ombudsman **news**

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

interesting times

I'm proud to be introducing this *ombudsman news* as the newly-appointed chief ombudsman and chief executive. As a long-standing reader of *ombudsman news*, I've seen it reflect significant changes over its 119 issues – changes for the ombudsman, for financial services and for the outside world.

And from mobile technology to virtual currencies, it's clear that some things are changing faster than ever. It's certainly an interesting time for us all.

But some things happen more gradually. It was back in the early days of my ombudsman career – more than ten years ago – that the Department of Trade and Industry first set out its plans for reforming consumer credit, which later became the Consumer Credit Act 2006. At that time, a cap on what was then referred to as "short-term loan interest rates" was decided against. Today, largely due to the publicity around payday loans, that form of lending has become controversial – and the new regulator has taken a different stance. It's hardly surprising – a decade and a financial crisis later – that views have moved on.

We don't set the rules at the ombudsman. But our unique position – hearing opposite perspectives on what's not working and why – means we've a responsibility to understand and to share what we know. This time we're talking about payday lending – an issue that's rarely out of the news at the moment, whether portrayed as a symbol of everything that's wrong with financial services or a practical solution in tight times.

Financial Ombudsman Service

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Caroline Wayman

Unfortunately – as Juliana Francis explains in *ombudsman focus* – the complaints that are reaching us paint a really quite troubling picture.

We also highlight the increasing number of people who are telling us they feel they've got a raw deal from a credit broker. We know from experience that a rise in calls to us about a particular issue can be an indicator of something potentially more serious and widespread. I'm hoping this isn't the case here – but we'll be keeping an eye on what's happening.

Of course, credit brokers and payday lenders are only two parts of a far wider lending sector – which ranges from credit unions to high street banks and building societies. It's recognised that short-term lenders are offering credit where many larger businesses won't. And customers of *all* businesses experience financial pressures and poor mental health. These are challenges for the sector as a whole.

But I think – on balance – things are moving in the right direction. We've seen encouraging signs recently that businesses are renewing their customer focus – and really are trying to make things better. I'm hoping this will be reflected in the cases we deal with – or, better still, *don't* deal with – in months and years to come.

Caroline

... a rise in calls to us about a particular issue can be an indicator of something potentially more serious

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London E14 9SR

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

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

short-term credit

"Short-term" credit usually means money lent that's to be paid back in a matter of months. The products available to consumers include payday loans, doorstep loans and logbook loans secured against a vehicle – as well as guarantor loans and borrowing from credit unions.

From 1 April this year, businesses providing consumer credit are authorised and regulated by the Financial Conduct Authority (FCA) – having previously been licenced by the Office of Fair Trading (OFT).

Since then, the number of times a short-term loan can be "rolled over" and the number of times a lender can take money from a customer's bank account have both been limited to two. The FCA also expects proper affordability checks to be carried out – and we know that some lenders have recently signed up to "real-time" data-sharing to help them with this.

There are new rules around how credit is advertised. And the level of the interest rate and charges that lenders can apply – as well as the total amount of borrowing – will be capped from early 2015.

Since the financial crisis, we've seen an increase across all areas in complaints involving financial difficulties – either as the main cause of the problem or an additional but important factor. Given that many people who use short-term credit do so to meet everyday expenses – and sometimes to pay off other debts – financial hardship features in a high proportion of cases.

In general, we find that consumers who get in touch with us are aware of the high rate of interest – perhaps reflecting the fact that many customers of short-term lenders have found it difficult to get credit elsewhere. In fact, cost is the main factor in very few complaints that reach us. But charges are something we hear a lot about – in particular, from consumers (or sometimes their relatives) who feel they haven't been treated fairly when they've fallen into financial difficulties.

We also see complaints arising from lenders' attempts to reclaim money they're owed – particularly where continuous payment authorities (CPAs) are involved. This can cause problems if the lender takes money the consumer needs to meet essential expenses – potentially making their financial difficulties worse.

Other consumers who come to us are worried and frustrated that they've ended up in such a position – and question whether they should have been lent the money in the first place. We appreciate that people are responsible for thinking about what they can afford.

But circumstances can change unexpectedly. And the regulators have recognised lenders' responsibility to make sure customers are lent only what they can pay back – setting out what's expected with guidance on irresponsible lending.

When we're asked to step into a complaint, we'll assess whether – and how – the lender decided the loan was affordable in the first place. For guarantor loans, we'll consider what both parties understood about the arrangement – and the consequences of the borrower not meeting their repayments.

We'll also assess whether the lender met their obligation to treat customers in hardship positively and sympathetically. In practice, this means recognising the stress that the customer could be under – and talking openly and constructively about how the money can be repaid. If we find a lender hasn't done this, we may tell them to refund any interest and charges that have been applied to the debt.

Financial Ombudsman Service

case study 119/1

consumer complains that payday loans hindered subsequent credit card application

Ms F took out seven loans with the same payday loan company. She paid them all back in time, and so thought no problems would arise from taking out the loans.

But a few months later Ms F applied for a credit card – and her application was declined. The only reason given was that her credit report wasn't up to scratch.

Ms F contacted the payday loan company. She said that they had sent her a letter saying that taking out a loan with them could improve her credit score. She told them that she hadn't needed to take the loans out, and had only done so because of their letter.

Ms F added that because she had paid back the loans on time her credit report should be in better shape. So she held the lender liable for her failed credit card application.

The lender said that none of their advertising claimed that loans taken out with them would improve someone's credit score. They also contested Ms F's recollection of the repayments – saying she repaid two of the seven loans late. The lender concluded that they couldn't be held responsible for Ms F's unsuccessful credit card application, and so rejected her complaint.

Unhappy with the lender's response, Ms F brought the complaint to us.

complaint not upheld

We asked Ms F to show us the letter that she said she had received, claiming that taking out loans could help her credit score. But Ms F couldn't provide it to us, saying that she had thrown it away. The lender, however, maintained their position that their advertising made no such claims. To support this, they supplied us with some examples of their marketing materials from around the time. Nothing we saw implied that taking loans out with them could help a person's credit score.

Next we turned to Ms F's claim that she hadn't needed the loans and had only taken them out because of the letter. We asked Ms F several times if she could send bank statements to us so that we could assess her situation, but we didn't receive anything.

The lender sent us a copy of their records for Ms F. This showed that Ms F had taken out seven loans. Five of these had been paid back with plenty of time to spare. But we saw that two of the loans had each been repaid a day late.

From what we'd seen, we didn't think that the business had done anything wrong. We didn't uphold Ms F's complaint, but we gave her details for credit reference agencies so she could find out more about how credit files worked.

... the paperwork clearly set out the guarantor's role and obligations

case study 119/2

consumer complains that lender won't release him from guarantor loan

When Mr E took out a short-term loan, his friend Mr A acted as the guarantor. Unfortunately, their relationship broke down. Mr A phoned the lender, saying that Mr E was refusing to cover any more repayments. He explained that Mr E's partner had said that she'd pay – but wanted to give the money direct to him, Mr A. So the lender arranged for the direct debit details on the loan account to be changed so the repayments would be taken from Mr A's bank account.

However, this arrangement didn't work out – and after a couple of months, Mr E's partner stopped paying.

Mr A told the lender that he'd reported Mr E to the police for threatening behaviour – and said he would get back in touch with the crime reference number.

When they didn't hear from Mr A for a few days, the lender called back to see what was happening. At that point, Mr A made a complaint. He said he'd only agreed to act as guarantor under duress – and in the circumstances, he felt the lender should remove his liability from the loan. When the lender refused, Mr A referred the matter to us.

complaint not upheld

We asked the lender to tell us more about how the loan had been arranged. They told us that it would have been taken out at a meeting between their employee, Mr A and Mr E. The lender sent us the agreement that Mr A and Mr E would have been given to read and sign. We were satisfied that the paperwork clearly set out the guarantor's role and obligations.

We asked the lender to give us recordings of all the phone contact they'd had with Mr A. We listened to the call when Mr A had phoned to change the direct debit details, but we didn't hear anything to suggest that he'd been under any pressure from Mr E. So we didn't think the lender could have been expected to know there was a problem at that time.

When Mr A had brought up Mr E's behaviour in a subsequent call, the lender had recommended he get in touch with his local Citizens Advice Bureau for help sorting out his dispute with Mr E. Although the lender hadn't given Mr A the answer he wanted, we thought they had tried to be helpful.

Mr A told us that he felt the business had harassed him once they'd found out Mr E couldn't pay. But from the recordings we'd heard the only time the lender had called Mr A – rather than the other way round – was to see if he had the crime reference number. So we didn't agree that this was harassment.

We appreciated the stressful situation that Mr A was in. But we couldn't see that he'd been pressured into guaranteeing the loan. And we thought it was likely that he had understood his obligations from the outset.

In the circumstances, we decided that the lender hadn't done anything wrong – and we didn't uphold the complaint.

... they wanted over £1,000 to settle the debt

case study 119/3

consumer complains that charges and interest were applied to his loan, despite his financial difficulties

The company that Mr W worked for was having some cash flow problems, and Mr W and his colleagues had to accept a pay cut. Unfortunately, this reduced Mr W's income to below his outgoings. Looking to plug the gap, he took out a payday loan for £200.

But as the deadline to repay the loan approached, Mr W realised that he wouldn't have enough money to pay it back. The day before his payment was due he phoned the lender to explain. He then emailed a week later to tell the lender that he was in financial difficulties and to sort out how he was going to repay the loan.

By this time the lender had already applied interest and charges, and Mr W was unable to pay the full amount once more. He offered to pay back the loan and some of the interest and charges, but the lender wouldn't accept it.

Under a continuous payment authority (CPA) that he had taken out, the lender repeatedly tried to take the money straight from Mr W's account. Each attempt was unsuccessful and so led to further charges being added to the debt.

Getting more worried, Mr W made repeated attempts to offer to settle the debt. But the lender said they wouldn't accept anything other than the full amount – and in one payment. So Mr W complained.

He said that he had been honest about his situation and warned them about his financial difficulties before the loan became overdue. The lender replied that they had no record of Mr W calling them, and their first contact was the email sent a week after Mr W had missed his payment date.

The lender continued to reject Mr W's offers and they added more interest and charges. They then sent letters about debt-collection and potential legal action. They wanted over £1,000 to settle the debt.

Unable to come to an agreement with the lender, Mr W turned to us.

complaint upheld

There was some dispute about when Mr W first made contact with the lender. Both the lender and Mr W sent us copies of the email that Mr W had sent, but neither of them could show any evidence of a phone call. So we could only say for sure that Mr W had contacted the lender after the payment was late.

However, there was no dispute about *why* Mr W had contacted the lender. He had alerted them to the money troubles he was having, and offered to pay back the loan – but with some of the charges and interest discounted.

Looking at the chain of emails between them, we could see that Mr W had made repeated offers to pay back the outstanding money. But each time, the lender had rejected his offer.

The lender was under no obligation to accept Mr W's offers. But under the Office of Fair Trading's guidelines they did have a duty to respond sympathetically to Mr W's circumstances. They had clear evidence that Mr W was having money troubles. Not only had he told them a number of times, but their own repeated efforts to take the money under the CPA had failed. That should have been a strong signal that Mr W was unable to pay.

Looking at the evidence of both sides, we decided that the lender hadn't treated Mr W positively or sympathetically after he alerted them to his situation. So we had to decide a fair outcome to the complaint.

We thought that it was fair for the lender to apply late fees and charges up to the point that Mr W emailed them. And Mr W had consistently shown he was willing to pay back the loan, but had accepted that he'd been unable to pay it back by the due date.

So we decided that a fair settlement would be for Mr W to pay back the amount of the loan, plus the charges and interest up to the point that he emailed the lender.

We also decided that the lender's treatment had caused unnecessary stress for Mr W, so we told them to pay Mr W £100 compensation.

... they said that the loan agreement gave them permission to close her loan account

case study 119/4

consumer complains credit union took loan payments direct from her account because the loan terms were unclear

Mrs J was part of a credit union. When she was looking to renovate her kitchen, she decided to apply for a loan. A loan for £4,000 was granted, Mrs J received the money on 11 August, and she set to work on her kitchen.

Because she'd received the money on 11 August, she set up a standing order to make repayments on the loan started from 12 September. But when she checked her share account in early October, she noticed that the credit union had taken payments from her on 2 September and 3 October. Mrs J also noticed that £100 she'd tried to pay into her share account had actually been put towards her loan account.

Confused, she contacted the credit union to find out what had happened.

The union told Mrs J that although she'd received the loan money on 11 August, the loan agreement had said that payments were due on the first of each month. They also pointed out that the terms of the loan agreement said that they had the right to take money from Mrs J if she missed these payments.

Mrs J and the credit union's dispute became quite protracted. Then, for two months, Mrs J didn't make payments because she was unhappy with the union's actions.

This led the credit union to close her loan account and take the full outstanding amount from her share account. Mrs J thought that this was unfair. She complained to the credit union, but they said that the loan agreement gave them permission to close her loan account.

Growing increasingly frustrated, Mrs J brought her complaint to us.

complaint partially upheld

We wanted to see the loan agreement that Mrs J had signed and the payments schedule that the credit union gave her. The credit union gave us a copy of the loan agreement, but said that they didn't use payment schedules.

When we looked at the loan agreement, we could see that it said that the first payment was due on 1 September. So Mrs J should have known when to make the first payment. The loan agreement didn't say anything about when subsequent payments should be made.

In the absence of a payment schedule, we could understand how it wasn't entirely clear for Mrs J to know when to pay each month.

We also looked at the loan agreement to see whether it gave the credit union the rights to take payments. The agreement said that if payments were missed, the credit union reserved the right to take monies owed directly from share accounts.

The agreement also said that, "*in case of default ... the entire balance of the loan and any interest due shall immediately become payable*".

In our view, the agreement was clearly worded. Mrs J accepted that she had signed the loan agreement, so she had agreed to both of these terms. So we decided that the union hadn't acted outside of the loan agreement.

However, we did think that there were things the credit union could have done better. They didn't provide a payment schedule or anything similar. We thought that this could lead to confusion – as it had in this case. We also thought that, while they had acted in line with the loan agreement, they could have communicated better with Mrs J.

When we told the credit union our findings, they agreed with us and offered to pay Mrs J £150 to reflect the confusion they'd caused.

After the complaint was settled, the credit union told us that they would start using payment schedules with all future loans.

case study 119/5

consumer complains that lender took a lump sum – despite a payment plan being in place

Mr N took out a short-term loan to cover some unexpected outgoings. He was due to pay the money back in two payments over the next month. But when he realised that he probably wouldn't have enough to repay the loan he asked for the payment dates to be rolled over by a month, which the business agreed to.

The next month, he paid the first instalment. When the second payment was due however, he didn't have enough money to pay it. He missed the payment, and interest started accruing on the debt.

A couple of months later, Mr N contacted the business to sort out repaying. He told the business that he was having money troubles and would appreciate a payment plan, rather than paying in a lump sum.

The business agreed and they set up a plan. Mr N was to pay the money back in instalments over six months.

The business took three months' payment as agreed. But then a few days after the third payment a lump sum of more than the outstanding balance was taken from Mr N's account.

As soon as Mr N discovered this he contacted the business to find out what had happened. He told them that they had made his finances – which were already proving tricky to manage – even harder to manage. The business apologised for their error and offered to refund Mr N's overpayment. But Mr N and the business couldn't agree on exactly how much should be refunded.

Mr N's financial situation was becoming harder to manage, and he turned to us to try and sort the matter out.

complaint upheld

The business had already accepted that they had made a mistake by taking the lump sum out of Mr N's account. We had to decide just how much the business should pay back.

Mr N understood that he had to pay back the full amount of the loan, and some charges and interest. But he wasn't happy with how much the business was demanding.

Good industry practice is for businesses to stop applying interest and charges once they are aware of a customer's financial hardship. We could see here that when Mr N phoned to set up a payment plan, he'd explicitly told them he couldn't afford a lump sum payment. He'd told them he was in financial difficulties.

So we thought that it was fair for the business to apply charges up until that point, and not after.

We told the business to work out how much Mr N should have paid in total if the debt had been accruing only up to the point when the payment plan was put in place. They should then subtract that from the total that they had actually received from Mr N over the months, and refund him the difference.

Being in financial difficulty and having a lump sum taken out of his account was quite stressful for Mr N. So we told the business to also pay Mr N £150.

... when Miss C tried to extend the loan for a sixteenth time, the business refused

case study 119/6

consumer complains that she was irresponsibly lent to – having to roll over her loan 20 times

Miss C took out a payday loan for £300, understanding that she would have to pay back £350. Shortly afterwards she realised that she was going to have trouble paying it back in time. So she asked the business if she could extend the deadline by a month. The business agreed and Miss C paid a £100 extension fee.

When the new deadline came around, the business also took £400 from Miss C's bank account to repay the loan.

A month later Miss C applied for another loan, also for £300. And for this second loan she once again had to ask for the loan to be rolled over. The business granted this extension, and charged the same £100 fee.

But this time, before the business could take the repayment from her account, she asked to extend the loan again. This cycle of monthly extensions continued for over a year. Miss C had extended the deadline for this second loan 15 times – meaning she had paid £1,500 in fees.

When Miss C tried to extend the loan for a sixteenth time, the business refused. It was at this point that Miss C told them she had been experiencing severe money troubles for quite some time. Miss C explained that she had felt ashamed and had been afraid to try and sort the situation out.

She told the business that she felt that they'd taken advantage of her situation, and she'd had to pay back far more than she'd borrowed. She said that the business should have realised she was experiencing hardship. The business said that they had only acted in line with the terms and conditions of the loan she'd taken out.

Seeking some help, Miss C turned to us.

complaint upheld

Miss C had clearly been having a tough time. She had received £600 from two loans, which she thought would cost her £700. Instead, she had paid over £2,000 during the previous year and a half.

We first wanted to see what kind of affordability checks the business had carried out.

They said that they'd routinely checked her credit file, and run bank and fraud checks. They told us that nothing had come back to them suggesting they shouldn't lend money to Miss C. But they didn't show us any evidence of these checks, or give us the information that they said they'd received.

We asked to see a list of the business's contact with Miss C and the payments that she'd made. We could see that there had been no contact between the two parties apart from Miss C's calls to extend her loan.

When we looked at the notes from each call, there was no evidence that any enquiries had been made as to why Miss C was extending the loan. Nor could we see that any attempts had been made to suggest making the growing financial burden any lighter for Miss C, such as repaying in instalments.

And yet the fact that the business eventually decided not to extend the loan meant that they were evidently carrying out some sort of checks each time.

We decided that the business hadn't run proper affordability checks consistently, otherwise they would have spotted Miss C's situation. We thought that they ought to have picked up on Miss C's money troubles when she tried to extend the second loan for the third month in a row. By then, she had already paid £1,000 when she was supposed to repay £700.

We didn't think the business's actions had been fair. So the business had to refund some money, and we had to decide how much.

Miss C had agreed to two loans of £300, each at a cost of £50. The roll-over of the first loan seemed fair, as did the first two roll-overs for the second loan. This totalled £1,000, when Miss C had actually paid over £2,000.

So we decided that they should refund Miss C £1,300, plus interest. We also told them to pay £150 for the additional worry they had caused her at an already difficult time.

... she was surprised when they told her that she was behind with her payments

case study 119/7

consumer complains that a default on her credit file is the business's fault

Ms O took out a home credit loan for £200, understanding that she would pay back £280. The loan was in the form of a shopping voucher. Ms O was to repay the loan over 28 weeks, paying back £10 each week, with the first instalment due a week after she'd received the voucher.

Under the terms of the loan Ms O could pay each instalment by giving cash to a collection agent from the business, who would come to her house each week.

Three weeks passed and no collection agent had visited her, but she thought nothing of it. In the fourth week an agent turned up, and she gave him £10. The agent continued to turn up sporadically, and Ms O paid them when they did.

Around this time Ms O moved in with her partner. And about two months after that, she rang the business to tell them her new address.

When speaking to the business on the phone she was surprised when they told her that she was behind with her payments. They said to her that they had sent her letters about her arrears and she hadn't got back in touch with them. So they'd registered a default on her credit file.

Ms O was very unhappy with this. She complained, telling them that it was the business's fault that their collection agent hadn't turned up. She said that she'd paid the agent every time they had come to collect any money from her. Ms O was also unhappy that she'd not received letters to warn her about what was happening to her credit file.

The business responded that Ms O had a duty to pay the weekly instalments, whether an agent turned up or not. They pointed to the loan agreement and said that it stated other ways she could pay – like over the phone or online.

The business also said that they had sent her letters about the arrears, but the letters must have gone to her old address. They said they couldn't be liable for the letters not reaching her – because she hadn't told them about her move.

Unhappy with the business's reply, Ms O came to us.

complaint not upheld

The business sent us a copy of the loan agreement and copies of the letters they said they sent to Ms O about her arrears.

We saw straight away that the letters had been addressed to Ms O's old address. But we agreed with the business that they had no way of knowing Ms O had moved until she told them. So we thought the business couldn't be held responsible for Ms O not receiving the letters.

Next we turned to the loan agreement. It set out how much the loan was for, the interest payable and a schedule of payments – all very clearly. It prominently said that Ms O had to pay back £10 a week. And where it listed payment methods, the agreement stressed that a payment had to be made each week. So whether or not a collection agent from the business turned up at her house, Ms O still had an obligation to pay.

Given this, we didn't think there was any reason why Ms O wouldn't have known about the terms and conditions. And there was no indication that she had told the business or their debt collection agent that she could only make cash payments.

We explained this to Ms O, pointing out that by the time the full loan of £280 was due, she had only paid £110. The onus was on Ms O to pay back the loan, but she hadn't. So she hadn't met the terms of the agreement. We explained to Ms O that we didn't think the business had acted wrongly in marking her credit file.

While we were investigating the complaint, Ms O paid off the outstanding amount – so the mark on her credit file showed as "satisfied". We thought this was an accurate and fair reflection of what had happened, and didn't uphold Ms O's complaint.

… he hadn't mentioned on the form that he was receiving benefits

case study
119/8

consumer complains that payday loan was unaffordable

After Mr H was made redundant, he found it increasingly difficult to meet his everyday living expenses. He approached his local authority for a crisis loan – but when he was warned that the assessment process would take some time, he took out a payday loan in the meantime.

However, by the time the loan repayment was due, Mr H didn't have enough money to cover it. When the lender sent a letter asking for payment, he complained that they should have known he was receiving benefits – and shouldn't have lent him so much. The lender said they had made their decision based on the information Mr H had given them about his income – and didn't feel they had done anything wrong. At that point, Mr H asked us to step in.

complaint not upheld

Mr H told us that he'd taken out the loan to tide him over, and had planned to pay it back when he received his crisis loan from the council. He was sorry he'd ended up in this situation – but thought the payday lender should have been more responsible.

Although we asked Mr H for evidence of his income and outgoings, he didn't send us any. However, we were able to look at the information Mr H had given the payday lender – and consider how the lender had assessed if the loan was affordable.

When we asked the lender for a copy of Mr H's application form, we noted that that Mr H had said that he was employed full-time and earning £20,000.

He hadn't mentioned on the form that he was receiving benefits. We also noted that Mr H had applied for a loan of £600 – far more than the £150 the lender had offered.

In these circumstances, we didn't think it was fair to say that the lender had acted irresponsibly. In our view, the fact that Mr H had been given less than he'd asked for indicated that the lender had assessed the loan's affordability – even though they'd used inaccurate information.

In the letter about the missed repayment, we saw that the lender had explained they could agree a lower repayment amount with Mr H if he got in touch. It seemed to us that the lender had tried to work constructively with Mr H. Unfortunately, Mr H hadn't tried to work things out with the lender before making a complaint.

We told Mr H that given everything we'd seen, we weren't upholding his complaint. But we explained that the option of reduced payments was still open – and encouraged him to contact the payday lender to discuss this. Mr H was also happy for us to put him in touch with a free debt-advice charity so he could start sorting his finances out.

case study 119/9

consumer's mother complains that consumer shouldn't have been given payday loan

During a period of poor mental health, Mr S was sectioned under the Mental Health Act and admitted to a psychiatric ward. While he was in hospital, his mother, Mrs S, found out that he had borrowed £100 from a short-term lender shortly before he was sectioned. The loan was due to be repaid before Mr S would be discharged.

Mrs S phoned the lender to explain what had happened – and asked them to stop interest and charges being applied to the loan. When the lender told Mrs S that they needed medical evidence about her son's situation, she gave them contact details for Mr S's doctor. But the lender said that they couldn't contact third parties because of data protection issues.

In the meantime, the lender had been sending Mr S – who was still in hospital – frequent text messages about the loan. Worried about the impact of the situation on her son's health, Mrs S found the money to clear the loan account herself. Then, with Mr S's agreement, she complained to the lender. She said that Mr S shouldn't have been given a loan in the first place – and in any case, he shouldn't have been harassed while he was in hospital.

However, the lender defended their decision to lend to Mr S – and wouldn't refund the loan, interest or charges. Mrs S didn't think this was right and referred the matter to us.

complaint upheld

We asked the lender to show us their records from the time Mr S took out the loan. From the file notes they sent us, we saw that Mr S had approached the lender around six weeks before the date Mrs S said he had been admitted to hospital.

There was no evidence that the loan was unaffordable compared with Mr S's income – or that he had disclosed his mental health problems to the lender. In these circumstances, we didn't agree that the lender shouldn't have authorised the loan.

By the time the complaint reached us, Mrs S had managed to get in touch with her son's GP and mental health support team. She sent us their confirmation that Mr S had been experiencing mental ill health – and that he had been in hospital during the period in question.

We didn't think it was unreasonable that the lender would want to know why Mr S couldn't pay back the loan on time. But in light of Mr and Mrs S particular circumstances, we thought that the lender hadn't acted very sensitively, and that there was more they could have done to support Mrs S.

If the lender had acted sooner, then interest and charges wouldn't have been applied to Mr S's account. And he wouldn't have received the text messages saying his payment was overdue – which we thought would have caused him additional worry at an already stressful time.

We explained to Mrs S that we didn't think the lender should refund the loan. But we told the lender to refund any interest and charges that had been applied to the loan after Mrs S first phoned them.

... Mrs S said that Mr S shouldn't have been given a loan in the first place

... the amount Mr G owed increased to more than £1,000

case study 119/10

consumer complains that payday loan was unaffordable

Mr G worked part time while he was studying. But when his moped broke down, he realised it would be an expensive month and he would need some more money. So he took out a payday loan of £200. A week later, he "topped up" his loan – borrowing another £300 from the same lender.

Unfortunately, when the loan was due to be paid back, Mr G couldn't cover the balance of nearly £700. As interest and charges were applied to his account, the amount he owed increased to more than £1,000. Eventually, the payday lender passed Mr G's account to a debt-collection company.

At that point, Mr G told his father that he'd got into difficulties. Concerned about the amount of money involved, his father complained to the payday lender. He pointed out that Mr G only earned around £400 a month – which was far less than what he'd been lent over that period.

Mr G's father felt the lender should have appreciated this – and asked them to write off the loan.

The lender rejected the complaint. They said that Mr G had borrowed money from them before and had paid it back on time – so they'd had no reason to think that this loan wouldn't be the same. Unhappy with this response, Mr G and his father referred the complaint to us.

complaint upheld

We asked Mr G to provide evidence of how much he earned – and also asked the payday lender to give us Mr G's application form. Comparing the two, we confirmed that Mr G had given the lender accurate information about his income. That meant – as his father had said – that Mr G had been lent more than he earned in a month.

We asked the lender for more information about Mr G's loan history. The records we were sent confirmed that Mr G had taken out a loan in the past. But contrary to what the lender had said, he hadn't paid it back on time.

In fact, he'd cleared the balance a month late – and taken out the second loan on the same day. We also noted from the lender's records that the credit check that they had used when assessing whether to lend to Mr G had been carried out six months previously. So it didn't factor in the late payment on the first loan.

We pointed out to the lender the Office of Fair Trading's guidance for creditors. This said that when assessing affordability, a creditor should take into account – among other things – the prospective borrower's income, their credit report, and any previous dealings with them. Having carefully considered Mr G's case, we didn't think the lender had adequately assessed the affordability of the loan – or the top-up – in line with the OFT's guidance.

Because Mr G had already had the benefit of the money he'd borrowed, we didn't think it was fair to tell the lender to refund the loan. But we did tell the lender to refund the interest and charges that had been applied to Mr G's account.

... she returned home to find her car had been repossessed

case study 119/11

consumer complains that lender has wrongly repossessed car under a logbook loan

A few months after taking out a logbook loan – secured against her car – Mrs Q was asked to reduce her working hours, and began to have trouble paying her bills.

Realising she wouldn't be able to make her repayment, Mrs Q emailed the loan company to explain her situation. At this point, she had paid back all but £500 of the original £3,000 loan.

But by the time the company got in touch with Mrs Q three weeks later, she'd missed a payment and more interest and charges had been applied to her account. The lender told Mrs Q that she needed to pay £250 immediately to clear her arrears – and that if she didn't, they would pass her account to a debt collector.

Unfortunately, Mrs Q's employer was having problems paying its staff. Mrs Q told the lender that she would pay the £250 – but would have to do so in two parts.

She made the payments over two successive weeks and didn't hear anything more from the lender. However, the following week she returned home to find her car had been repossessed while she was out.

Mrs Q made a complaint. She said that she'd paid the money the lender had asked her to – so she thought it was unfair they had repossessed her car – and especially without warning. When the lender refused to return the car, she came to us for help.

complaint upheld

We asked the lender for a copy of the bill of sale – their legal agreement with Mrs Q about the loan secured against her car. We noted that one of the terms of this agreement was that the lender would write to or phone the consumer before repossessing their vehicle – and "try to agree a remedy". But when we asked to see records of the lender's contact with Mrs Q, we didn't see any evidence that they'd done this.

We also established that the bill of sale hadn't been registered within seven days. This meant it wasn't valid – and so the lender hadn't been legally entitled to repossess the car.

But even if the bill of sale had been valid, we didn't think the lender had acted fairly. It seemed to us that Mrs Q had been upfront about her financial difficulties. But rather than treating her positively and sympathetically – perhaps by suggesting a repayment plan – the lender had demanded a lump sum payment.

In our view, Mrs Q had acted in good faith – paying the £250 as soon as she could. But the lender hadn't even let her know they'd received it – and had gone ahead with the repossession anyway.

The lender accepted that they hadn't correctly executed the bill of sale, and agreed to return her car. We also told the lender to put a suitable repayment plan in place – and to refund the interest and charges they'd applied to Mrs Q's account from the point that she told them about her financial troubles.

Mrs Q had receipts to show she'd had to hire a car to get to work when she didn't have her own. We told the lender to refund her these costs – as well as to pay her £150 to recognise the inconvenience their actions had caused.

... the lender insisted that Mr M had to phone them to sort things out

case study 119/12

consumer complains that payday lender won't agree a repayment plan

Mr M had taken out a loan with a payday lender to cover his living expenses. Unfortunately, he was badly hurt in a car accident and admitted to hospital.

Mr M emailed the lender from hospital, using his phone, to tell them what had happened – and that he couldn't pay back the loan on time. At first, the lender didn't reply. But after a couple of weeks, they emailed to say they thought it would be better if Mr M called them to talk about the loan.

Mr M emailed back to say that he couldn't call because his hearing had been damaged by the accident. But the lender insisted that he had to phone them to sort things out.

When Mr M was discharged six weeks after the accident, he emailed the lender again. He explained that because of the severity of his head injury, he'd had to give up work. And because his only income was now benefit payments, his financial situation was a lot worse.

So he wanted to set up a repayment plan.

The lender emailed back again, asking Mr M to phone them. Mr M explained again why he couldn't. The lender then sent Mr M an income and expenditure form so they could assess how much he could afford to repay.

When the lender came up with a repayment amount that Mr M didn't think he could afford, he suggested a lower amount. The lender didn't get in touch for two weeks – but eventually replied repeating the original amount, and telling Mr M to phone them.

Frustrated, Mr M complained to the lender. He said he didn't think it was fair that the growing debt was being recorded on his credit file when he was trying hard to reach an agreement to pay. He was particularly worried that he wouldn't be able to get finance to adapt his home for the disabilities the accident had caused. But the lender refused to negotiate a lower repayment – and Mr M asked us to step in.

complaint upheld

Mr M sent us the chain of emails he'd exchanged with the lender since the accident. We noted that over a period of weeks, he'd contacted the lender several times. The lender had often taken longer to reply then they said they would – and repeatedly insisted that Mr M needed to phone them, even after he'd explained why he couldn't.

We pointed out to the lender that they are required to take into account any reasonable requests their customers make about where, when and how to be contacted. In our view, Mr M's request was very reasonable.

We asked the payday lender for a copy of the Mr M's income and expenditure form. Having considered this, we understood why the repayment amount the lender had suggested wasn't acceptable to him. It was more than half his monthly income, and would have left him without enough money to pay his bills. From the correspondence we saw, it seemed that Mr M had tried to move things forward – but unfortunately, the lender hadn't been so constructive.

In all the circumstances, we thought the lender had treated Mr M unfairly. We told them to refund all the interest and charges that had been applied to Mr M's account since he told them about his situation.

We also told them to pay Mr M £250 to compensate for the unnecessary worry and inconvenience they'd caused him at an already stressful time.

We confirmed with the lender that they would reassess Mr M's income and expenditure and arrange – by email – a suitable repayment plan. And they agreed to make sure any adverse information was removed from Mr M's credit file.

payday lending – the perspective of complaints to the ombudsman

The case studies in this issue of *ombudsman news* look at individual situations where things have gone wrong for consumers who took out short-term loans. But what we see in individual cases also gives us a wider insight into how the short-term credit sector operates and its impact on consumers – especially payday lending.

This month *ombudsman focus* talks to senior ombudsman Juliana Francis to get her thoughts on the payday loan sector, the complaints we're seeing and what lessons there are to be learned more generally.

Juliana, could you start by giving us some background to the payday loan sector?

Payday loans are still a relatively new product in the UK's financial market. They've been a growing presence for about ten years, but in that time they have caused increasing controversy. And in the last four or five years the sector has taken off significantly.

It's a sector that attracts considerable media, regulatory and political attention. You're likely most days to come across at least one story about payday lending in the press. And that's a good indicator of the considerable issues and sensitivities the payday loan sector is facing.

The stories in the news usually focus on the costs, the interest rates and the affordability of payday loans – and they're important stories to tell. But at the ombudsman we're positioned rather differently to other organisations, so we have a slightly different perspective on things.

so what kind of cases are you seeing?

From what's generally reported in stories about payday loans, you might expect that the main issues in the cases we see would be around the cost of the loans – both the charges involved in taking out short-term credit and the cost of the interest.

Yet while these issues are very important, it's very rarely cost that's the central point in the complaints we see. It seems that – from what consumers who bring complaints to us are saying – the headline stories aren't necessarily the headline issues.

But what we do see are complaints involving the impact of payday loans on credit reports, debt-chasing and collection processes, continuous payment authorities, fraud, poor administration and more. And each of these factors presents its own particular challenges.

Perhaps unsurprisingly, we see that consumers who are most vulnerable, or have the most challenging money troubles, are the people who most often complain about high costs. But in general, the cost of the loans is a subsidiary issue in the majority of the complaints referred to us. High interest rates and high charges are the main reason for complaining in only 4% and 3% respectively of the cases we see.

Juliana Francis, senior ombudsman

is there a single main reason for people complaining?

Not really. We see a complex picture, with most complaints involving more than one problem. No single issue presents itself as the main cause of people's troubles. Instead, the problems are usually varied and often interlinked.

But that's not to say that we don't see some things cropping up time and again.

For example, around one in six of the payday lending complaints that we see is about a loan the consumer said they hadn't even taken out. This is very concerning. And there are things that lenders and consumers can all do to help the situation.

For consumers, some people might benefit from being more cautious. We know that younger consumers between 18 and 24 are twice as likely to have a payday loan complaint involving fraud.

On the other hand, we also see examples of older consumers over 55 being particularly susceptible to scams. So greater awareness of how to protect yourself from common frauds or scams would be helpful across the board.

But a large part of the fraud problem is down to lenders themselves. Payday loans are marketed as quick and easy to obtain. In fact, many lenders compete on speed as well as on price – so it's no surprise that fraudsters are taking advantage. In some cases we see evidence that the lender's checks weren't secure or detailed enough to prevent fraud taking place.

what other areas need some attention?

Another aspect that we find highly concerning is the way some businesses reclaim money from consumers. In particular, we've seen worrying treatment of people who are vulnerable or in very difficult financial circumstances.

The inappropriate use of continuous payment authorities (CPAs) and some of the methods used to recover money owed features in one in five of the cases consumers refer to us. This is particularly unsettling, as a number of these cases involve people who are unemployed, disabled, experiencing mental health issues or otherwise in considerable financial distress.

And while we also see evidence of good practice too, we still see too many cases where difficult situations are handled poorly by lenders. This includes aggressive or insensitive debt collection practices, and the refusal to allow repayment plans. Lenders need to be aware of their duty to treat those in financial hardship positively and sympathetically – especially those people who are most vulnerable.

are there more general themes in the complaints you see?

The rise of payday lending is often linked directly to the tough economic environment of recent years. Many people have been struggling to make ends meet and have found it much harder to get credit. So it's easy to see why the marketing techniques used by payday lenders have been so effective in these circumstances.

But just as people often don't fully recognise the impact of the interest and charges until it's too late, similarly many people seem to have misconceptions about how credit files work. Some of the case studies in this issue of *ombudsman news* highlight how many consumers don't always fully understand how payday loans – or any loans, really – impact on their credit scores.

In issue 118 of *ombudsman news* the chief ombudsman touched on these "information asymmetries" – businesses knowing considerably more than consumers. It's an area of concern, and one that's tricky to address.

Another aspect where I believe much clearer information can, and should, be provided is in relation to the right of consumers to have their concerns independently investigated.

how do you mean?

We've seen considerable evidence to suggest that many consumers taking out short-term credit aren't being given their so-called "referral rights" to the ombudsman. By that, I mean being clearly and helpfully signposted to us by the lender in their final response letter following a complaint to the business. In disappointingly few cases do we see consumers being fully informed of their right to bring a complaint to us. In far too many instances, people are being given misleading, late, or incomplete information – and sometimes no information at all. This has to change.

The lack of clear referral rights to the ombudsman may be one reason why we're not seeing as many payday loan complaints referred to us as we might expect. Last year we saw 794 cases. That was a 46% increase on the previous year. But this is still – we suspect – the tip of the iceberg.

do you expect the number of payday loan complaints to rise then?

We can't be sure what will happen to complaint volumes in the future – so we're working to make sure we're ready for whatever comes our way.

The landscape of payday lending is already starting to change. In its final year of operating, the Office of Fair Trading (OFT) implemented a number of guidelines around payday lending. And since it took over responsibility for the regulation of consumer credit in April this year, the Financial Conduct Authority (FCA) has been tightening regulations – most notably around costs and "rolling over" loans. So in response, practice across the sector should already be shifting and improving.

But there are still some issues that we see cropping up often in the cases referred to us. So I wouldn't be surprised to see more payday loan complaints come our way.

what kind of issues?

We continue to see instances of unsatisfactory customer service and poor administration. Everything from loans being paid into the wrong accounts, or not at all, to fees or interest not being correctly applied, and repayments not being registered. Things like these can and do make customers feel uncared for at best, and at worst worried and stressed.

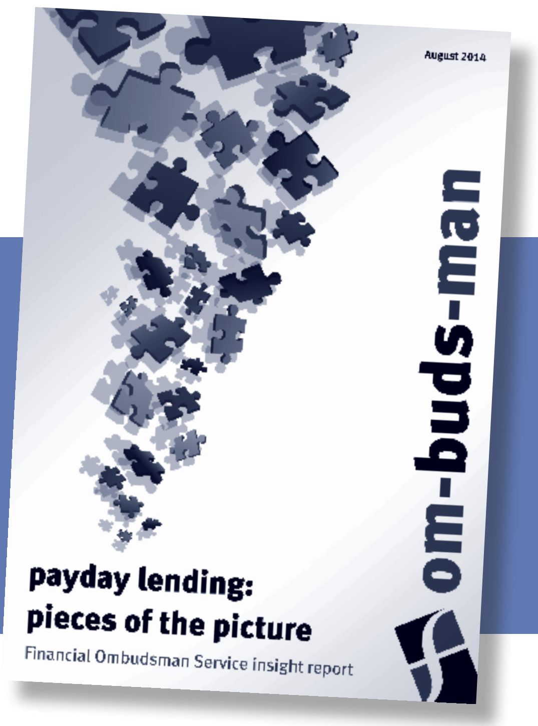
Mistakes happen, of course – we all recognise that as an inevitable fact of life. But the rate at which mistakes are happening, and the lack of remedial action, paints a very poor picture of some practice in the payday loan sector. More needs to be done to strengthen lenders' processes, checks and customer service – particularly when dealing with vulnerable consumers.

Some things are imperative and shouldn't be hard to change – like telling consumers clearly about their right to refer an unresolved problem to the ombudsman. Other areas might be harder to fix. But improvements will benefit not just consumers taking out payday loans, but also the businesses themselves.

We're starting to see some lenders already moving towards other products, away from the "traditional" 30-day payday loan. And we're starting to see more complaints where the affordability of the loan at the outset is questionable.

It'll be up to the regulator to decide how it approaches wider areas of concern such as these. In the meantime we'll continue to look at the individual circumstances of each complaint we receive, to decide what a fair solution will be. And we'll also continue to share the insights from what we see wherever we can. After all, learning from what's gone wrong is by far the best way of preventing future complaints and improving things for everyone.

You can find out more about payday lending from the perspective of complaints referred to the ombudsman in our recently published payday lending insight report



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Q? &A

featuring questions raised recently with our free, expert helpline for businesses and advice workers

Don't the new consumer credit rules just apply to payday lenders?

No – they apply to *all* businesses authorised to by the Financial Conduct Authority (FCA) to provide consumer credit, loans or debt services. This includes around 50,000 businesses that were previously licensed by the Office of Fair Trading (OFT) – from catalogue retailers and pawn brokers, to home credit providers and logbook loan companies.

And as well as the new part of the regulator's handbook – the consumer credit sourcebook, or "CONC" – businesses will still need to follow any existing codes of practice.

Unfortunately, we're hearing from the consumer advice sector that many people are running into problems with consumer credit – particularly where the lender has passed the account to a debt collector.

We expect businesses to treat customers in financial hardship sympathetically and positively – as soon as they become aware of the problem. It's also important that businesses understand the rules about signposting customers to debt-management organisations, and displaying risk warnings in financial promotions.

I'm a consumer adviser offering debt advice. After the FCA's rule changes, the ombudsman can now consider complaints against me – should I be worried?

It's true that we can now consider complaints against debt advice agencies such as the Citizens Advice Bureau and members of Advice UK. We would be able to look into things if a consumer felt that they had received incorrect advice.

But services like these occupy a unique position within the advisory landscape, as they operate as not-for-profit organisations and offer free advice. To recognise this, these organisations won't be charged a case fee for complaints we receive against them – even after the usual limit of 25 cases.

If you're worried about the changes to our rules, or have concerns about how you're affected, feel free to contact the technical advice desk on 020 7964 1400 or tweet @financialombuds.

I'm trying to help a client who says they've been ripped off by a credit broker. Is that something you can get involved in?

In most cases, yes. Credit brokers are businesses that search for lenders on a consumer's behalf. They charge a fee to do this – which applies whether or not the consumer goes on to borrow any money. We've been hearing from a growing number of people that things haven't worked out.

We know some credit brokers offer to refund fees if a consumer can't find a loan – but usually only after three or six months, and only if the consumer requests it in writing. In our view, it's fair that the consumer is refunded as soon as it becomes apparent that they're not going to get a loan.

It's also important that brokers make sure they're giving clear information about when and how fees are charged – so consumers aren't surprised when the money's taken from their bank account.

Financial Ombudsman Service

ref: 830/pc