ombudsman news

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

in this issue

staying relevant

It's sometimes tempting to think things don't really change that much. The last time all our case studies in a single issue of *ombudsman news* were focused on cars – a few years ago now – we highlighted problems ranging from finance repayments and theft claims, to disagreements about "wear and tear". And as we've shown in this issue, these are still things we're regularly hearing about in 2016.

Perhaps this isn't surprising. After all, even though technology's changed over the years, the fundamentals of cars – and the financial services attached to them – remain broadly the same. For our part, we're still looking to resolve things fairly and informally – no matter what problems people bring to us.

But just because we're doing broadly the same thing, doesn't mean we can stand still. And we haven't. In the last *ombudsman news*, we explained how – at a time that people can use social media to get a near-instant response to a concern – we've been developing our own ways of working.

This focus on keeping up and staying relevant is something I've noticed when I talk to people working in financial services too. From the conversations I had at a recent event on "robo-advice", it was clear that businesses are looking to the future – thinking about how new technology can help them provide a service that reflects the shifting expectations of many customers. ▶

Financial Ombudsman Service

follow us

@financialombuds Financial Ombudsman Service

financial-ombudsman.org.uk

subscribe ombudsman.news@financial-ombudsman.org.uk

meet us

in May we're in:

- Coventry
- Wolverhampton

for more events see page 23

scan for previous issues

Caroline Wayman

Of course, technological innovation isn't the answer to everything – and without careful thought, it could actually be the cause of problems. By insisting that people use new technology, both we and businesses could risk upsetting – and excluding – people who value personal contact.

And at a time when the issue of vulnerability remains in the spotlight – both within financial services and more widely – reaching people who find themselves excluded by new technology is clearly a very pressing challenge.

For me, staying relevant is a balance – moving with the times, but remembering what, and who, we're here for. In *our plans for the year ahead* – published this month – we've explained how we're going to do that over the coming months.

Caroline

... at a time when the issue of vulnerability remains in the spotlight, reaching people who find themselves excluded by new technology is clearly a very pressing challenge

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 9am to 6pm

things that go wrong with cars

While people might not automatically associate cars with the financial ombudsman, they feature in a wide range of the problems we deal with.

With all of the UK's more than 30 million cars needing to be insured to drive, it's not surprising we regularly hear from people having problems with their insurance. What's more, many of those cars have been bought or hired with some kind of finance arrangement. In these cases, we can often help when something's gone wrong with the car or how it was sold.

Many of the problems we deal with today are about similar issues to those we've dealt with since we were set up. We continue to give answers on unpaid claims, fair valuations and the quality of new cars. And poor communication continues to be an underlying problem in a number of the complaints people bring to us.

But while some things haven't changed, developments in technology, for example, mean the individual factors we'd expect a business to consider *have* changed – while continuing to follow our fair and reasonable approach to sorting things out.

In the past, a complaint about a stolen car, for example, might have been decided by – among other factors – whether someone could provide both sets of keys. But we know from experience that some newer "keyless" cars can be stolen without a key. In cases like these, we'll check an insurer has fully explored all the options – and not just told their customer that without a key, a car can't be stolen.

In many of the complaints we deal with, we find a business hasn't acted unfairly – but they could have explained things more simply or clearly.

Falling back on jargon like "misrepresentation" or "fault claim" can leave people feeling confused or frustrated. On the other hand, we often find that by making things more straightforward, people understand – and are more likely to accept – the outcome. This might be as simple as an insurer reassuring their customer that a "fault claim" doesn't necessarily mean they're being "blamed" for an accident.

The following case studies highlight the range of issues we see. We've recently added more information to our website about the most common complaints we receive involving cars – and our approach to putting things right when something's gone wrong.

... an independent engineer had concluded that the faults had existed before they bought the car

case study 132/1

consumers complain that finance company won't refund payments and let them return faulty car

Mr and Mrs B bought a used car on a hire purchase agreement – but soon began to have problems with it. Over the next couple of months, they arranged a number of repairs at the garage they'd bought it from – but these were all unsuccessful.

Mr and Mrs B then contacted the finance provider, who arranged for an engineer to inspect the car. The engineer found that the car's suspension was faulty, the brake pads were worn and there was an oil leak in the gearbox. He said that, in his view, the faults would have been there when the car was sold.

The finance provider agreed to fix the oil leak. But they said the fact that Mr and Mrs B had already driven a few thousand miles in the car showed it must have been working properly when they bought it.

Mr and Mrs B insisted the car hadn't run properly since they'd taken it home – and that they wanted to return it and get back the money they'd paid. When the finance provider refused, they complained to us.

complaint upheld

We asked the finance provider for their records of the repairs and the inspections that had been carried out on the car.

Looking at the history of the repairs, we thought it was clear that Mr and Mrs B had experienced difficulties very soon after buying the car. The repairs arranged by the garage hadn't fixed the problem. And an independent engineer had concluded that the faults had existed before they bought the car.

Mr and Mrs B told us the reason they'd clocked up so many miles was because the garage was a 100-mile round trip. We didn't think – as the finance provider had argued – that the high mileage meant the car hadn't been faulty when it was sold. On the other hand, it *did* suggest that Mr and Mrs B had had some benefit from the car, despite its faults.

We explained to Mr and Mrs B that – because they'd still been able to use the car – it was fair for the finance provider to keep the money they'd already paid.

But given everything we'd seen, we agreed that the car hadn't been fit for purpose when it was sold. So we told the finance provider that Mr and Mrs B should be allowed to return it – and to cancel their finance agreement.

... she didn't understand how she was responsible for the claim if the car wasn't legally hers

case study 132/2

consumer complains that insurer is holding her liable when car she no longer owns is involved in an accident

Mrs L had added her husband's brother – Mr H – to her car insurance, so he could help run errands for her husband, Mr L, who was partially-sighted.

When Mr and Mrs L later split up, Mrs L transferred ownership of the car to Mr H. A few months later, Mrs L's insurer notified her that Mr H had had an accident with a motorbike, but Mr H hadn't been insured. When the motorcyclist's insurer had contacted them, they'd found out that Mrs L no longer owned the car.

The insurer told Mrs L that – because she hadn't told them about this "material change" – they were cancelling her policy from the point she'd transferred ownership.

They also explained that, since Mrs L hadn't cancelled her insurance, they were still legally liable for any claims made against the policy. And they were now looking to recover from Mrs L the costs of the motorcyclist's claim.

Mrs L refused to pay – saying that Mr H, the car's owner, should cover the costs. When the insurer insisted that Mrs L was responsible, she contacted us.

complaint not upheld

Mrs L told us she hadn't realised she'd needed to cancel her insurance – and had assumed that Mr H would organise his own. She didn't understand how she was responsible for the claim if the car wasn't legally hers.

We explained to Mrs L that, once she'd given the car to Mr H, the insurer hadn't been insuring the risk she'd initially asked them to cover. In the circumstances, we thought it was fair for the insurer to cancel her policy.

We also explained that, as the insurer of the car at the time of Mr H's accident, Mrs L's insurer had a duty – under the *Road Traffic Act* – to deal with the motorcyclist's claim. And the law also gave the insurer the right to recover any money from the policyholder – Mrs L.

We pointed out that, if Mrs L had cancelled her policy, the insurer wouldn't have had to deal with the claim.

We appreciated that Mrs L was frustrated – but we didn't agree that the insurer had acted unfairly.

... Mrs W's front door was round the corner from the driveway – meaning her view of her car would have been obstructed

case study 132/3

consumer complains that insurer turned down claim for stolen car – on grounds that she left her car unattended with the key inside

On a frosty morning, Mrs W started up her car's engine and went back indoors to get her phone. As she came back to her front door, she saw someone drive off in the car.

When Mrs W claimed on her car insurance, the insurer refused to pay out. They said Mrs W's claim wasn't covered because she'd left her keys in her car and left the car unattended.

Mrs W's son, Mr W, complained about the insurer's decision. When the insurer wouldn't change their position, he contacted us.

complaint not upheld

Mr W said the insurer hadn't told Mrs W about the policy terms they were using to turn down her claim.

We checked the documents Mrs W had been sent when she bought the policy – and found the exclusions were clearly set out in the key facts. We told Mr W that we thought the insurer had done enough to highlight the types of claims they wouldn't cover.

But we still needed to decide whether it was fair for the insurer to use the exclusions in Mrs W's situation. So we asked for more detail about what had happened.

Mr W explained that his mother had quickly gone back into the house to pick up her phone, which had been charging in the living room. He said she'd partly closed the door – but had only ever been about six feet away from the car.

Mr W also provided photos of where the car had been parked when it was stolen. It had been on Mrs W's driveway at the time – as Mr W had described, a few feet away from the living room.

We take a pragmatic view of what "unattended" means. And we weighed up whether Mrs W had been near enough to her car to keep a close eye it – and to deter a thief.

But looking at the photos, we didn't think this was the case. Mrs W's front door was round the corner from the driveway – meaning her view of her car would have been obstructed. And Mr W confirmed that Mrs W hadn't seen anyone get into the car.

We were sorry to hear about Mrs W's upsetting experience. But – in light of what we'd seen – we didn't agree that the insurer had acted unfairly in turning down her claim.

case study 132/4

consumer complains that insurer has rejected claim after accident on grounds that damage is wear and tear

After Mrs O's insurer had repaired her car following an accident, she noticed that the air conditioning and central locking systems weren't working properly.

When she told her insurer, they said that their investigations had shown the systems had wear and tear. And since this damage wasn't related to the accident, they didn't have to repair it.

Mrs O said she hadn't had any problems with the air conditioning or central locking before the accident. She pointed out that she'd only just had the air conditioning serviced.

But her insurer wouldn't change their decision – so she contacted us.

complaint upheld

The insurer told us that they'd had Mrs O's car inspected at one of their authorised garages – and had made their decision based on the findings of the engineer's report.

We asked for a copy of this report. The engineer had said that the damage to the air conditioning and central locking *could* have been down to wear and tear. But he'd said it was likely the accident had contributed to the damage – and could have caused it.

We asked the insurer – since the engineer hadn't been sure about the cause – what other evidence they'd used to reach their conclusion about the damage. But they said the engineer's report was all they'd used.

It was for the insurer to show their exclusion for wear and tear should apply. And we didn't agree that the evidence showed that the damage *wasn't* caused by the accident.

We told the insurer to pay for Mrs O's car's air conditioning and central locking to be repaired.

... they said the engineer's report was all they'd used

case study 132/5

consumer complains after insurer says problems with car are due to wear and tear

When Mr G's car was involved in a crash, he made a claim on his insurance and had it repaired. But when he started driving, he noticed it was making some strange noises.

Mr G contacted his insurer, saying the damage wasn't fixed. But after their engineer had looked into the problem, they said they wouldn't pay for any further repairs. The engineer said all the accident damage had been fixed by the original repairs. The remaining problems *hadn't* been fixed because they'd been caused by wear and tear – and weren't covered under the insurance.

Unhappy with his insurer's response, Mr G made a complaint. He said his car hadn't made noises before the crash – and the insurer was now making excuses to get out of paying.

Looking for an independent opinion, Mr G asked a second engineer to inspect the car. But when the insurer reassessed the claim based on the new inspection, they still refused to pay for the damage.

Frustrated with his insurer's decision, Mr G contacted us.

complaint not upheld

We looked at both engineers' reports about Mr G's car. From the report the insurer sent us, we could see their engineer had been clear about the cause of the problems. He said all the accident damage had been fixed. The remaining damage – which was causing the noises Mr G had heard – was due to wear and tear, and not the crash.

On the other hand, Mr G's engineer hadn't been so sure. He said Mr G's car had recently passed its MOT – and problems with the car should have been picked up at that point if they'd been ongoing wear and tear issues.

The engineer said that some problems with the car "may well" have been related to the crash. But he said further investigation would be needed to be sure either way.

Mr G insisted he'd always maintained his car. But his car was 13 years old – so we thought it was possible that there would have been some wear and tear that had gone unnoticed. And we know from experience that not everything is checked during an MOT – so we couldn't be sure that the damaged parts would have been part of the check.

From Mr G's inspection, it seemed the engineer hadn't been sure about the cause of the damage. He'd suggested that the problems *might* have come about following the crash. But he hadn't ruled out the possibility that they were due to wear and tear. The insurer's engineer, on the other hand, had said the damage definitely hadn't been caused by the crash.

We appreciated that the problems with Mr G's car had only become apparent following the initial repairs. But weighing up both reports, Mr G's engineer's report wasn't enough to convince us the problems were most likely caused by the accident.

Although we appreciated Mr G's frustration, we decided his insurer had made a fair decision given the evidence.

... weighing up both reports, Mr G's engineer's report wasn't enough to convince us the problems were most likely caused by the accident

... it seemed someone had tried inputting different residency dates to see how the price would be affected

case study
132/6

consumer complains insurer has unfairly kept entire premium after he gave incorrect information

After buying a new car, Mr Z took out insurance through an online comparison site. After he'd paid the annual premium, he received an email from his new insurer. They said there was a problem with his application, and they needed to know how long he'd been a UK resident.

Mr Z called the insurer and confirmed he'd been a UK resident for three years. But they said his quote was based on his being a UK resident since birth. They said he'd deliberately given the wrong information. As a result, they were cancelling his policy and keeping the money he'd already paid.

Mr Z said he hadn't even realised he'd made a mistake. He said his wife had answered the questions for him in getting the quote – so she must have put in the wrong details. And in any case, he thought keeping the full premium was unfair now he'd told them the right information.

The insurer maintained they'd been clear about the risks of giving the wrong information. They refused to change their position – so Mr Z came to us.

complaint not upheld

We asked to see how the insurer had asked about Mr Z's UK residency – as well as the information given in his application.

The insurer sent us a screenshot of the online application. The relevant question stated "UK resident from" – followed by a tick box for "birth", or the option to provide a specific date. In Mr Z's application, he'd ticked "from birth" – so he'd given the wrong answer to what we could see was a clear question.

The insurer also sent us a report of Mr Z's quote history – showing they'd given nine different quotes for Mr Z's policy. The quotes included three different dates for how long Mr Z had been a UK resident – with each giving a different price.

Mr Z maintained he hadn't been the one to answer the questions. He'd told the insurer his wife had got the quote – but said she'd since told him it was her friend. And he said her friend had filled out the details on her own – which must be why she'd got the dates wrong.

But Mr Z's account didn't add up. Not only had he changed his story about who'd got the quotes, but some specific details were correct in *all* the quotes. A crash Mr Z's wife had been involved in was listed, as well as a speeding fine she'd received. Mr Z couldn't explain how his wife's friend had known about these, but hadn't checked how long he'd been a UK resident.

From the evidence, it seemed someone had tried inputting different residency dates to see how the price would be affected. Mr Z had accepted a quote that was almost £400 cheaper than if he'd provided the right information – so we said the insurer had been reasonable in deciding the wrong information had been given deliberately.

We explained to Mr Z that whoever had obtained the quotes, it was his job to check that the information provided was correct. Looking at the policy documents Mr Z had been sent – as well as the information he'd been given in completing his quote – the insurer had been clear about the consequences of giving the wrong information.
So we decided it was fair for the insurer to cancel Mr Z's policy and to keep the premium he'd already paid.

... we could see the garage hadn't noted down what was in the car

case study 132/7

consumers complain that insurer won't pay for vandalism damage to car that happened while it was at approved garage

Following a crash, Mr and Mrs A's car was repaired at a garage. But after the repairs were completed, the car was vandalised on the forecourt.

Mr and Mrs A contacted their insurer to claim for the vandalism damage. They also said some headphones and a spare wheel had gone missing from the car – and asked the insurer to cover the costs.

The insurer said they'd now settled Mr and Mrs A's claim, and their further claim would have to be dealt with by the *garage's* insurer instead. Unhappy with this answer, Mr and Mrs A refused to pick up their car until it had been fully repaired. But the insurer wouldn't change their position.

Feeling they were stuck in a stalemate, Mr and Mrs A got in touch with us.

complaint upheld

We asked Mr and Mrs A's insurer for more details about the original claim. They explained that since the car had some special modifications, they'd given the couple cash to get it repaired at a specialist garage.

The insurer confirmed they'd chosen the garage. But the vandalism had happened after the car had been repaired and the insurer had paid the cash settlement. So they believed it was the garage's responsibility – not theirs – to put right the vandalism damage.

Mr and Mrs A explained that they'd tried to sort things out directly with the garage. From the correspondence we saw, it seemed there'd been confusion around how they'd need to go about getting a claim settled through the garage's insurer.

It was clear that Mr and Mrs A had tried to resolve the problem – but the dispute had now been going on for a number of months. We pointed out to the insurer that the car had been in the care of their approved garage when the vandalism happened. In these circumstances, we thought it was reasonable for the insurer to take responsibility for Mr and Mrs A's claim.

The insurer also sent us paperwork from the garage that had repaired the car. From this, we could see the garage hadn't noted down what was in the car. On the other hand, they'd later told Mr and Mrs A's insurer that the car definitely hadn't had a spare wheel when it arrived. And they didn't believe the headphones had been in the car either.

We weren't sure how the garage – or the insurer – could be so sure of what had or hadn't been in the car, when there was no evidence they'd actually checked. We thought it would have been reasonable to expect an approved garage to carry out such a check – to make sure the insurer's customers' possessions were protected.

We told the insurer to arrange for the vandalism damage to be repaired at an independent garage. And we told them to cover reasonable replacement costs for the headphones and spare wheel – taking into account any evidence Mr and Mrs A could provide about the age and condition of the items.

Mr and Mrs A had been left without a car while their insurer was refusing to pay their claim. So we also told the insurer to pay £300 to recognise the inconvenience they'd caused.

case study 132/8

consumer complains that hire company has charged too much for damage to car

When Mr V reached the end of the finance agreement on his car, he returned the car to the hire company he'd leased it from. The company contacted him to confirm his contract had ended. And they also sent him a bill with some additional charges.

Mr V wasn't happy with all the charges – in particular, £350 relating to damage to the roof of the car. When he asked for more information, the company told him there were dents in the roof. They said they'd made it clear that Mr V would be charged for this kind of damage.

Mr V maintained that he hadn't damaged the car's roof. But when the company insisted he pay the charge, he asked us for help.

complaint upheld

Mr V told us he'd known he'd scratched the front of the car – and he'd expected to pay for this, as well as for extra mileage.

But he said the hire company hadn't given him much information about the damage to the roof. They'd only told him the roof was dented in three places – and that their policy allowed up to two dents.

We asked to see the paperwork the hire company had given Mr V. This explained that the company considered "fair wear and tear" to the roof as a maximum of two dents – each no longer than 2cm.

The hire company sent us photos they'd taken during their inspection of the car. They'd highlighted three areas where they said the roof was damaged – with a ruler next to the dents they'd identified.

But looking at the photos, we could only see two dents. And going by the ruler in the images, each of these was only around 2cm long.

We asked the hire company if they had any other photos that showed the third dent they'd identified. But they said they'd given us the only photos they had.

From what we'd seen, the dents on Mr V's car fell under "fair wear and tear" – as set out in his contract. In the circumstances, we told the hire company to waive the £350 charge relating to the dents.

... they said they'd given us the only photos they had

case study 132/9

consumers complain that car bought using "conditional sale" finance was modified – and wasn't as the dealer described

Mr and Mrs K bought a car on finance. The dealer told them the car didn't come with a spare tyre because it had "run flat" tyres which could be driven with a puncture.

But when Mr and Mrs K later had the tyres replaced, it came to light that they were just the standard type.

Mr and Mrs K complained to the finance company. They said they'd read on the internet that the car was worth less with standard tyres – and that if they'd known their car didn't have "run flat" tyres, they would have negotiated a lower price.

The finance provider pointed out to Mr and Mrs K that the car hadn't been advertised as having "run flat" tyres. They also spoke to an independent engineer, who said that the model could come with either type of tyre as standard.

Based on their investigation, the finance provider refused to give Mr and Mrs K a refund. But Mr and Mrs K didn't agree – so they contacted us.

complaint not upheld

Mr and Mrs K told us they'd queried the lack of a spare tyre with the dealer – who'd told them it was because the car came with "run flat" tyres.

They accepted that they hadn't known what "run flat" tyres were until the dealer explained it to them. In fact, they hadn't noticed what the initial advert they'd seen said about tyres at all.

Mr and Mrs K could no longer find the article they said they'd read online, referring to how the type of tyres could affect the car's value. On the other hand, the engineer had confirmed the car could come with either type of tyre – and hadn't indicated the type of tyre could have an impact on the value.

It was clear that the dealer had given Mr and Mrs K the wrong information. But – given they hadn't even thought about the tyres beforehand – we didn't think this had influenced their decision to buy the car, and at the price they'd paid.

We explained to Mr and Mrs K that, from what we'd seen, they hadn't lost out as a result of the dealer's mistake. So the finance provider's answer was fair.

... they hadn't known what "run flat" tyres were until the dealer explained it to them

... they'd reviewed their decision – and taken guidance from their solicitors

case study 132/10

consumer complains that accident wasn't his fault – but insurer has split liability

Driving home from work, Mr E collided with another car. His car insurer agreed with the other driver's insurer to split liability for the accident 80/20 – with Mr E being held 80% responsible.

Mr E maintained that he wasn't at fault at all – and complained to his insurer. When the insurer wouldn't change their decision, he contacted us.

complaint not upheld

Mr E told us he'd been on the main road with right of way when the other driver had driven into him from a side road. He said he'd been driving slowly and hadn't done anything wrong.

Mr E told us to look at the evidence – and see for ourselves who was responsible. We explained that it wasn't our role to investigate the accident – but we'd make sure the insurer's answer was reasonable, given all the evidence that had been available to them.

When we asked the insurer for the evidence they'd used, they sent us statements that they'd taken from both drivers. The other driver had said Mr E had passed stationary traffic and driven into an area marked "keep clear" – so he'd been the one at fault.

From their records, we could see the insurer had also visited the scene of the accident, studied the road layout and taken photos of the damage to the cars. And after Mr E complained about the outcome of the claim, they'd reviewed their decision – and taken guidance from their solicitors about the likely outcome if the other driver's claim went to court.

In light of this, we decided the insurer had carried out a fair investigation – and had reached a reasonable conclusion about what had happened.

We appreciated that Mr E felt strongly that he wasn't to blame. But we didn't agree that his insurer had acted unfairly.

case study 132/11

consumer complains about insurer's valuation of his car after it's written off

After Mr J's car was hit by a motorbike it had to be written off. His car insurer offered him £3,600 – which they said was the car's market value before the crash.

Mr J didn't think this was enough. He told the insurer he'd seen similar cars selling for a lot more. He said he'd spent a lot of money on extras for his car – including special headlights, privacy glass and a sat-nav – which he didn't think the insurer had factored in.

The insurer told Mr J they'd already added £200 to the valuation to account for the extras. But Mr J insisted the extras were worth several hundred pounds more – and complained to us.

complaint not upheld

Mr J sent us some adverts he'd seen of similar cars being advertised for more than the insurer had offered him. But we explained to Mr J that cars don't often sell for the advertised price – so we couldn't rely on the adverts to say if the valuation was fair.

We checked the motor trade guides to see the range of valuations for Mr J's car. The guides gave prices around a hundred pounds either side of the insurer's offer. The guides also suggested that some of the features Mr J had said he'd paid extra for actually came as standard with his particular model.

When we pointed this out to Mr J, he said he'd specifically been told by one of the insurer's engineers that he should be paid another £600 for the extras.

We asked the insurer for their records of Mr J's claim – including notes of conversations he'd had with their engineers. But there was nothing in these records to suggest he'd been promised £600. The three engineers who'd been involved in the claim had all agreed £200 was a fair amount for the extras.

We explained to Mr J that – taking together the guide prices and the engineers' views – we thought the insurer's valuation was fair.

... the trade guides gave prices around a hundred pounds either side of the insurer's offer

... it was reasonable that his insurer had taken into account the HGV insurer's side of the story

case study 132/12

consumer complains that car insurer should have looked at CCTV footage of accident

As Mr U was driving to work one morning, an HGV turned – and collided with his rear wheel. Rather than stop to exchange details with the other driver, Mr U noted down the HGV's number plate and drove on to work.

When he arrived, Mr U called his insurer to make a claim. He said the HGV driver had been turning into a garage – and the garage had CCTV cameras that would show the HGV driver was at fault.

Mr U called his insurer when he hadn't heard from them after a month. He asked if they'd checked the CCTV footage – and they told him they would contact the garage about this.

Some months later, Mr U heard that his insurer had settled his claim – splitting liability 50/50 between him and the HGV driver. The insurer offered Mr U £150 for the delays in sorting out his claim. They also apologised for not checking the CCTV footage – which was no longer available.

Mr U wasn't happy with this outcome. He now had a "fault" claim on his records. And he said that without the CCTV, he could no longer prove he wasn't to blame.

When Mr U's insurer refused to change their position, he brought his complaint to us.

complaint not upheld

We explained to Mr U that it wasn't our role to investigate the collision. But we would look into whether his insurer had acted fairly in settling the claim.

We asked Mr U's insurer for their records from the claim – including the phone calls Mr U had made to them.

During the calls, Mr U had asked about the CCTV footage several times. It seemed the insurer had spoken to the garage once, but hadn't followed this up.

And by the time Mr U complained the insurer hadn't looked at the footage, the garage said it was no longer available.

The records also showed Mr U's insurer had spoken to the HGV driver's insurer. The HGV driver had said he hadn't realised he'd hit anyone. And his insurer said Mr U had been passing the HGV – and should have taken more care. They pointed to guidance in the Highway Code about passing long vehicles – and suggested that Mr U should have waited.

For his part, Mr U had accepted he'd passed the HGV driver while the HGV was turning. But he argued the HGV driver hadn't checked his mirrors – something the CCTV would have shown.

We could see the situation wasn't clear-cut – and it had been difficult for Mr U's insurer to decide who was at fault. By not talking to the other driver at the time of the accident, Mr U had made it difficult for his insurer to know exactly what had happened.

And we thought it was reasonable that his insurer had taken into account the HGV insurer's side of the story.

In light of everything we'd seen, we didn't think it was clear the outcome would definitely have been different – even if the CCTV footage had shown the HGV driver hadn't checked his mirrors.

We decided Mr U's insurer's decision was reasonable – based on the evidence they had. And we felt their offer of £150 – in recognition of their poor customer service – was fair in the circumstances.

ombudsman focus: debt management

It's estimated that Citizens Advice Bureaux in England and Wales are dealing with over 4,000 new debt problems each day. And according to debt charity StepChange, more than half a million people contacted them for debt advice over the last year.

In light of figures like these, it's perhaps not surprising that a significant proportion of the complaints we receive involve people experiencing financial difficulties. A number of these people have been paying for help to get on top of their debts – but are unhappy with the service they've received from the commercial debt management company involved.

Debt management businesses are covered by the Financial Conduct Authority (FCA) – meaning we can look into complaints about them. In this *ombudsman focus*, senior ombudsman Juliana Francis explains more about the problems we see with debt management services – and how these could be prevented.

Juliana Francis,
senior ombudsman

> "it's often only after a few years that people find out they haven't paid off as much debt as they'd expected"

compared with some other types of complaints, volumes of complaints about debt management seem relatively low

if levels of personal debt are high, why aren't you hearing more about debt management?

Even though these complaints make up a relatively small proportion of our work, the impact on the individual people involved can be significant. They're some of the most upsetting cases I see as an ombudsman.

People don't turn to debt management services lightly. If their level of debt wasn't a worry – or they'd had the confidence to deal with creditors themselves – they wouldn't have sought third-party help in the first place. And on top of the practical implications, struggling with debt may well have an impact on people's mental health.

So whatever the raw figures, I think it's really important we share what we're hearing. From our independent position, we can help debt managers to improve their service and stop things going wrong – and help to improve people's understanding of what they're signing up to and what to do if they're unhappy.

Actually, the fact that we're not seeing large volumes of complaints right now could speak to a couple of things.

First, people don't always get help with their debts – paid-for or otherwise. They may tell friends or colleagues – but we know from the complaints that do reach us that people are often worried or embarrassed about seeking help. And those people who are already using a debt management service might not know they've got a right to complain if they're unhappy.

It's also the case that people tend to complain when their debt management plan has come to an end – or is some way down the line.

It's often only after a few years that people find out they haven't paid off as much debt as they'd expected.

Occasionally, we hear from people who've received a court summons out of the blue – relating to a debt they *thought* their debt manager had been paying off for them. Worryingly, people are also contacting us after hearing their debt manager has gone out of business. At this point, it can be very difficult for us to find a satisfactory way forward.

but debt management isn't always a bad option, is it?

There are a range of options for dealing with serious debt – from debt management plans and individual voluntary arrangements, right through to bankruptcy. The ins-and-outs can be complicated. And if someone's dealing with the stress of high levels of debt across a number of different creditors, I think it's understandable they might want support to turn things round.

The fact is there are a number of organisations who don't charge for debt management services. But as I've mentioned, in the first instance people may talk about their troubles to friends or organisations they're familiar with – who aren't generally debt experts, and don't know about all the options. So people don't always know they can get help for free.

It's worth mentioning that people don't always know about our free service, either. We're aware that a number of claims management companies are contacting people who are on debt management plans. But – as we've been saying for years – it's simply not necessary for people to pay someone to complain for them. And in some cases, a claims manager's fees could leave someone in an even worse financial position.

so what types of things are you seeing?

Last year – after reviewing how the debt management market was working – the Financial Conduct Authority (FCA) said they had a number of concerns. Put simply, they found many instances of debt managers not following the rules – which meant many customers, including many vulnerable people, were being treated unfairly.

That's clearly worrying – not least because both the FCA's research and our own experience suggest people don't tend to shop around for debt management services. They're really relying on the help and advice they get from whichever debt manager they contact. But if that help and advice is inappropriate, things may simply get worse.

"it's simply not necessary for people to pay someone to complain for them"

"payments have been going towards the debt manager's fees – rather than towards paying off their debt"

"in many cases, we find the debt manager involved simply didn't make it clear enough exactly what was happening to their customer's money"

The things the FCA saw going wrong are reflected in the complaints that we see. For example, people often contact us after finding out how much of their monthly payments have been going towards the debt manager's fees – rather than towards paying off their debt. Especially if they've had an arrangement for some years, people can be very upset to realise they've barely moved forward.

consumer complains that debt manager hasn't been passing on payments to creditors

Mrs C – who'd been on a debt management plan for some months – received a letter from one of her creditors saying they hadn't received any payments.

Mrs C made a complaint, which was eventually escalated to us. Comparing the debt manager's records with information provided by Mrs C's creditors, we found the debt manager hadn't been passing on all the payments they should have.

We told the debt manager to refund the payments that they hadn't passed on, adding interest – and to cover the fees that Mrs C's different creditors had applied to her accounts as a result.

During our involvement, a creditor who'd put Mrs C's account into default agreed to remove the default – after learning from us that the failing was on the debt manager's part.

Mrs C told us she'd closed her account and set up a new debt management plan with a free provider – which she hadn't previously known existed.

but surely people would have known they had to pay?

People generally know they're not getting a service for free. But the debt manager's fee structure may be complex. And in many cases, we find the debt manager involved simply didn't make it clear enough exactly what was happening to their customer's money.

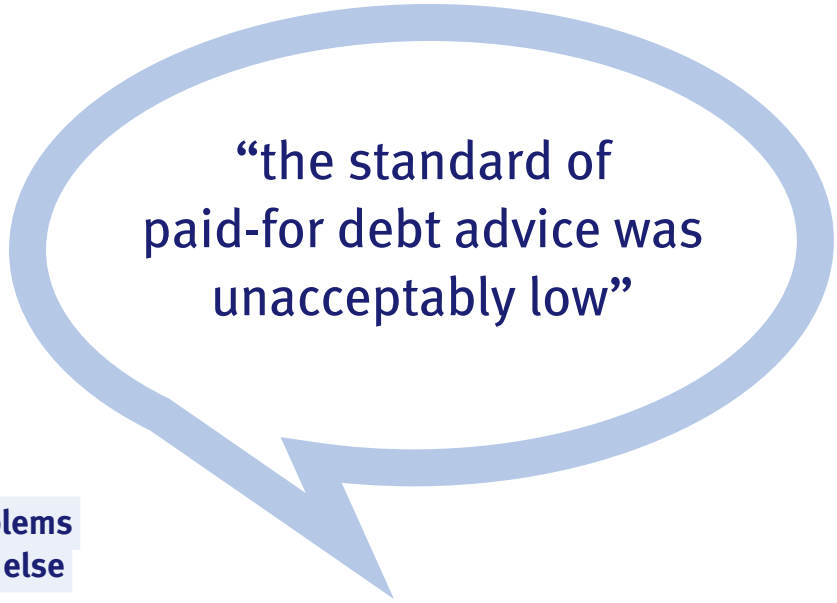
For example, we often see situations where a debt manager has switched from a debt management plan to a so-called "debt reduction" strategy – where they negotiate with a creditor to try to reduce the total debt. While they're doing this, they're passing on less of the payments to the creditor – and taking more in fees. So the fees may work up from say, £25, to £200 or more.

Some people may feel it's unfair to charge a fee at all. And free help is available – if people know about it. But for those debt managers who do charge a fee, the rules say that at least half someone's monthly payments should be going to their creditors. However *clearly* a debt manager explains that 90% of payments will be taken in fees, it's not fair and it's not legal.

aside from problems with fees, what else do you see?

We've also seen issues with the quality of advice that debt managers are giving people about how to deal with their debt. Again, this reflects the FCA's conclusion that, while there's room for improvement among free debt managers, the standard of paid-for debt advice was unacceptably low.

Take the "debt reduction" strategy I mentioned. The code of practice for debt managers says they should act in their customers' best interests. And if we find these sorts of negotiations have dragged on, we're unlikely to agree this has happened.



That's because ultimately, the creditor might not agree to reduce the debt. In the meantime, the customer has paid a substantial amount of fees – when they could have been reducing their debt faster.

We've also seen some instances of debt managers making false promises – such as telling people their debt will be cleared in an unrealistically short time. And we've found debt managers don't always explain the impact that setting up a debt management arrangement will have on people's credit file.

As I mentioned earlier, at the point they seek help, many people aren't in a position to shop around – and don't have the wider knowledge needed to question what they're being told.

how do you go about resolving complaints about debt management?

Unfortunately, some people who contact us don't have much paperwork relating to what they've signed up to. I think that's understandable – bearing in mind many people we speak to have had their debt management arrangement for some years, while at the same time facing precarious and unpredictable circumstances.

For their part, debt managers can't always give us evidence about what they told their customer – or how they've handled their customer's money. So we can see the money going from someone's bank account to the debt manager, but the debt manager can't explain what they've done with it.

These things certainly make it harder for us to establish exactly what's gone on. But like any other type of complaint, we reach our answer based on what we believe is most likely to have happened – after listening to what both sides have to say.

you mentioned debt managers going out of business – can you explain more about that?

Over the past few years, a number of debt management companies have left the market or gone out of business – which is clearly very worrying for people who've been relying on them.

It also means that if someone's got a valid complaint about a debt manager, the options become very limited. For consumer credit businesses that were previously licensed by the Office of Fair Trading – and which are now covered by the FCA – there's currently no "final safety net" like the Financial Services Compensation Scheme.

consumer complains that debt manager hasn't settled her debts

Miss F contacted us after closing her account with a debt management company. She said the debt manager hadn't settled her debts, despite saying they had.

Miss F sent us bank statements showing the monthly payments she'd made to the debt manager. And the debt manager sent us internal records indicating they'd paid Miss F's creditors.

But the debt manager's records didn't tally with the information we received from Miss F's different creditors about how much they'd each received. The evidence suggested that the debt manager hadn't been paying Miss F's debts.

We told the debt manager to refund all the money they'd taken from Miss F, with interest – and to pay her £200 for handling her complaint poorly and causing unnecessary stress.

so how can you help?

If the company's gone out of business, we'll look into whether funds are available to compensate customers. If they are, then we're often able to work with the administrator or liquidator to get the compensation paid. If not, then we'll explain the position to any customers who contact us.

Either way, the most constructive recommendation we can make is that people contact a free debt management service – who can review their arrangements and help them continue on the way to becoming debt-free.

Disappointingly, we also encounter problems in resolving complaints with debt managers who are still in business. We hear from a significant number of people who've tried to raise their concerns with their debt manager – but simply haven't got a response. And sometimes, the debt manager doesn't respond to us either.

These communication issues can have very serious consequences. If the trouble's been going on for some time, by the time we get involved people may have run up unmanageable debt interest and charges – or in the worst cases, may be threatened with court action.

Not responding to a complaint – and leaving a customer in such a vulnerable position – clearly isn't acceptable. So we'll report unresponsive debt managers to the FCA.

If we decide someone's out of pocket, we'll be upfront about the likelihood of getting their money back – and explain the option of enforcing our ombudsmen's decisions in court.

"if funds are available we're often able to work with the administrator or liquidator to get the compensation paid"

consumer complains that debt manager – in liquidation – hasn't been paying creditors

Mr N emailed us after his debt management company went into administration. He'd been very upset to find out that the debt manager hadn't been paying his creditors.

We contacted the debt manager's administrators – who told us that the debt manager wasn't in a position to pay compensation.

When we explained this to Mr N, he was understandably concerned. We suggested he stay in touch with the administrators – who'd already written to him – in case the position changed.

We also encouraged Mr N to let his creditors know what had happened – and to contact a free debt advice service.

aside from reporting poor practice to the FCA, how can you stop things going wrong?

It's not right that taking steps to get help with debt could result in even deeper difficulties – including becoming a target for claims management companies. So we'll continue to share what we're seeing – with the FCA, with debt managers directly, as well as through *ombudsman news*.

Importantly, we'll also keep conversations going as part of our outreach with local communities.

By explaining to front-line advisers what we're seeing – and by hearing about the problems people are bringing to them – we can work together to make sure people are getting the help they need.

That's not just about knowing we're here if something goes wrong. As I've explained, by the time a complaint reaches us, the options may be very limited. It's about identifying why people are getting into trouble with creditors in the first place – and what we can do to stop that happening.

And we'll continue to maintain our relationships with organisations offering free debt advice. That way, when complaints are escalated to us, we're able to signpost people efficiently to the specialist support they need to get things on track – which generally goes beyond putting right one individual problem with a debt manager.

upcoming events ...

consumer adviser		
working together with the ombudsman	**Coventry**	**4 May**
	Glasgow	**8 June**
smaller business		
meet the ombudsman roadshow	**Wolverhampton**	**5 May**
	Leicester	**18 May**

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

FSC www.fsc.org MIX Paper from responsible sources FSC® C001785

Printed on Challenger Offset paper made from ECF (Elemental Chlorine-Free) wood pulps, acquired from sustainable forest reserves.

100% of the inks used in *ombudsman news* are vegetable-oil based, 95% of press chemicals are recycled for further use, and on average 99% of waste associated with this publication is recycled.

Q? &A

I'm confused about the upcoming change to the current so-called "next business day" rule. I understand I'll have three days to resolve complaints informally. But can customers really go to the ombudsman after that point? Or – if they're unhappy – do I then have eight weeks to review my answer?

Businesses currently have until the end of the next business day to resolve complaints informally – something that hasn't changed since we were set up. But from 30 June 2016, you'll have until the end of the *third* business day.

Just as before, you won't need to send a traditional "final response" at this stage.

But from June, if you've resolved things to your customer's satisfaction by the end of the third business day, you *will* need to let them know that they can still refer their complaint to us – in a new "summary resolution communication". If on reflection they're unhappy with your answer, we can start looking into things straight away.

There will be more information about what you'll need to put in this type of "summary resolution communication" in the "DISP" section of the FCA's handbook.

A long-standing customer of mine has made a complaint. It's a complex matter and there are a lot of files involved. If they refer the complaint to you, what exactly should I send you? It's impractical to post it all – not to mention expensive.

We always try to resolve complaints as quickly and informally as possible. So it's unlikely you'll need to send us boxes of files, even if you've got a long history with this particular customer. If you're still looking into the complaint, you can phone our technical advice helpline on 020 7964 1400 to talk through how we'd approach it.

If things are already further along – and your customer does contact us – we'll give you a call (or send you an email if you'd prefer) so you can explain what's happened. Once we've heard more about the problem, we'll explain the specific things we'll need in order to sort it out.

In most cases, the information we ask for will be among the paperwork you've used to look into the complaint yourself. If we need anything else, we'll agree a reasonable timeframe for getting it back to us. We'll bear in mind that if you need to retrieve older information – or if third parties are involved – it may take slightly longer.

Even if there *is* a lot to send us, you don't need to post it. If you can scan it, get in touch and we can arrange for it to be sent securely.

Financial Ombudsman Service