ombudsman news

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

in this issue

Financial Ombudsman Service

knowing what matters

All of a sudden, it seems, the festive season's come round again – and with it, the traditional pleasure, or ordeal, of planning and buying gifts. Finding the right present – something personal and meaningful, whether your budget's £5 or £50 – is certainly a test of how well you know the person you're buying for.

Aside from navigating the likes and dislikes of in-laws, nieces and friends, there's also the practical question of *how* to get what you've decided to buy. It might be quicker to do everything online. But is it always better? I often think there's no substitute for buying in person – so you can really see what you're getting.

Of course, what people want is something any successful organisation will be thinking about all year round. For financial businesses, it's part of developing products that match customers' lifestyles and aspirations. And from brokering an insurance policy to underwriting a mortgage, getting to grips with a customer's individual circumstances helps to ensure the right decision's made.

In the same way as gift-buying, acting on assumptions might be a quick fix – for example, providing a service, or making a decision, based on generalisations about customers of a certain age.

But as this issue's case studies highlight, there's a good chance that – just as with a gift – the outcome won't feel personalised or fair.

At the ombudsman, we're not in the business of thinking up new products or services. In general, our informal approach to resolving problems has stood the test of time. But that's not to say we don't need to understand people's lives – not only the range of individual preferences, but how these are changing with time. It's a fundamental part of planning for the future – and making sure we remain relevant and accessible.

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meet us

in December we're in:

- **Ashford**
- **Birmingham**

for more events see page 23

scan for previous issues

Caroline Wayman

For example, we've seen a significant increase in people using mobile devices to find out about us or contact us. So we need to reflect this in the service we offer – while bearing in mind that some people still prefer a face-to-face conversation.

We want to hear what businesses want and need from us too. In *ombudsman focus*, we share some of the feedback we've received over the last few months – and I've asked the right people here to respond.

In the next week or so, we'll also begin to consult on our plans and budget for the year ahead. As a public service – but one that's funded by the businesses we cover – there's a wide interest in our work. I'm looking forward to hearing our stakeholders' different perspectives on our approach to the challenges ahead.

And I'm confident that the better we understand these perspectives, the better we'll be able to make plans and choices that feel fair to everyone who relies on us.

Caroline

... getting to grips with a customer's individual circumstances helps to ensure the right decision's made

Financial Ombudsman Service
Exchange Tower
London E14 9SR

switchboard 020 7964 1000

consumer helpline
Monday to Friday 8am to 8pm *and*
Saturday 9am to 1pm
0800 023 4 567

technical advice desk
020 7964 1400
Monday to Friday 8am to 6pm

older people and retirement

With people generally living and staying active for longer, retirement and older age could cover a period of 30 years or more. It's a time that's very likely to involve making key decisions about money – including how to cover costs in the years ahead, from home improvements and holidays to care.

And while older age doesn't always mean winding down, it could mean a greater likelihood of health problems or decreased mobility – which bring with them their own financial questions and costs.

The Older People Working Group – made up of experts from the public, private and third sectors – has highlighted that while many older people are happy with their financial position, a significant number of others aren't so confident or comfortable. So events often associated with ageing – like illness, bereavement or needing care – could leave them financially, as well as personally vulnerable. In our research on "vishing" scams, for example, we found that 80% of victims were over the age of 55.

Last year, one in four of the complaints we resolved were referred to us by people aged over 55. And, in particular, older age groups are more likely than others to contact us about their mortgages. As our case studies highlight, some people complain they've been treated unfairly by their mortgage provider when they reach the end of their mortgage term.

People sometimes tell us they've been discriminated against because of their age – and feel their financial provider is relying on strict, inflexible rules. With evidence that older people tend to be the most loyal to financial providers, it's understandable that these long-standing customers might be particularly sensitive to service that feels unfair.

To decide whether a business has acted fairly, we'll check that they've followed their own policies, processes, and good practice in their area. But equally importantly, we'll look for evidence that they've considered their customer's individual circumstances. While we don't always agree there's been discrimination, we'll look into how clearly the business explained their actions and decisions.

... we were concerned that bank had overlooked the dramatic change in Mrs U's spending – which can be a typical sign of financial abuse

case study 130/1

consumer complains that bank should have stepped in to prevent financial abuse

After Mrs U, in her eighties, had a fall which left her housebound, her nephew offered to help manage her finances. They set up a "third party mandate" for Mrs U's current and savings accounts, which were with the same bank.

Two years later, Mrs U's nephew tried to register a power of attorney for Mrs U. At this point, Mrs U's cousin, Miss W, became concerned. Looking through some of Mrs U's recent paperwork, Miss W found that almost all Mrs U's cash and savings had gone.

With Miss W's help, Mrs U contacted her bank to cancel her nephew's third party mandate. They then complained that the bank should have noticed Mrs U's account was being emptied – and should refund the money.

The bank said that, since Mrs U had given her nephew permission to use her accounts, they weren't responsible for what had happened. In their view, it was a "family dispute", which Mrs U would have to take to court.

Miss W explained that Mrs U's mental health had got worse since signing the mandate. She also argued that Mrs U clearly hadn't given her nephew permission to take all her money.

When the bank refused to change their position, Miss W asked us to step in.

complaint upheld

We asked the bank for information about how Mrs U's accounts had been used before and after she signed the mandate. From the statements the bank sent us, it was clear that Mrs U had always managed her finances well. She'd had several thousand pounds in her current account and a similar amount in her savings. She'd also had several direct debits for various bills and hadn't ever gone overdrawn.

But after her nephew's mandate was put in place, the way the account was used changed significantly. Mrs U's current account was continually overdrawn and running up charges.

Over a few months, 15 separate payments had been made from her savings account to her current account – leaving only a few pence. The money from her current account had then been withdrawn £300 at a time.

It also seemed that online banking had been set up a year into the mandate – and a £5,000 loan had been taken out online.

The bank pointed out that the mandate didn't extend to Mrs U's debit card – and since a large part of her money had been taken out by card, she must have given her nephew her PIN and permission to make withdrawals. They also insisted that we shouldn't look into a "family dispute".

We explained that we can look into complaints about unauthorised payments, regardless of whether family members are involved. And we were concerned the bank had overlooked the dramatic change in Mrs U's spending – which can be a typical sign of financial abuse.

While we accepted that Mrs U might have initially accepted her nephew's help with managing her bills, we didn't agree she'd given him permission to use her money in the way he had.

Given everything we'd seen, we decided the bank hadn't met their duty of care towards Mrs U – especially given her vulnerability.

We knew how much Mrs U had been spending each year before the mandate was in place. And we thought this was a reasonable gauge of how much she would have been spending if nothing had gone wrong.

Taking this into account, we told the bank to refund the extra money that had been spent – without her permission – adding 8% interest.

We also told the bank to cancel the loan and refund the instalments that had been paid, to refund the interest and charges relating to being overdrawn, and to ensure Mrs U's credit file wasn't affected.

To reflect the significant distress Mrs U experienced as a result of the unauthorised spending – which the bank could have protected her against – we told the bank to pay her £500.

... from the records of the meeting Mr T had had with the broker, it also seemed that the charge had been discussed face-to-face

case study 130/2

consumer complains that early repayment charge for lifetime mortgage is unfair

Mr and Mrs T, in their seventies, had a number of separate loans. After taking advice, they decided to take out a lifetime mortgage to pay off what they owed.

When Mrs T died a few years later, Mr T decided to move closer to his daughter so she could care for him and sell his house. He was told by the mortgage company that he'd have to pay £15,000 for ending the agreement early.

Mr T complained to the broker who'd sold the mortgage. He said the charge was unreasonably high, and hadn't been properly explained. And he felt it was unfair that he had to pay anything at all, given the unplanned circumstances that had forced him to sell his home.

The broker acknowledged Mr T's upsetting circumstances, but argued the charge had been clear from the start. Unhappy, Mr T contacted us.

complaint not upheld

We looked at the paperwork Mr T had been given when taking out his loan. We could see there was a page explaining the early repayment charge. From the records of the meeting Mr T had had with the broker, it also seemed that the charge had been discussed face-to-face.

In a follow-up letter, the broker had set out the different options available to Mr T – including the lifetime mortgage – as well as the reasons why he and Mr T had concluded the other options weren't suitable. This letter also mentioned the charges that applied to the various options.

Mr T pointed out that the paperwork showed that if the lifetime mortgage was repaid early, the charge could be up to 20% of the initial loan amount – or there might be no charge at all.

He said he understood that the calculations behind the charges were complicated. But he felt the paperwork was unclear and misleading. He said if he'd known how much he would have to pay, he wouldn't have taken out the mortgage.

We explained that the early repayment charge was based on several factors, including interest rates linked to gilt yields. If the interest rates increased, the early repayment charge decreased – and there had been times in the past when some mortgages had no early repayment charges.

Interest rates had remained low while Mr T had his mortgage, so there would have always been a charge. But we didn't think it was reasonable to expect the broker to know this would happen – or exactly how much Mr T would have to pay if he ended up selling his home.

Looking back at the broker's notes of their discussions with Mr T, we could see that he'd said he hadn't wanted to fix an early repayment amount upfront.

We were sorry to hear what Mr T had been through. But, given everything we'd seen, we didn't agree that the charge shouldn't apply.

... in our view, they should have known that the temporary repairs wouldn't hold for long

case study 130/3

consumer complains that insurer's failure to repair storm-damaged roof led to further damage to her home

After her roof was badly damaged during a storm, Mrs E – in her eighties and living alone – made a claim on her home insurance. While the insurer was assessing her claim, they told Mrs E to arrange for temporary repairs to her roof.

The insurer later agreed to deal with damage to the inside of Mrs E's home. But they said that her roof had been in a poor condition before the storm – and so rejected that part of her claim.

A few months later, Mrs E's roof leaked again, causing more internal damage. She called her insurer, but they refused to help. They said that the damage had been caused by the failure of the temporary repairs to the roof – and it had been Mrs E's responsibility to arrange for permanent repairs to be carried out.

Left with unrepaired damage and worried about further damage, Mrs E contacted us.

complaint upheld

We asked the insurer for all their records relating to Mrs E's original and second claim. From the photos and reports about the roof, we thought it was clear that it had been in a bad condition.

So we didn't think the insurer had acted unfairly in turning down the claim. But there was still the issue of how the insurer had dealt with Mrs E later on. Mrs E told us that the insurer had asked her to stop further leaks from the roof while they looked into the claim, but hadn't told her to arrange anything permanent.

The insurer accepted they'd told Mrs E to arrange for the leak to be stopped. From their records about the claim, it looked like sealant had been applied. But there wasn't any evidence that they'd phoned or written to Mrs E about the need to make permanent repairs. It also didn't appear that the loss adjuster who'd visited her home had mentioned this either.

The insurer had gone on to repair the internal damage to Mrs E's home, knowing that only temporary repairs had been made to the roof. In our view, they should have known that the temporary repairs wouldn't hold for long – and should have clearly explained this to Mrs E before carrying out the internal repairs.

We thought this was especially important given Mrs E's age and the fact she was dealing with the problem alone.

In light of what we'd seen, we decided the damage Mrs E was now living with had arisen because of the insurer's mistake during the first claim. We told them to arrange for the further damage to be repaired – ensuring that only one claim was recorded against Mrs E's name.

We also explained to Mrs E why the damage to her roof hadn't been covered by her insurance – and that she'd still need to arrange for it to be permanently repaired.

… she'd transferred money from her small amount of savings into her bank account to cover two years' worth of instalments

case study 130/4

consumer complains that timeshare loan was unsuitable

Mrs H, in her eighties, was on holiday in Spain when she and a friend went to a meeting about timeshare opportunities. At the meeting, Mrs H agreed to take out a loan of £25,000 to buy a timeshare villa.

Mrs H understood that she'd repay the loan monthly and that after two years she'd receive a cheque for £15,000. After two years, Mrs H didn't hear from the timeshare company. She tried phoning them – but after being passed between various people, she couldn't get an answer about what was happening.

Mrs H then contacted the loan provider – and learned she'd signed up to a ten-year loan. She and her friend complained, arguing that Mrs H shouldn't have been given such a long-term loan in her eighties.

But the loan provider said that they wouldn't reject a loan application because of someone's age. They said they hadn't done anything wrong – and told Mrs H to continue to make the monthly repayments.

Now struggling to afford the loan, Mrs H contacted us.

complaint upheld

We asked Mrs H about the meeting with the timeshare company. She said that the sales representative had assured her that after two years the timeshare would be sold on – so she'd have no trouble repaying her loan with the proceeds.

The loan provider told us that the agreement Mrs H had signed clearly stated the loan would be over ten years.

On the other hand, Mrs H said the representative hadn't said much about how exactly the arrangement worked. But she said she'd always been careful with her spending – and wouldn't have gone ahead if she'd known it was so long-term.

Mrs H's friend sent us detailed notes she'd taken at the meeting in Spain. We saw in particular that she'd clearly noted that after 24 months, there'd be nothing more to pay and £15,000 would be transferred into a personal bank account.

Mrs H also sent us paperwork showing that her only regular income was her state pension – and that she'd transferred money from her small amount of savings into her bank account to cover two years' worth of instalments.

In light of this, we decided it was likely that Mrs H thought she'd only be making loan repayments for two years.

And in our view – while we acknowledged the loan provider didn't want to discriminate against older customers – they should have looked more closely into Mrs H's circumstances. If they had, we thought it would have been clear that she would have had trouble making payments over such a long time.

We told the loan provider to cancel the agreement and write off the rest of the loan. We also told them to refund any payments made after two years (subtracting the resale value of her timeshare). We told them to make sure there was no adverse information on her credit file.

... he hadn't been told about his legal right to reject it if it wasn't fit for purpose

case study 130/5

consumer complains that he's unable to use mobility scooter he bought on finance

When Mr C's arthritis worsened, he decided to upgrade his basic second-hand mobility scooter. He visited his local mobility shop and agreed to buy a more modern scooter on finance – paying the deposit and trading in his old scooter.

But when the new scooter was delivered, Mr C found that using it gave him back pain. After several conversations with the mobility company and the finance provider, he still couldn't resolve the problem.

Left with a scooter he couldn't use – and unable to get out and about by himself – Mr C contacted us.

complaint upheld

We asked the finance provider for records of the contact they'd had with Mr C, including the phone calls between them after the scooter had been delivered.

In the first call, we heard Mr C complain that the scooter's tyres were "like concrete", meaning that driving gave him back pain. The finance company had said they'd talk to the mobility company.

The finance company had later called back to say nothing could be done to soften the tyres. When Mr C said that he wanted his old scooter back, the finance company had offered to speak to the mobility company again – and said they'd hold off setting up the finance agreement until the problem was sorted.

There had been several more phone calls between Mr C and the finance company over the next couple of weeks – but the problem hadn't been resolved. In the final call, Mr C had agreed to go ahead with the finance agreement, despite saying he was "not happy at all".

When we asked the finance company why this had happened, they said that they wouldn't have gone ahead if there had still been outstanding issues. They felt Mr C had simply changed his mind.

But from what we'd heard from the phone calls, we thought it was more likely that Mr C had thought he'd had no choice other than going ahead. He'd been told he couldn't reject the scooter because it was working properly. He *hadn't* been told about his legal right to reject it if it wasn't fit for purpose.

Mr C had clearly mentioned in the phone calls with the finance provider that he had arthritis – and from the records we saw, it seemed he'd told the mobility company too. Despite this, he'd ended up with a scooter that wasn't suitable for the purpose he needed it for.

In the circumstances, we told the finance company to refund Mr C's deposit, as well as the trade-in value of his old scooter – and any payments he'd made in the meantime. We also told them to arrange a convenient time with Mr C to pick up the scooter from his house. Mr C accepted this arrangement and said he'd be going with his daughter to choose a new scooter soon.

… they'd "strongly advised" that he speak to an independent financial adviser

case study 130/6

consumer's wife complains that husband wasn't offered "enhanced" annuity

Around two years into retirement, Mr J died. After hearing a radio feature about annuities, Mr J's wife decided to look into her husband's arrangements.

Mrs J contacted Mr J's pension provider, explaining that her husband had had high blood pressure – but hadn't been offered the "enhanced annuity rate" she believed he'd been entitled to.

The pension provider told Mrs J that they hadn't advised Mr J on what annuity to buy – so they couldn't be held responsible for his choice. But Mrs J asked us to step in, saying she believed her husband's annuity had been mis-sold.

complaint not upheld

We asked the pension provider to show us the information they'd given Mr J about his annuity options. They sent us the letters they'd sent Mr J as he approached retirement.

We saw the pension provider had told Mr J that as well as buying an annuity direct from them, he could also look for another provider. In one letter they'd "strongly advised" that he speak to an independent financial adviser before making his decision. And in a second letter, they'd said it was "highly likely" he could get a higher level of income from another company.

Based on what we'd seen, we didn't think the pension provider had made a recommendation – suitable or not – about what annuity Mr J should buy. In fact, we thought they'd made it clear that he should put time into fully understanding his options before making a decision.

Mrs J said that Mr J had been a customer of the pension for many years – and thought they should specifically have told him he would have qualified for an enhanced annuity.

When we asked the pension provider about this, they said that they hadn't offered enhanced annuities at the time. We explained to Mrs J that this meant Mr J would have had to approach a different provider to find out what he would qualify for. We noted this was something the pension provider had suggested when they'd written to Mr J.

Given everything we'd seen, we decided the pension provider had given Mr J enough information about his options – including the fact he might be able to get a better annuity elsewhere. We appreciated that Mrs J was disappointed, but we didn't agree that Mr J's annuity had been mis-sold.

case study
130/7

consumer complains that they should have been sold an annuity with a longer guarantee period

After being diagnosed with cancer, Mr S wanted to get his finances in order. He discussed his options with a financial adviser and agreed to take out an annuity with a five-year guaranteed payment period – meaning that it would continue to pay out for five years if Mr S died within this time.

When Mr S died three years later, his wife, Mrs S, complained to the adviser that there should have been a longer guaranteed payment period. She said that Mr S had previously bought an annuity with a ten-year guarantee – and she believed he would have chosen this option if the adviser had put it forward.

But the adviser said that it had been Mr S's decision to buy an annuity with a five-year guarantee. Worried about how she was going to manage financially, Mrs S complained to us on behalf of her husband's estate.

complaint upheld

We looked at the adviser's records of their contact and meetings with Mr S. From these, it was clear he'd told the adviser he was having treatment for cancer. He'd also said that his priorities were to maximise both his tax-free cash and the income Mrs S would receive if he died.

The adviser had gone on to recommend an annuity with a five-year guaranteed payment, with no spouse's pension. But it didn't appear that any other options had been discussed or compared.

When we asked the adviser about this, they said that if Mr S had wanted a longer guarantee then he could have asked for one. They suggested that, as he'd previously bought a ten-year annuity, he should have known that this option was available.

But we didn't think it was enough simply to assume Mr S had been aware of all his options – based on only one earlier experience.

We compared the income from annuities with five-year and ten-year guarantees. A five-year guarantee would have given a slightly higher yearly income. But looking back at Mr S's priorities, we didn't think the difference was enough that he would have chosen to take the slightly larger short-term income over securing longer-term income for his wife.

Given everything we'd seen, we agreed that the adviser should have made Mr S aware of his options – and that if they had, an annuity with a ten-year guarantee would have better met his priorities.

So we told the adviser to put Mrs S in the position she would be in if Mr S had taken out an annuity with a ten-year guarantee.

... we didn't think it was enough simply to assume Mr S had been aware of all his options – based on only one earlier experience

... they'd also referred to media speculation about what borrowers might do in the future

case study 130/8

consumers complain that bank unfairly turned down new mortgage because of age

Mr and Mrs I owned several buy-to-let properties and rented them out to boost their income during retirement.

Six months before the interest-only mortgage on one of their properties was due to end, the lender – Mr and Mrs I's bank – wrote to tell them it was almost time to pay the capital.

Mr I emailed the bank, explaining that rather than paying off the mortgage, he wanted to take out a new mortgage instead. He didn't hear anything for a couple of weeks – but then began to receive letters from the bank saying they'd take legal action if the couple didn't pay the capital.

Mr I contacted the bank again. This time, they replied that their lending criteria meant they couldn't lend to people over 70. Mr and Mrs I were both in their 70s. So the bank would neither offer them a new mortgage to replace the one that was ending, nor extend the term of the original one.

Mr I complained, saying that both he and his wife were in good health and wanted to continue renting out properties for as long as they could. He also felt that the bank should have told him sooner that their lending policy had changed, to give him more time to make new arrangements.

When the bank refused to change their decision, Mr I managed to re-mortgage with a different lender. But feeling he'd been unfairly discriminated against by the bank, he asked us to look into what had happened.

complaint upheld

The bank told us they had a responsibility to make sure their mortgages were affordable in the long term, which was why they'd set their maximum lending age at 70.

They told us they were limiting their involvement in the buy-to-let market, and in particular had decided not to lend in the particular part of the buy-to-let market that Mr and Mrs I were involved in.

However, we saw the letter Mr I had received from the bank, turning down his request for a new mortgage. This referred only to Mr and Mrs I's age – and the bank's age limit of 70.

We acknowledged that lenders are entitled to make decisions based on age – it's allowed under the Equality Act. But the Act also says that if a lender carries out an assessment of risk, they should use information that is reasonable to rely on – and that's relevant to their assessment of the risk involved.

In light of this, we asked the bank for more information about how they'd reached their decision. We wanted to know how they'd arrived at the maximum age limit policy – and how and why they'd applied it to Mr and Mrs I.

It seemed the bank had made a policy decision about setting an age limit. But from what they told us, they'd based their decision partly on the risks of having older buy-to-let borrowers.

From what the bank sent us, we saw their risk assessment had included some actuarial information. But they'd also referred to media speculation about what borrowers might do in the future. Because of this, we didn't think the bank had relied only on relevant information from reliable sources – in line with the Equality Act.

We were also concerned about the letters that the bank had sent Mr and Mrs I – raising the prospect of eviction at a time the couple were actively trying to sort things out. Mr and Mrs I explained how worried they'd been that their credit files would be affected, meaning they wouldn't have been able to carry on renovating and letting out local houses.

From the records we saw, it seemed that Mr and Mrs I had generally had a lot of trouble communicating with the bank. They hadn't responded to Mr I's original email before sending worrying letters. They had refused to talk to the couple's solicitors, despite having permission. And the bank had taken weeks to provide a redemption statement, which Mr and Mrs I needed to re-mortgage.

Looking at all the circumstances, we decided that Mr and Mrs I had been unfairly treated – and we told the bank to pay them £500 to reflect the upset this had caused.

Because Mr and Mrs I had found another mortgage provider, it wasn't now necessary to tell the bank to look at their situation again – this time without applying the age policy.

... we noticed that the age limit was mentioned some way down the terms and conditions

case study 130/9

consumer complains that packaged bank account wasn't right for him because age limits meant he couldn't use his travel insurance

Mr W, in his eighties, read a news article about potential problems using features included with "packaged" bank accounts. He'd taken out his packaged account because of the travel insurance it came with, so he phoned his bank to check there wasn't a problem.

During the conversation, the bank told Mr W that there was an age limit of 80 for the travel insurance. Mr W complained he hadn't known about the age limit – and had been paying for useless insurance.

The bank said the terms and conditions would have been clear during the online application – and that it was Mr W's responsibility to read them. Unhappy with this response, Mr W contacted us.

complaint upheld

Mr W told us he often travelled to Europe to visit family – and sent us paperwork backing this up. He said that he'd decided to take out the account to get the travel insurance, because he'd worked out it would be cheaper than buying a separate policy, as he'd done in previous years.

He insisted he hadn't been told about the age limit on the travel insurance – and that if he had, he wouldn't have chosen the packaged account.

The bank sent us screenshots of an example online application form. Looking at these, we noticed that the age limit was mentioned some way down the terms and conditions. In our view, this important information should have been specifically highlighted – but, because it wasn't, it could have been easily overlooked on the screen.

The bank also sent us an example of the sort of welcome pack Mr W would have received after he took out the bank account. It had more details of the insurance and other features which came with the account.

But again the age limit on the travel insurance wasn't easy to spot. We also didn't think it was fair for the bank to rely on information they'd sent to Mr W after he'd already opened the account.

We pointed out that, because the pack was sent only *after* a customer opened an account, the customer couldn't use it to help them decide whether to take out the account in the first place.

We looked at the other features of the account – to see if the package as a whole might have been useful to Mr W. As well as travel insurance, the account came with mobile phone insurance and breakdown cover. It also offered lower overdraft fees. But Mr W told us he didn't have a mobile phone – and his bank records showed no mobile charges. And he had stopped driving a few years previously.

Given everything we'd seen, we decided it was likely that Mr W had only taken out the packaged account for the travel insurance. If the bank had provided clearer information about the age limit, we didn't believe he would've opened the account at all.

We told the bank to refund all the fees he'd paid, with interest.

case study 130/10

consumer complains that mortgage company won't change interest-only mortgage to lifetime mortgage

Mr A, in his eighties, rang his mortgage company to ask a question about his statement. During the call, he discovered his mortgage had a 25-year term, whereas he'd thought he had a lifetime mortgage.

Mr A realised that this meant he'd be forced to sell his home in his late 90s. He complained to the mortgage company, asking them to change his arrangements. But the mortgage company refused. They said that they hadn't given Mr A advice about what mortgage to have – and that he'd been given clear information about the terms he was signing up to.

Increasingly worried, Mr A arranged an appointment at his local community centre – and the adviser there contacted us.

complaint upheld

From the information the mortgage company sent us, we saw Mr A had an interest-only mortgage with a 25-year term. He'd taken it out jointly with his wife when they were both in their early 70s – although Mrs A had died a few years later. At the time, the mortgage company had agreed that the sale of Mr and Mrs A's home was an acceptable "repayment vehicle".

In our view, the question wasn't whether Mr A had been given clear information about the mortgage. In fact, we agreed it was clear.

Instead, we were concerned that the mortgage company hadn't given personalised advice – taking into account their age and circumstances. Mr A was now facing the prospect of selling his home at nearly 100 years old – with 15 years of worry in front of him. We didn't think this was fair.

We told the mortgage company to convert Mr A's 25-year mortgage to a mortgage with no set end. Mr A's monthly pension payments were enough to cover the interest payments – with the capital being paid back when his house was sold after he died.

... Mr A realised that this meant he'd be forced to sell his home in his late 90s

... she thought she'd gone on to close her UK account – and was now very confused to be told she owed money

case study 130/11

consumer complains that bank is asking her to repay overdraft and pay charges

After retiring, Mrs B moved abroad to live in her favourite holiday town in France. A few months later, the bank she'd used in the UK wrote to say she'd gone over her authorised overdraft – and asked her to pay back the money.

Mrs B told the bank that she'd closed her account with them when she moved – and didn't believe she owed any money. She told them to contact her French bank to sort the problem out.

When the bank wrote to her again suggesting ways to pay, Mrs B phoned us.

complaint not upheld

Mrs B explained that she hadn't closed her UK account straightaway after moving to France – because she'd needed to arrange for her pension to be paid into her French account. In the meantime, she'd set up a regular payment from her UK account to her French account.

But she thought she'd gone on to close her UK account – and was now very confused to be told she owed money. She told us her home helpers couldn't explain it either. She said she had health problems, and the worry was making things worse.

We asked Mrs B's UK bank for details of her account. We could see that her private pension had continued to be paid into her UK bank for three months after she'd moved abroad. We also noticed that the regular payment Mrs B had set up to the French account had continued after that.

Neither Mrs B nor the UK bank had any record of her contacting them to close her account – or cancelling the regular payment she'd set up. We thought it was possible that – after arranging for her pension to get to the right place – Mrs B might have simply forgotten.

We talked Mrs B through what had happened. And we explained we didn't think it was unfair of her UK bank to ask for the money back – since it had been going into her French account and she'd been able to spend it.

We considered whether the bank could have noticed what was happening. But we didn't think they'd done anything wrong. Mrs B had set up the regular payments – and the bank had contacted her after she'd gone over her authorised overdraft.

We told the bank to agree with Mrs B a manageable way of paying back what she owed – taking into account her health and circumstances. The bank said they'd also waive the overdraft charges.

... in our view, he'd already given them a fair chance to put things right

case study 130/12

consumer complains after credit card provider turns down section 75 claim for faulty hearing aids

When Mr N's hearing worsened, he bought a hearing aid. But after he started wearing it, he found it didn't fit well and there was a lot of feedback noise.

Mr N contacted the hearing aid company and they agreed to look into the problems. When the aid still wasn't fixed after several months, Mr N asked for a refund.

When the hearing aid company refused to refund him, Mr N – who'd bought the hearing aid on a credit card – contacted his card provider to make a claim under "section 75" of the consumer credit act. But the credit card provider said he'd need to get an independent report to establish whether there was a manufacturing fault.

Mr N complained, saying the aid was clearly faulty. When the credit card provider insisted he get a report, he asked us to step in.

complaint upheld

Mr N thought it should be obvious that the hearing aid was faulty. He felt he was being asked to go through more hoops on top of the months of trouble he'd already had.

The credit card provider told us that, as far as they could see, the hearing aid company had offered Mr N their usual "after-care". They felt Mr N should give the company more time to put things right.

But we didn't agree. We pointed out that hearing aids are expensive and very personal items – so it's important they're right from the start. Mr N had sent his hearing aid back to the company three times over several months. In our view, he'd already given them a fair chance to put things right.

And while we accepted that getting an independent report might sometimes be the best course of action, we didn't think it was so in Mr N's case. We thought there was already enough evidence that the hearing aid was faulty – without making him search for and instruct an independent audiologist.

We told the credit card provider to give Mr N a full refund for the hearing aid – reworking his account as if he hadn't paid the initial amount or any related interest or charges. We also told them to pay Mr N £500 to reflect the embarrassment, inconvenience and discomfort caused by not sorting things out sooner.

... we didn't think it was good advice to risk Ms Y's future income to pay off a debt

case study 130/13

consumer complains that unsuitable advice led her to lose guaranteed pension benefits

Ms Y had previously worked for the same employer for fifteen years and had been enrolled in their pension scheme. When she was in her late fifties – and self-employed – she took financial advice and transferred her employer's pension to a "group personal pension".

A few years later, Ms Y complained about the advice she'd received. She said she was worried that her pension income would be lower than she'd hoped – because in transferring to a personal pension, she'd lost the "guaranteed benefits" she would have received if she'd stayed in her employer's pension.

The adviser replied that the risk of losing the guaranteed benefits had been made clear to Ms Y – and that there was nothing they could do. Feeling she'd been misled and was losing out, Ms Y contacted us.

complaint upheld

We asked the adviser to send us any records and paperwork they had from their meeting with Ms Y.

From the "fact find" carried out at the time of the advice, we could see that Ms Y had ticked the box to say she had "little knowledge or experience" of investments. On the other hand, her attitude to risk had been recorded as "very speculative/ aggressive".

The adviser's recommendation letter gave a lot of detail about Ms Y's circumstances. At the time, she'd been struggling with day-to-day costs and had about £1,000 of debt. She'd been renting, didn't have any savings, had never invested before, and didn't have any other pension arrangements. Since she'd become self-employed, she hadn't been contributing to a pension plan at all.

The adviser had recommended that Ms Y transfer out of her previous employer's pension, taking half the "fund enhancement" as a lump sum to pay off her debt.

But in light of what they'd found out about Ms Y, we didn't agree with the adviser that she could afford to take risks with her pension fund.

When we explained this to the adviser, they said Ms Y had been made aware of the risks involved – and had confirmed she understood that the value of the new pension arrangement could fall. They said she was still some way off retirement, and in any case she'd only lost out by a "trivial" £250.

However, we told the adviser that – regardless of how much Ms Y had currently lost out by – what mattered was whether their advice had been suitable. We didn't think it was good advice to risk Ms Y's future income to pay off a debt. And there was no evidence that the adviser had looked into any other options.

We told the adviser to put Ms Y in the position she'd be in if she hadn't made the transfer – following the steps set out for pension complaints falling outside the regulator's Pensions Review.

... they'd told the mortgage provider at that time that they didn't have any arrangements in place to repay the capital at the end of the term

case study 130/14

consumer complains that mortgage company says she's too old to extend mortgage term

Mrs R, a widow in her eighties, received a letter from her mortgage company. This explained that the term of her interest-only mortgage was coming to an end – and asked her to get in touch to discuss her options.

When she contacted the mortgage company, Mrs R asked if the mortgage term could be extended for the rest of her life – meaning the capital would be repaid when her house was sold after she died.

But the mortgage provider wouldn't agree to this suggestion. They said it was their policy not to extend the mortgage terms of borrowers over 75 – and as Mrs R couldn't pay, they would have to make arrangements to sell her house.

Mrs R complained, but the mortgage provider refused to change their position. She then contacted us, saying she feared she'd be left homeless.

complaint upheld

We asked the mortgage provider for information about the original sale of the mortgage. When they'd taken out the mortgage – interest-only over ten years – Mrs R had been 75 and her husband had been 70. They'd told the mortgage provider at that time that they didn't have any arrangements in place to repay the capital at the end of the term.

The mortgage company told us that, in their view, Mrs R still had time to find a way of repaying the capital. They didn't think it was fair to act outside their lending policy. And they felt that because other options – like converting the mortgage into a lifetime mortgage – would require constant reviews, it would be in Mrs R's best interests to sell her house.

Looking at Mrs R's financial position, it seemed her pension covered the interest-only mortgage payments. But we didn't think it was likely she'd be able to pay off the mortgage capital.

We pointed out to the mortgage company that they'd already agreed to lend money to Mr and Mrs R into their eighties – knowing that there was no "repayment vehicle" in place. And in our view, Mrs R was in her current position because of their previous lending decision.

In the circumstances, we didn't think it was fair to now simply say she was too old – and force her to sell her home.

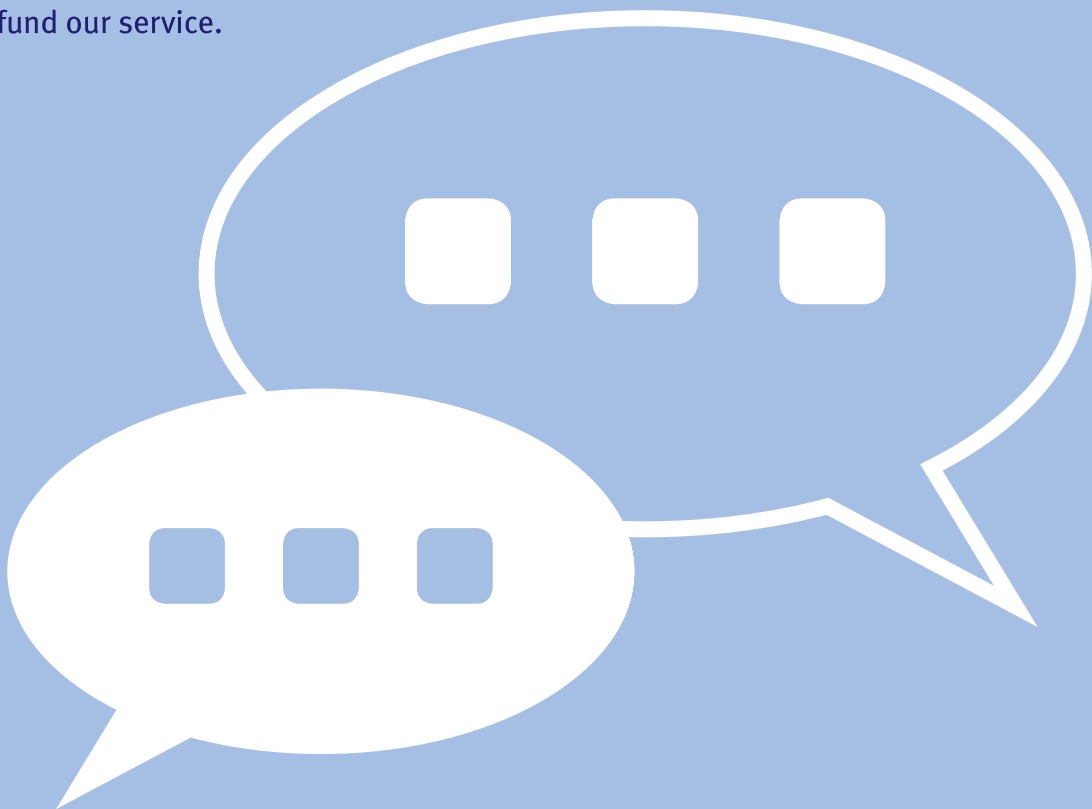
We told the mortgage company to extend the term of the interest-only mortgage indefinitely, so the capital could be repaid when Mrs R's home was eventually sold.

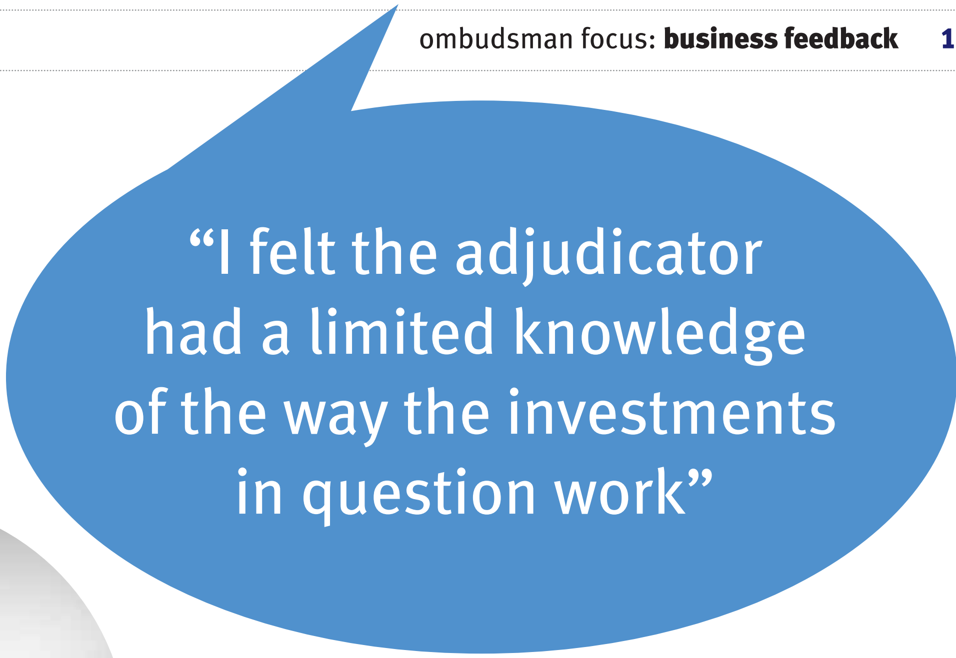
ombudsman focus: **business feedback**

We want everyone who uses us to have confidence that we'll give fair, expert answers to complaints. And each year – from conversations with trade bodies and consumer groups, regular meetings, surveys and formal consultations – we ask for feedback from the people who use and fund our service.

When we've resolved a complaint, we also ask the people involved – the business complaints handler and the customer who contacted us – to tell us about their experience using our service. This helps us to better understand what we're doing well and where we could improve – as well as identifying any misunderstandings we need to address.

In this *ombudsman focus* we highlight and respond to some of the recent comments and suggestions we've received from complaints handlers at businesses.





Clare Mortimer,
managing ombudsman

A business will – hopefully – understand the products they're selling and recommending. And we need to ensure our people can resolve the wide-ranging, sometimes life-changing problems that reach us involving these products.

So clearly, an understanding of financial products and services is part of our work. But beyond a certain point, just knowing the intricate detail and structure of, for example, a specific investment product won't help with the more pressing question of moving things forward. I've seen all too often the nub of a problem – and a clear practical solution – being totally overlooked, with too much focus on irrelevant technical arguments.

I think anyone dealing with complaints needs, first and foremost, to be an expert in problem-solving. And most importantly, that's about listening to different perspectives and unpicking what's gone wrong.

In some cases, we also need to clarify something that a business hasn't communicated particularly well – which of course means having expert knowledge of how financial products and services work.

In my experience, focusing too narrowly on technical ins and outs risks overlooking the real practical and emotional impact of what's happened.

Say we've decided someone's been unfairly charged a large fee. Yes, to make sure they're not out of pocket, we'll need to understand what needs to happen to reverse it. But did they need that money for something else? What about the worry the mistake caused? These are very practical questions our people might ask, which may not have been addressed by the business.

I know this issue is very important to businesses. And we invest significant time and resources each year in training and developing our people. But for us to do our job effectively, those skills have to be much broader than purely product-based.

That's why the type of work we do attracts people from all sorts of backgrounds, where seeing the bigger picture is essential – from solicitors and barristers, to auditors and Trading Standards enforcement officers.

“These claims companies just seem able to put in a complaint about anything without any specific arguments. You should penalise them for making unqualified claims”

Steve Townsley,
senior ombudsman

Over the last few years, we’ve received significant numbers of complaints through commercial claims-management companies – nearly exclusively about PPI, and more recently about packaged bank accounts. As an ombudsman working in this area, I’m well aware of some businesses’ views about claims managers – as well as sometimes hearing concerns from people who’ve used them to complain.

While it’s ultimately people’s personal choice, I think it’s right that we’ve always made it absolutely clear there’s no need for people to pay for help to bring a complaint to us. And we’ve always stressed how important it is that we hear from people in their own words – so we can really get to the heart of why they’re unhappy.

Given the thousands of complaints we get through claims managers, it’s not surprising that some people think it’s our job to regulate them – and that we should be calling them up on poor practice. Parliament didn’t set us up to regulate claims managers, so where we see bad practice we talk to their own regulator – the Claims Management Regulator, part of the Ministry of Justice. We highlight where things need to improve, and the information we pass on helps the Claims Management Regulator take action where standards aren’t being met.

We also work closely with claims managers themselves – to help stop the unfocused, generic type of arguments you’ve mentioned.

We regularly meet them to make sure they understand exactly how we work – particularly those claims managers who send us the most complaints.

I’m pleased to see that this work with claims managers is having a real impact. It includes telling them to review carefully the cases they’ve already sent – or were planning to send – to us. In the area of packaged bank accounts alone, these frank conversations have led to claims managers deciding not to pursue several thousand complaints.

From what I’ve seen, businesses can play their part in helping to avoid unnecessary complaints being made by claims management companies. Some claims managers tell us they haven’t been given a full answer to a complaint by the business.

Sometimes it’s only after we step in that a business really engages with the complaint – sending us strong evidence, for example, that their customer specifically wanted a particular packaged account.

By being clear and open from the start – and taking the time to explain what’s happened – businesses can improve their relationships with their customers, and play their part in reducing the number of complaints consumers refer to us.

All this frees up both our – and businesses’ – resources. It also means people find out sooner rather than later if they haven’t actually lost out.

Sarah Lawrence,

technical advice desk manager

The ombudsman's technical advice desk has been an important part of our complaint prevention work since 2000. Since then we've been helping people who deal with complaints at the front line – from businesses through to community advice workers – to resolve problems themselves, without officially escalating things to the ombudsman.

Between us, we're experts in explaining how our fair approach applies to all kinds of situations. But the nature of our role means we can only ever give an informal steer based on the one side of the story we are being told.

On the other hand, when one of our adjudicators is looking into a problem, they'll have listened to both sides' views before deciding what's fair.

And if it's been a while from when you phoned the advice desk to when your customer contacted us, circumstances may well have moved on anyway. For both these reasons, an adjudicator's or ombudsman's answer can be different to the initial steer we've previously given.

I'm always really interested in feedback like yours. To me, it shows there's more we can do to explain what we're here for and the support we offer.

Our free events around the UK for smaller businesses are also a great way of finding out about our approach and the different ways we can help you resolve complaints fairly – as well as meeting our ombudsmen face to face and asking questions directly.

"I recently called your technical advice desk and followed their advice to the letter. But when the customer later referred the complaint to you, you upheld it"

"I think businesses should be able to challenge consumers face to face when they bring complaints to the ombudsman"

David Bainbridge,
head of outreach

"Your support and events for businesses concentrate on London in my opinion – they're too far away"

We were set up as an informal alternative to the courts – meaning, importantly, with our approach there's no cross-examination, no need for legal representation, and no need to compile and formally present "pleadings".

I can understand how some people might want their day in court. But for most people, an adversarial system would feel intimidating and confrontational – and act as an unfair barrier to using our service and getting a much-needed resolution to a problem.

Face to face meetings as a matter of course would also be resource-intensive and very expensive to run.

But aside from that, it's usually just not necessary to call everyone into a room to sort things out. Using the phone and email, we can hear different views and get the information we need very quickly and efficiently. Allowing people to explain things in their own words in their own time – without pressure or confrontation – can help to take the heat out of a situation and put things in perspective.

In terms of resolving individual complaints, meeting the two sides face to face as a matter of course would almost certainly be prohibitively expensive and complicated – and isn't necessary in most cases anyway.

But in other areas of our work, we recognise that meeting face to face can be very effective – in particular when we're looking to raise awareness of our role and our approach. It's great that more than nine in ten businesses we cover don't actually have any complaints referred to us at all each year.

But it's likely to mean there are a lot of businesses out there with no direct experience of our service and the support we offer.

If you've not actually had a conversation with us, I can appreciate how "the ombudsman" could seem a bit of a faceless "unknown". And if you're not using our website very much – or perhaps if you don't regularly read ombudsman news – you might not know that we're out and about meeting businesses pretty much every week across the UK.

Since January this year, we've hosted 59 different conferences, training days and local forums for businesses nationwide.

And we've many more planned for the coming months – not to mention the dozens of other local and national industry networks and events we take part in.

Through our years of outreach work, we know that patterns of complaints and concerns – and business priorities – vary not just over time, but from place to place. So we continue to look into how we can get to know local communities even better, so we can help more effectively.

In October, for example, we ran a drop-in centre at the Bullring shopping mall in Birmingham. Over a long weekend, our adjudicators and ombudsmen met local businesses to find out more about the issues and challenges they're facing at the moment.

We also met community and consumer advice organisations, to learn about the problems people are bringing to them. And we gave practical tips and answers to the hundreds of shoppers who approached us – explaining the next steps in sorting out a problem, or just putting worries to rest. I'd like to think that each conversation we had prevented a potential complaint from being escalated – either to a business or to us.

upcoming events ...

smaller business:		
meet the ombudsman roadshow	**Ashford**	**2 December**
	Stratford	**26 January**
consumer adviser:		
working together with the ombudsman	**Birmingham**	**8 December**
industry event:		
payday lending workshop	**London**	**8 December**

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

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Q? &A

One of my community centre's clients has exhausted all avenues with her bank, but she's reluctant to take things further. Mainly, she thinks she won't use the right words to get her case taken seriously. Could that be a problem?

There are commercial claims companies eager to complain on people's behalf in all walks of life. This could give the impression that you need to pay to bring a "case" to an organisation like ours.

Although we know some people look for the convenience of having their complaint "managed" by a claims manager, we've always been very clear there's no need.

When someone contacts us, our role is to get underneath what people are telling us to find out what's happened.

Hearing people describe their problem in their own words is by far the best way for us to understand what's gone on and the impact it's had. Jargon and legalese just get in the way – and is often just another layer we have to unpick to get to the truth.

Apart from complaints about PPI – where many people took action after being contacted by a claims manager – seven in ten people who contacted us last year did so themselves. And another 10% asked someone to help them for free – like a friend, family member or community adviser. If your client's very nervous, we can talk to you on their behalf.

My customer's referred a complaint to you – my first in ten years. I so rarely trouble the ombudsman, but all the same I'm facing a case fee – win or lose. How is that fair?

A case fee applies whatever the outcome of a complaint – to reflect the work we've spent looking into and resolving the problem. Even if we decide a business hasn't acted unfairly, that doesn't necessarily mean a complaint is "frivolous" or shouldn't be charged for. Where a complaint isn't upheld, customers of businesses may still be concerned, angry or anxious. And our role is to help them better understand what's happened and rebuild trust in the relationship.

But you're unlikely to pay a case fee anyway. That's because we've made sure our funding arrangements recognise – as you've pointed out – the tiny share of the workload smaller businesses like yours are responsible for. So we don't charge for the first 25 complaints each year. This means 95% of businesses whose customers complained to us paid no case fees at all last year.

Because smaller businesses have less direct contact with us in general – as they have fewer complaints – there are other ways you can keep in touch with us. Just using our free technical advice desk to talk through a tricky situation can often help nip a potential complaint in the bud. We also hope the case studies in *ombudsman news* help prevent similar problems.

Financial Ombudsman Service

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