64	60	560	**4%**	7%	2%
61	60	231	**62%**	55%	65%
59	59	226	**44%**	45%	35%
58	69	283	**49%**	41%	37%
56	80	274	**50%**	48%	26%
43	53	222	**23%**	23%	26%
41	48	224	**42%**	49%	53%
40	36	192	**69%**	57%	44%
33	34	329	**84%**	67%	56%
*	56	163	*	57%	63%
47,286	39,213	160,776	**52%**	52%	50%
455	363	2,236	**43%**	43 %	42%
47,741	**39,576**	**163,012**	**52%**	**52%**	**50%**

Banking complaints involving the use of power of attorney

In some of the banking complaints referred to us the consumer has given someone else a formal written authority to act for them – in the form of a *power of attorney*. This is a legal authority given by one person (the '*donor*') to another person or persons (the '*attorney*' or '*attorneys*') to conduct the donor's financial or legal affairs.

Some types of power of attorney automatically come to an end if the donor loses mental capacity. Other types – known as '*enduring*', '*lasting*' or '*continuing*' powers of attorney – can continue in force even after the donor loses mental capacity, although (depending on the type of power of attorney) some additional legal formalities may be required.

Important changes in the law about powers of attorney came about in April 2001 for Scotland and in October 2007 for the rest of the United Kingdom. The changes did not undo powers of attorney that had already been given before then. But they meant that new powers of attorney given after those dates were subject to different rules around their effect and how (and when) they needed to be registered with the Office of the Public Guardian or the Office of the Public Guardian (Scotland).

The complaints we see suggest that consumers and bank staff are sometimes confused or uncertain about the different rules for old and newer types of powers of attorney, and about how the power of attorney should operate in practice, in relation to banking transactions.

Powers of attorney are most frequently given because the donor is elderly or vulnerable in some way. This can give rise to situations that require sensitive handling by the bank. For example, if it has reason to believe the attorney may be abusing their power, then it may have to balance its duty to act on the instructions of the person to whom the customer has given power of attorney with its wider concern to protect its customer.

Our approach when dealing with cases involving powers of attorney has not altered since we last featured this topic in *ombudsman news* (issue 52, April 2006). The following cases illustrate some of the more typical types of complaint we receive.

90/10
consumer complains of delays, inconvenience and unnecessary legal costs caused by bank's errors and misunderstandings relating to powers of attorney

Mrs C complained about the poor service provided by the bank where her parents, Mr and Mrs K, had a joint mortgage account and individual current accounts.

When Mrs C's father became seriously ill he arranged for her to have lasting power of attorney, so she could take over the running of his financial affairs. And shortly after this, Mrs C also obtained lasting power of attorney over her mother's affairs, enabling her to manage her mother's finances as well, if this became necessary.

After ringing the bank to explain that she now had the two powers of attorney, Mrs C was advised to take all relevant documents, together with proof of her own identity, to a local branch of the bank. She did this, and was told by a member of staff that he would '*make a note of the situation*'.

A short time after this, Mr K died. Mrs C was his executor and she visited the bank branch to get some information about her late father's accounts, in order to apply for a grant of probate.

She took with her a copy of her late father's death certificate, together with his will. However, the bank refused to give her the information she asked for. It said it would first need to see proof that Mr K had given her power of attorney over his affairs.

Mrs C explained that she had already provided this proof but the bank insisted that it had no record of it. She was therefore unable to obtain the information she needed until the following day, when she returned to the bank with proof of her identity and with a copy of the power of attorney in respect of her late father's affairs.

She also brought the power of attorney relating to her mother's affairs. She asked the bank to check that it had now made a proper record of *all* the paperwork she had brought in – and she was told that all relevant details had been '*put on file*'.

Not long after this, Mrs K decided to rearrange her mortgage. She asked her daughter to contact the bank and make all the arrangements on her behalf. However, the bank refused to accept that Mrs C had any authority to act for her mother and it said Mrs K would have to come in to the branch herself to discuss the changes to her mortgage.

The bank added that, because of '*an unfortunate oversight*', it had forgotten to remove Mr K's name from the joint mortgage account when Mrs C had brought in a copy of his death certificate. So it said that before it could now take any action in connection with the mortgage, Mrs K would have to ask her solicitor to arrange the transfer of the mortgaged property into her sole name.

After visiting a solicitor with her mother, Mrs C wrote to the bank to complain – on behalf of her mother and of her late father's estate – about its poor standard of service. She said the bank's poor administration had caused considerable inconvenience. She also said the bank had misinformed her, as the solicitor had told her there was no need for his involvement.

... the bank's poor administration had caused considerable inconvenience.

... the bank had not properly understood the effect of the documents she had provided.

Mrs C asked the bank to reimburse her for the cost of seeing the solicitor. She also wanted the bank to pay compensation for the time she had spent '*dealing with matters resulting from the bank's incompetence*'.

She quoted the amount of compensation she considered appropriate, based on a multiple of the daily rate she charged clients of her own business. She asked the bank to pay this sum to a charity of her mother's choosing.

The bank accepted that there had been '*some service failures*' and it agreed to reimburse the solicitor's fee. It also offered £50 as a '*goodwill payment*'. Mrs C did not consider this was adequate, and she eventually referred her complaint to us.

complaint upheld

It seemed to us that the bank had not properly understood the effect of the various documents that Mrs C had provided. In particular, it had failed to appreciate that the power of attorney given by her father was no longer relevant, following his death.

The bank had admitted its mistake in not making the necessary amendments to the joint mortgage, after Mrs C had given it a copy of her father's death certificate. And it had incorrectly told Mrs C that her mother needed the services of a solicitor before it could carry out changes to the mortgage.

Overall, we were satisfied that the bank's failings had caused Mrs C real inconvenience. However, we did not agree that compensation should be linked to a multiple of her professional daily rate, or that the bank should be required to pay this sum to charity.

We told the bank that in addition to reimbursing the solicitor's fee, it should pay £500 compensation to Mrs K, in line with our published approach to compensation for non-financial loss.

... she arranged for her son to have an ordinary power of attorney so he could deal with her financial affairs.

■ **90/11**

bank allowed consumer to continue exercising power of attorney after it had ceased to have legal effect

Mrs J, who was elderly and in frail health, arranged for her son to have an ordinary power of attorney so he could deal with her financial affairs.

Within a few months, Mrs J's condition had deteriorated to the extent that her local social services rang the bank to let it know that she now lacked mental capacity. Social services subsequently followed up their call with a fax, again stating that Mrs J now lacked mental capacity.

A few months later, Mrs J died. Her daughter, Mrs L, was her executor. When looking through her late mother's bank statements, Mrs L noticed that her brother had continued to draw on their mother's account after social services had contacted the bank.

Mrs L was aware that social services had told the bank about her late mother's condition, so she asked the bank why it had failed to act on this information. She said it was her understanding that an ordinary power of attorney stops automatically if the donor loses mental capacity.

The bank told Mrs L that it was legally entitled to allow Mr J to act under the power of attorney until *either* it received formal notification of Mrs J's lack of mental capacity *or* Mrs J cancelled the power of attorney. The bank said it had never received any formal notification of Mrs J's condition. When questioned about this, it admitted receiving the phone call from social services but said it had never received a fax confirming the call.

Unhappy with this response, Mrs L brought a complaint to us in her capacity as the late Mrs J's executor.

... we thought the bank should have acted promptly to freeze the account.

complaint upheld

We checked whether Mr J was one of the beneficiaries of his mother's estate. He wasn't, so we were satisfied there would not be an unfair result of any benefit to him if we upheld the complaint.

That was an important point because, unlike a court, we have no power to direct how the money from any award made to an estate should be distributed.

From the evidence provided by Mrs L and social services, we concluded that the bank *had* received the fax about Mrs J's lack of mental capacity. But regardless of whether or not it had done so, we thought the bank should have acted promptly to freeze Mrs J's account as soon as it received the phone call about her loss of mental capacity.

Mrs J had given her son an *ordinary* power of attorney. This no longer had any legal effect once she lost mental capacity. The bank should not, therefore, have allowed Mr J to continue using the account. If it had felt it needed formal written notification, and did not realise it had received the fax, then it should have followed matters up with social services.

It was clear from the evidence we saw that Mrs L had made separate financial arrangements to provide for her mother during her last months (when she was hospitalised and unable to do anything for herself). It was also clear that the withdrawals, totalling just over £8,000, that Mr J had made *after* social services contacted the bank, had not been for his mother's benefit.

Mrs L had incurred legal costs on behalf of the estate in connection with these withdrawals. We said the bank should pay these costs, as they would not have been necessary if the bank had acted correctly when notified of Mrs J's loss of mental capacity.

We said the bank should also pay the late Mrs J's estate the total sum that her son had withdrawn *after* the power of attorney ceased to have effect. It should also pay interest on that sum.

90/12

consumer with power of attorney objects to bank's internal procedures for noting the power in its records

Shortly after Mr A was given lasting power of attorney for his aunt, he visited her bank branch. His intention was to inform the bank that he had the power of attorney and to make arrangements to operate her account, should it become necessary.

The bank asked Mr A to sign its own registration form. It said it would then take a photocopy of the power of attorney and keep this on file.

... in strict legal terms, there was no need for him to sign the bank's form.

Mr A refused to sign the form. He said he could not see why it was necessary, as he had showed the bank all the relevant paperwork. He also pointed out that the form appeared to be impractical, in the circumstances, as it asked for the accountholder's signature.

The bank agreed that the wording of the form was a little confusing. But it said there was no need for Mr A's aunt to sign the form, as he had power of attorney to sign on her behalf. Mr A still refused to do this. He also refused to allow the bank to make a photocopy of the power of attorney.

The bank told him that its procedures required it to retain a copy. It said that if he objected to the bank making its own copy, he would need to provide a certified copy which he could obtain from his solicitor.

Mr A left the bank at that point. He subsequently wrote to the bank's head office to complain about what he considered to be '*excessively bureaucratic and unnecessary procedures*'. He asked the bank to compensate his aunt for the inconvenience she had been caused.

... he complained to the bank about its '*excessively bureaucratic and unnecessary procedures*'.

complaint not upheld

There was no dispute between Mr A and the bank about what had happened in the branch. The only point at issue was whether the bank had acted reasonably in asking him to sign the form – and in requiring a copy of the power of attorney, for its records.

Mr A's aunt had registered the lasting power of attorney with the Office of the Public Guardian so he was entitled to act under it.

In strict legal terms, there was no need for him to sign the bank's form. However, we could not see that the bank had acted unreasonably or put him to any real inconvenience in asking him to do this. The bank had already filled in the form with the information it needed, so all Mr A had to do was to sign it. He was not asked to bring his aunt into the branch, or to get her signature on the form.

We also thought it reasonable (and a reflection of normal practice) for the bank to require a copy of the power of attorney for its records.

We did not agree with Mr A that the bank should pay his aunt compensation. She had not been inconvenienced by the fact that the bank had not so far made an official note of the power of attorney. She was fully capable of managing her financial affairs herself and had arranged the power of attorney as a precaution, in case she eventually became too frail to cope on her own.

We encouraged Mr A to cooperate with the bank to ensure that his power of attorney could be properly noted on its records. We did not uphold his complaint.

... the bank said it had no record of her power of attorney.

■ **90/13**

consumer and bank both misunderstand need for formal registration of enduring power of attorney

When Mrs J's uncle, Mr B, gave her an enduring power of attorney she visited his bank to make arrangements to operate his account, should it become necessary.

Mr B was fully capable of dealing with his finances himself at that stage and it was three years later when Mrs J first needed to use the power of attorney. She then visited the bank to explain that Mr B had become increasingly frail and now lacked mental capacity.

After telling Mrs J that this information would be put on file, the bank allowed her to withdraw £200 from the account. It arranged with her that in future it would send the monthly statements for her uncle's account to her, at her home address.

Several months later Mrs J again visited the branch to make a further withdrawal. By then it had become clear to her that she would need to start making more frequent withdrawals in order to meet her uncle's care needs.

She was very surprised when the bank refused to give her access to Mr B's account, as it said it had no record of her power of attorney. Mrs J protested that she had registered the power of attorney at that same branch, three years earlier. And she pointed out that she had recently withdrawn some money from the account without any difficulty.

However, the bank told her she would need to obtain an order from the Office of the Public Guardian before it could allow her access to Mr B's account. Mrs J argued, without success, that this should not be necessary – and she eventually referred a complaint to us, on her uncle's behalf.

complaint upheld in part

Mrs J had not realised that before she could use the power of attorney, she had to register it with the Office of the Public Guardian. But she had not been alone in misunderstanding the situation.

The bank employee had also been unaware of the legal requirements when he had registered the power of attorney in the bank's records, allowed her to withdraw money from Mr B's account, and sent the statements to her home address. So we were not surprised that Mrs J had failed to realise that all was not in order.

Once the problem came to light, the situation was made worse by the fact that the bank had lost the details of the power of attorney. It had therefore – mistakenly – suggested that it had never been told about it at all.

It was always going to be necessary for Mrs J to register the power of attorney with the Office of the Public Guardian before she could use it to act for her uncle. And we accepted that the bank had no general duty to advise her in the matter. However, she would have registered it far earlier if the bank had not mistakenly allowed her access to Mr B's account before she had done this.

We also thought that the bank should have been more helpful when it eventually realised that the power of attorney had not yet been properly registered, particularly in view of its earlier mishandling of the matter.

We said the bank should credit Mr B's account with £550, to reflect its contribution to the difficulties. ■

... the bank had lost the details of the power of attorney.

... He said he had been '*humiliated*' by the bank manager's insistence on speaking to his mother.

90/14

bank seeks donor's agreement before agreeing to attorney's request to transfer funds

Mrs D gave her son power of attorney so that he could deal with her financial affairs. She was elderly, with mobility problems, and '*disliked dealing with paperwork*'.

Several years after Mr D had first started using his power of attorney, he went to the local bank branch and asked to transfer £15,000 from his mother's savings account to his own current account.

The cashier told him that as the transfer was for such a large sum of money, her manager would first have to approve it.

The manager took Mr D to a side office and asked him the reason for the transfer. Mr D later said he had felt '*embarrassed and insulted*' to be questioned in this way. He reminded the manager that he had a valid power of attorney – and he said he was not obliged to explain why he was transferring the money.

The manager then asked Mr D to wait for a few minutes while she '*checked something*' in the back office. He later discovered that the manager had rung his mother.

The manager had tried unsuccessfully to get through to Mrs D on her home number, but eventually spoke to her on her mobile phone. After a short discussion over the phone, the manager agreed to carry out the transfer.

Mr D subsequently complained about the bank's actions, on his own behalf and on behalf of his mother. He said he had been '*humiliated*' by the manager's insistence on speaking to his mother before allowing the transfer.

And Mrs D (who had been staying with friends at the time) said she had been annoyed to have her holiday interrupted by a call from the bank.

She said this had been '*particularly upsetting*' because her main reason for setting up the power of attorney had been to avoid dealing with financial matters.

The bank defended its actions. It said its approach to the situation had been reasonable, given the nature of the transaction. Mr D then brought the complaint to us.

complaint not upheld

There was no question that Mr D was legally entitled, under the lasting power of attorney, to operate his mother's account. But given the circumstances, we thought it reasonable for the bank to satisfy itself that all was in order before going ahead with the transaction.

The transfer was very different from the type of transaction that Mr D normally carried out for his mother. It involved a large amount of money – and this sum was being moved into Mr D's personal current account.

We were satisfied, from the bank's recording of the call and from the notes the manager had made subsequently, that it had been handled sensitively.

Mrs D had explained that she was on holiday, but she had not appeared at all unwilling to talk to the bank manager. The conversation had been fairly brief but it was long enough for the manager to establish that Mrs D was aware of the transfer and happy for it to go ahead. The manager also noted that Mrs D did not appear to be upset, confused or under any pressure.

We concluded that, in the circumstances, the steps the bank had taken were reasonable and proportionate and had been taken in Mrs D's best interests. We did not uphold the complaint.

... the bank said its approach had been reasonable, given the nature of the transaction.

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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. The ombudsman service is currently looking into a complaint about my business. How can I be sure that the person who will decide the case understands financial services as well as I do?

A. The technical, academic and professional qualifications of our adjudicators and ombudsmen are as varied as the work we cover.

The backgrounds of our staff are similarly varied. We have accountants and lawyers working for us as well as former IFAs, insurance and mortgage brokers, bankers, trading standards officers and stockbrokers. We list the backgrounds of all our ombudsmen on our website.

But what makes a good adjudicator or ombudsman is more than just letters after their name. It is the ability to stand back and listen to all sides of the story – to weigh up the arguments and arrive at decisions fairly and impartially.

This is also the defining characteristic of judges and magistrates – who similarly don't need to list their qualifications to demonstrate their ability to do the job.

There is no 'standard' adjudicator or ombudsman qualification. But when recruiting staff, we look for the characteristics described above, as well as for relevant experience.

Q. Before a loan or credit company is obliged to consider helping a consumer who claims to be in financial hardship, is it acceptable to require the consumer to provide proof that they've consulted a free debt-advice agency?

A. No. If a consumer says they are in financial difficulty and need debt advice, the financial business should give them details of suitable free agencies that might be able to help.

However, that should not prevent the financial business itself from providing the consumer with help straight away. And if consumers feel able to handle the matter themselves, then they should not be pressured into dealing through – or having their income and expenditure 'verified' by – a debt adviser.

There's more information about our approach to complaints involving financial hardship and unaffordable lending in our online technical resource – in the publications section of our website.

Q. What is the ombudsman's position regarding consumers' complaints involving payment protection insurance, now that the handling of these cases is subject to judicial review?

A. We are continuing as normal to deal with consumers' complaints about payment protection insurance – despite the legal action ('judicial review') launched on 8 October 2010 by the British Bankers Association (BBA) against the FSA and the Financial Ombudsman Service on the approach to PPI complaints handling. There is more information about our approach to these cases on our website.

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