ombudsman news

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

in this issue

the heart of the matter

When a consumer gets in touch with us about a problem they're having, one of the first questions we ask is how they would want things put right.

That seems like an obvious starting point. But perhaps because it's such a simple question, it's easy to overlook. We sometimes find that, in trying to settle a complaint, a business has made a "standard" offer of financial compensation – without considering whether it really gets to the heart of the impact the problem has had.

For example, if a business's mistake has left someone without the buffer of the mortgage overpayments they had made – and the peace of mind it was giving them – is it helpful to pay compensation into their current account? Or if someone's unnecessarily had to use their overdraft, have they turned to other lending – and what are the consequences for their wider financial position?

To highlight these issues, our case studies this month illustrate the complaints that can escalate when individual circumstances are overlooked – and the wide range of ways we can put things right. And in ombudsman focus, we explain our power to tell businesses to pay interest, where someone's missed out on money they were due.

Financial Ombudsman Service

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Caroline Wayman

As I've often pointed out, consumers generally aren't financial experts. So although someone might have a sense that something's not right, they might not know what's happened from a technical point of view. Or, if they do know, worry and frustration might get in the way of articulating it clearly. Life moves quickly, and it's likely that the longer a problem goes on, the more complicated it will become to explain it – let alone unwind it.

So getting to the heart of what's gone wrong won't always be easy. But consumers are relying on financial businesses to do just that – and to treat them fairly in the process. Remembering to ask that simple initial question – and really getting to grips with the answer – is the essential first step in helping everyone move on.

Caroline

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awarding interest: the ombudsman's approach

Richard West, lead ombudsman for decisions, rules and jurisdiction, explains our approach to adding interest to the awards we make.

Richard West

where does the ombudsman service get the power to award interest?

The legislation that set up the Financial Ombudsman Service – the *Financial Services and Markets Act 2000* – sets out our powers to tell businesses to pay interest. These powers are reflected in the part of the FCA's handbook that deals with ombudsman awards – DISP 3.7.

There are three different ways in which interest might come into play – which cut across all the complaints we deal with.

First, although this isn't about adding interest to an award, calculating the award itself may include an "interest" element. One example of this is where we tell a business to refund historical credit card account interest they've charged a consumer, as a result of the consumer having PPI.

Another example might be where we tell a business to work out how much an investment might have grown by if the money had been invested in a different way. In those cases, we sometimes use an "interest rate" as the benchmark to work out a fair return – though we're more likely to use an investment index, as Mr and Mrs O's case study shows.

Second, we can tell a business to pay interest *on* a money award. This generally happens if a loss has "crystallised" in the past – *before* we make our decision about a complaint. For example, if we uphold a complaint about an investment that's already matured, we'll usually tell the business to pay the consumer compensation equal to the difference between what the investment was worth when it matured, and what it would have been worth on maturity assuming a fair return. On top of this money award, we're likely to tell the business to pay 8% simple interest on the loss – for the period from the maturity date, to the date the compensation is paid to the consumer.

Third, we can tell a business to pay interest on the money award *after* it's been calculated. That is, if there's an unreasonable delay in a business settling a complaint following an ombudsman's decision, we can decide that 8% simple interest should start to accrue.

This all sounds quite technical, and it is. There are significant differences between these powers – not least that interest *as part of* an award is subject to our £150,000 award limit, whereas any interest *on* the award, as well as on any costs, isn't generally subject to the limit.

So it's not surprising that we're sometimes asked to explain what the interest is for and when it's likely to come into play. The scenario we receive most questions about is where we tell a business to pay interest *on* the money award.

"For many people, it might have influenced a whole range of decisions about spending and borrowing over a period of time"

so why do you tell businesses to pay interest on top of money awards?

If we uphold a complaint, we usually look to put the consumer in the position they would be in if things had happened as they should – and to award fair compensation. In some cases, we decide the consumer involved has been out of pocket as a result of a business's error.

So to compensate the consumer for being "deprived" of money – that is, not having it available to use – we can tell the business to pay interest on top of the money award, for the period their customer was out of pocket.

I've given an example of how this might apply in complaints about a matured investment. In the same way, if an insurance claim has been wrongly turned down, we might tell the insurer to add interest on the amount they should have paid, for the period their customer didn't have the money they should have had. Or if we decide a bank has unfairly applied fees to a customer's account, we may say interest should be added to those.

why do you use a rate of 8%?

When we uphold a complaint and decide to make a money award, we assess the loss the particular consumer has made in as much detail as we can. For example, how much worse off are they for having had an unsuitable investment, than if they'd had one that wasn't unsuitable?

However, we can rarely say for sure what the cost is to someone of being

"deprived" of that money. For many people, it might have influenced a whole range of decisions about spending and borrowing over a period of time.

So in deciding an appropriate interest rate *on* the money award, we consider the broad characteristics of the consumer. We think about how much it would cost someone with these attributes to borrow the money in question, and the range of missed opportunities they might have had – including what sort of returns they could have got if they'd invested the money. Of course, at a time when the Bank of England base rate and the returns on savings are low, we do get questions from some businesses about whether a rate of 8% is too high. And it's right that you wouldn't get 8% interest if you put your money in, say, a cash ISA.

However, only individual consumers and the smallest businesses, trusts and charities can use the ombudsman service. Thinking about the broad attributes you'd expect this type of consumer to have, if they'd had to borrow money to cover a loss, it's possible they'll have been charged well over 8%. The interest rates charged on credit cards may be 15% or even higher – not to mention the rates charged on short-term borrowing such as payday loans and unauthorised overdrafts.

Someone might also have missed out on opportunities as a result of not having had the money. It's not only about opportunities to save or invest. There could have been things they went without having or doing – which they really needed or might have benefited from.

It's also important to note that 8% is paid at a simple rate of interest – not the compound rate people are charged on borrowing. Being charged interest on interest in this way can make a significant difference over a period of time. And the interest is potentially subject to income tax.

So in most cases, for most consumers, we think a rate of 8% simple interest is appropriate to reflect the cost of being deprived of money in the past. This also reflects the current statutory interest rate on judgment debts.

case study

Mrs L complained that she didn't need the life, accidental death and critical illness cover she was sold when she bought a car on hire purchase. The business couldn't explain why they'd recommended the cover – and, in Mrs L's individual circumstances, there was no evidence she needed it.

So we told the business to pay compensation equivalent to the premiums she'd paid – adding 8% simple interest per year on each premium from the date Mrs L paid it to the date of settlement, to reflect the fact she'd been deprived of that money.

but don't the courts sometimes use a lower rate?

It's true that a court could use a different rate of interest. There's a lot of discretion involved – about whether to award interest, how much and over what period. And a lot depends on the type of claim being made, the "class" of claimant and the division of the court considering the case.

The courts might use a lower interest rate if that would better reflect the hypothetical borrowing costs for a claimant with that claimant's particular attributes. For example, if the claimant is a larger business, it's likely they would have been able to borrow money at a rate lower than 8% to cover a missing payment.

As I mentioned earlier, we only look into complaints from individual consumers and the very smallest businesses – who will take a much harder financial hit if they need to borrow money. However, if fairness requires it, we're also able to use a different rate of interest.

when might you award a lower rate of interest?

In some cases we might decide, in the individual circumstances, that a rate of 8% is too high. A good example is highlighted in our principal ombudsman's decision of a few years ago, which is published on our website.

The consumers involved had several million pounds of savings and no debts. They'd been out of pocket. But we didn't think it was likely they'd missed out on anything relating to their lifestyle through not having the money they were owed – or that they'd borrowed unnecessarily.

On the other hand, they'd missed out on the chance to get a return on their money, as they had with their other savings. So the ombudsman awarded an interest rate to reflect a typical return on a deposit account at the time.

what about interest on PPI compensation?

The 8% interest rate has come up in discussions around changes to the PPI complaint-handing rules, in light of the judgment in *Plevin v Paragon Personal Finance*. Some respondents to the FCA's consultation pointed out that in some court cases involving PPI, the court awarded interest at a rate of less than 8%. However, the FCA doesn't believe the parties involved closely resembled typical PPI customers – given they were generally reasonably affluent or involved in business enterprises or investments.

The FCA also said that, despite some businesses' concerns, they've seen no evidence of people delaying making a complaint about mis-sold PPI to maximise the interest on their compensation.

"It's not only about opportunities to save or invest. There could have been things they went without having or doing – which they really needed or might have benefited from"

what if a business delays paying compensation awarded by an ombudsman?

In cases where the loss is calculated up to the date of the final decision – rather than a date in the past – there won't be any interest to pay on the money award. But if the award isn't paid in a reasonable period of time, we're likely to tell the business to add interest from the date of decision to the date of payment.

We generally think a reasonable amount of time is 28 days from the date we tell the business the consumer has accepted the ombudsman's decision. So if they haven't paid by then, interest should start to accrue.

This compensates the consumer for being deprived of the money we've awarded if the business doesn't pay in good time – while giving the business a reasonable opportunity and encouragement to pay.

what if I've got questions about the ombudsman's approach to interest – or how I go about applying it in a particular set of circumstances?

If you have general questions about our powers to award interest – or you want to talk things through with us – you can get in touch with our technical helpline on 020 7964 1400. We can also answer questions face to face at our free events for smaller businesses.

case study

When Mr and Mrs O surrendered their equity bond at a loss, they complained it had been too high risk for them. We decided the advice they'd received hadn't been appropriate in their circumstances.

It wasn't clear how Mr and Mrs O would have otherwise invested their money. So we suggested the business compare the actual performance of the equity bond with an appropriate benchmark – in this case, the average rate for fixed-rate bonds – from the date the investment began to the date it was surrendered.

We explained that, if fixed-rate bonds had performed better, the business should pay the difference. And they should add 8% interest on the difference from the date Mr and Mrs O had surrendered the investment to the date of payment – to reflect the fact they'd been unfairly deprived of that money.

putting things right

The problems people bring to us are rarely clear-cut. While it's sometimes obvious what's gone wrong, very often the process of resolving a complaint involves not only unpicking the facts, but understanding the feelings and concerns that are stopping things moving forward.

Our case studies in this issue are all based on complaints we've upheld – that is, where we've decided that a consumer has been treated unfairly, and we've told the business to take action to put things right. Our general rule of thumb is to put the consumer in the position they'd be in if the business's unfair action – or in some cases, inaction – hadn't happened. When deciding what this means in practice, we're guided by what's fair and reasonable in the circumstances of each individual case.

As we highlighted in our annual review, in more than 40% of cases last year we told the business the basis or formula on which to pay compensation – rather than specifying the amount ourselves. In 25% of cases, we told the business to do something that didn't have an immediate cash value – for example, amending a credit file or apologising. And in 13% of cases overall, we told the business to pay compensation to recognise the non-financial impact of their actions – for example, the inconvenience or upset they'd caused their customer.

case study 136/1

consumer complains after mortgage account errors use up overpayments

Mrs F paid her mortgage by standing order. When her mortgage lender contacted her about changing her payment method, she agreed to let them set up a new direct debit to make her monthly mortgage payments. But at the end of the month, the mortgage lender took too much money, leaving Mrs F with very little left for food and travel.

Mrs F called the lender, who assured her they'd put the situation right. But the next month, they didn't take anything at all – and her mortgage payment had to be covered partly by overpayments she'd previously made.

The problems with Mrs F's direct debit continued, with the lender telling her each month that they would fix the problem. After six months, Mrs F said she wanted to go back to paying by standing order – and at the same time, she made a formal complaint to her mortgage lender.

The lender apologised for their errors, and offered Mrs F a total of £300 compensation, to make up for her inconvenience and the expenses she'd incurred. But Mrs F didn't think the lender had done enough to recognise the impact of their actions – so she brought her complaint to us.

putting things right

We asked Mrs F for more information about the impact of her lender's mistakes. She told us she lived on a very small income each month, and her mortgage payments took up a large part of this.

Mrs F also said she received some help from the Department for Work and Pensions, which she put towards her mortgage.

This meant she was able to overpay a small amount each month. Over several years, she'd built up around £300 in overpayments, giving her peace of mind that she had a "buffer" in case she had any financial difficulties.

Looking at the lender's actions, it was clear they'd caused Mrs F a great deal of worry by telling her they would fix the problem and failing to do so. And Mrs F said she'd incurred some expenses, like the cost of phone calls and account charges.

Mrs F was happy the business had made up for her expenses by compensating her for these costs. But she was still upset that their compensation hadn't made up for the overpayments she'd spent so long building up. So we didn't think they'd put her in the position she would have been in if they hadn't made any errors.

In the circumstances, we decided the lender needed to do more to put things right. We told them to pay Mrs F an additional £150 directly to her mortgage account – acting as an overpayment on her mortgage, to help her restart building a buffer against any future financial problems.

... over several years, she'd built up around £300 in overpayments, giving her peace of mind

case study

136/2

consumer complains after insurer's delays lead to a fortnight's wait for emergency surgery

Ms M was visiting her grandchildren in America for the first time. Towards the end of her holiday, she tripped and broke her wrist, so she visited the local hospital.

The hospital put Ms M's arm in a temporary cast, and scheduled emergency surgery for three days' time. But they said they couldn't go ahead with the surgery until Ms M's insurer had authorised it. So Ms M contacted her insurer – who said they'd look into whether they could cover the claim.

Ms M and her family continued to contact the insurer regularly. But the insurer didn't agree to cover the surgery until a week later – and Ms M had her surgery four days after that.

Unhappy with the time it had taken to deal with the claim, Ms M complained. She said she'd been left in great pain for more than two weeks, and had missed out on several activities she'd planned as part of her trip.

The insurer apologised for the time it had taken to deal with the claim. But when they maintained they'd followed the correct procedures, Ms M complained to us.

putting things right

Looking at Ms M's cover, we could see her policy covered "medical emergency expenses". So we thought the insurer should have dealt with Ms M's claim as soon as they reasonably could.

Initially, Ms M had been in a difficult position. The hospital had said they couldn't confirm her surgery until the insurer had agreed to deal with the claim. But to deal with the claim, the insurer said they'd need the hospital to confirm Ms M's need for surgery.

From the insurer's records, we noted that the hospital had finally confirmed to the insurer that Ms M needed surgery on the day her surgery was initially scheduled. The same evening, the insurer's own doctor had agreed Ms M would need surgery – but at that point, the insurer didn't agree to cover the surgery. Instead, they continued to query the cost the hospital had quoted for the surgery for a further week.

In the meantime, Ms M was in severe pain. Her cast had only been intended to be temporary – and she was unable to lower her arm for any length of time when she was wearing it. And because she hadn't had her surgery within the recommended time, her wrist had started to heal. As a result, Ms M's wrist had had to be broken again before being reset – causing her even more pain.

Throughout this time, Ms M had been in regular contact with the insurer. On several occasions, she'd been told to wait for a call back which never came. And when she'd spoken to the insurer on the day the original surgery had been planned, the insurer told her they were waiting for a doctor's report – despite the fact that, by that point, their records showed the doctor had already agreed surgery was necessary.

While we appreciated that the insurer had wanted to know the cost of the surgery, the hospital had made it clear Ms M needed surgery as soon as possible. In the circumstances, we said the insurer could have authorised the surgery sooner than they did.

Given the severe pain and inconvenience Ms M had suffered as a result of the insurer's delays, we told them to pay her £750 to recognise the impact of their actions.

... on several occasions, she'd been told to wait for a call back which never came

case study 136/3

consumer complains that business should have sold him comprehensive critical illness cover

When Mr G developed a serious illness, he contacted his insurer to make a claim on his critical illness cover. After considering the claim, the insurer said Mr G would have been covered by a "comprehensive" policy – but since he only had "basic" cover, they wouldn't pay the claim.

Mr G said he hadn't been told about the different levels of cover. And looking at the difference in price between the basic and comprehensive cover, Mr G said he definitely would have paid more for the increased peace of mind.

The insurer maintained they wouldn't change their position. They said the policy documents explained exactly what was covered under the basic policy, and their adviser would have discussed the relative merits of each level of cover.

Frustrated with his insurer's answer, Mr G asked us for help.

putting things right

Looking at the insurer's records from the sale of Mr G's policy, we thought it was likely he hadn't been given enough information – and if he had, we thought he would have taken out comprehensive cover.

Mr G's application form included tick boxes for the different cover options. But since Mr G had ticked both "basic" and "comprehensive", it wasn't clear which policy he'd actually wanted. The adviser had sold Mr G basic cover – but there was no record he'd actually explained the difference between the two levels of cover.

Instead, the insurer said their policy document would have made clear to Mr G what would and wouldn't be covered by his "basic" policy. But the levels of cover were discussed more than 10 pages into a 100-page document. We didn't think it was reasonable for the insurer to expect Mr G to understand his cover from this long document alone, when he'd also had a meeting with their adviser.

Given the small price difference between basic and comprehensive cover – as well as the level of Mr G's disposable income – we thought if his options had been discussed, he'd have paid the extra amount for much more extensive cover.

If Mr G had had comprehensive cover, his claim would have been covered. So we told the insurer to pay the claim – around £40,000 – along with 8% simple interest from the date the claim should have been paid.

The insurer agreed that putting things right fully would also mean upgrading Mr G's policy to provide comprehensive cover. But because of some changes to Mr G's health since he'd taken out his policy, they said it now wouldn't be possible to increase his cover. And as a result, the insurer recognised that there would still be some conditions Mr G's policy didn't cover him for.

To compensate Mr G for any future claim he might have to make – which would normally have been paid under the comprehensive cover – the insurer offered to pay Mr G an additional £10,000. They also offered £500 for the distress their mistake had caused – and Mr G accepted their offer.

... the adviser had sold Mr G basic cover – but there was no record he'd actually explained the difference between the two levels of cover

case study 136/4

consumer complains after business repeatedly sends information in late husband's name

After Mrs K's husband died, she contacted her bank to ask them to update their records. While she was dealing with her husband's affairs, she called them several times to make sure they were aware of her situation.

Three months later, Mrs K received a letter from her bank. The letter was addressed to her husband – and contained details of a credit card debt they said they'd be passing to a third party.

Upset by the letter, Mrs K complained to her bank. She said she'd told them several times her husband had died – and as the bank were acting as executors of his estate, there was no excuse for them to make that mistake.

The bank wrote back to apologise, saying they'd now updated their records. But Mrs K wasn't happy with the apology. And when the bank sent another letter addressed to Mr and Mrs K a month later, she complained again.

In response, the bank offered her £100, which she said she didn't want – but the bank credited the money to her account anyway. Upset by the bank's repeated mistakes, Mrs K asked us to help.

putting things right

We spoke to the bank, to understand why things had gone wrong after Mrs K had contacted them. The bank said their records showed Mrs K had been in touch with them several times after her husband died. They'd noted that Mr K had died – but this information hadn't been passed to their credit card department.

The bank also acknowledged that they hadn't tried to call Mrs K after their first mistake. So they said they could understand why she felt their apology wasn't sincere.

As for the second letter, the bank had contacted Mrs K to pay interest from a bond she'd held with her husband. They said this should have been sent by cheque, but another internal error meant it was credited to Mr and Mrs K's joint account.

As the joint account was now closed, the credit was rejected. But instead of checking why this had happened, the bank had simply re-sent the money as a cheque in Mr and Mrs K's names. And after speaking to Mrs K on the phone, the bank's adviser had failed to cancel their £100 offer of compensation after Mrs K said she didn't want it – so it had been automatically credited to her account.

Given their succession of errors, the bank recognised that simply apologising again was unlikely to put things right for Mrs K. And given the upset they'd caused Mrs K when she'd been grieving for her husband, we thought the bank needed to pay more compensation to recognise the impact of what had happened.

We decided £500 would have better reflected the distress she'd experienced because of the bank's errors. And in speaking to Mrs K, she asked if it would be possible for some of the compensation to be made out as a cheque to charity.

It was clear Mrs K's complaint wasn't about the money – so we told the bank to write a personalised letter to Mrs K, apologising for their mistake. And we and the bank agreed that the bank would re-send the £100 they'd mistakenly credited to Mrs K's account as a cheque made out to the charity of her choice.

... instead of checking why this had happened, the bank had simply re-sent the money as a cheque in Mr and Mrs K's names

case study 136/5

consumer complains that annuity payment errors have caused her significant distress

Mrs L lived alone, following the death of her husband some years earlier. When she received her annuity payment one month, she noticed she'd been paid too much – and contacted her pension provider to get the amount corrected.

The next month, Mrs L again received the wrong payment – but this time for a different amount. And despite contacting her pension provider several times, the same problem continued over several months.

After seven months of problems, Mrs L finally complained formally to the pension provider. The pension provider apologised, and offered her £50 for the inconvenience they'd caused. But Mrs L said the provider hadn't done enough to recognise the trouble they'd caused her – and she brought her complaint to us.

putting things right

We asked Mrs L for more information about the impact of her pension provider's mistakes. She explained that it had been a very difficult year for her, with two family deaths and a sister who was very ill. And since her husband had died, she hadn't had anyone to help her manage her finances.

Mrs L said she received housing benefit – and each time her pension provider had paid the wrong amount, she'd had to notify the authorities. Mrs L said as a result of the constant problems, she could have lost some of her benefits.

Mrs L also told us she'd found it very difficult to sort out the problems each month. She said sometimes when she tried to call the pension provider, she couldn't get through to anyone who could help. And when she did get through, she often had to explain the whole problem again, despite having already explained the issue several times in previous months.

When we spoke to the pension provider about Mrs L's situation, they acknowledged their initial offer didn't go far enough to recognise the impact of their mistakes. The provider said they'd like to offer Mrs L £500 for the stress and upset they'd caused, along with a letter of apology – which she accepted.

The provider also recognised Mrs L's problems getting in contact with them. They gave her a phone number for a dedicated point of contact in the business – and said if anything went wrong in future, she could use that point of contact directly.

... despite contacting her pension provider several times, the same problem continued over several months

... the lender had clearly been able to separate Miss B's repayments all along – despite having previously insisted to her that it wouldn't be possible

case study 136/6

consumer complains that business has put default marker on loan, after ex-partner misses payments

After Miss B and Mr C split up, Mr C agreed to take sole responsibility for repaying a £30,000 loan he'd taken out in their joint names. Two years later, Miss B heard from the lender, saying Mr C hadn't kept up his payments – so the loan was in default.

As the loan was in joint names, they said Miss B was jointly liable for the money. She agreed a repayment plan for half the remaining debt, with Mr C having already agreed a separate plan.

Miss B kept up her regular payments. But after a few months, she began receiving letters from the lender. They said Mr C wasn't keeping to his repayment plan, so Miss B would have to cover his payments too. They also said that, as Miss B was jointly liable for repaying the loan, the missed payments would be reflected on her credit file.

Over the next three years, the lender continued to contact Miss B whenever Mr C failed to make a repayment. Miss B called the lender regularly to try to resolve the problem, and was often asked security questions relating to Mr C. And when she couldn't answer the questions, the lender told her she'd have to talk to Mr C – despite her telling them repeatedly that they'd parted on very bad terms.

Whenever Miss B *was* able to talk to the lender, they maintained she was jointly liable for the loan – and they said there was nothing they could do to separate Mr C's payments and her own on the account.

Eventually, faced with financial difficulties and under stress from the ongoing situation, Miss B made a formal complaint to the lender. When the lender responded to say they hadn't done anything wrong, Miss B contacted us.

putting things right

Going through the records of Miss B's contact with the lender, it was clear they'd acted very insensitively towards her over a period of more than three years. She'd repeatedly explained that it would be too upsetting and complicated to contact Mr C – but the lender had simply insisted it was the only way to resolve the problem.

What's more, we thought the lender had missed the point in maintaining that Miss B was jointly liable for the loan. From the records, it was clear Miss B had always kept up her repayments – so there had been no reason to think she was trying to avoid her responsibilities.

On the other hand, the lender was holding her responsible for Mr C's repayment plan – which she hadn't been involved in, and hadn't been told she'd be liable for. Given her willingness to work with the lender, we thought this was clearly unfair on Miss B.

When we pointed out how poorly the lender had treated Miss B, they accepted that they needed to put things right. They said they could separate Mr C and Miss B's repayment details, so that if Mr C missed a payment, it wouldn't be recorded on Miss B's credit file. And they also offered to pay compensation for the stress they'd caused her.

Miss B said the lender's offer was "too little, too late" – and she was worried that she might face further problems from the lender if Mr C continued to miss payments.

Looking at the lender's offer, we were concerned to hear that the lender had clearly been able to separate Miss B's repayments all along – having previously insisted to her that it wouldn't be possible.

And we didn't think their offer of compensation made up for the serious lack of understanding or empathy they'd shown in insisting that Miss B speak to her ex-partner – despite having been told how upsetting this would be.

All in all, we weren't convinced that this offer from the business would finally resolve a problem which had already been going on for more than three years. Instead, we decided the fairest way to ensure Miss B was no longer responsible for Mr C's repayments was to release Miss B from her joint liability for the loan.

Because the total amount outstanding on the loan was significantly higher than the lender's offer, we didn't tell them to pay any additional compensation. But we told them to remove any records from Miss B's credit file relating to Mr C's missed payments for his loan repayment plan.

case study 136/7

consumer complains after insurer limits claim amount for vet's bills following removal of cat's tooth

Mrs N's pet cat was diagnosed with rhinitis caused by a "retained" tooth in his nasal cavity. She contacted her pet insurer to claim for treating the rhinitis, and for the cost of removing the tooth.

The insurer said they defined the cat's problems as dental. And as their dental cover was limited to £500 a year, they agreed to pay only £500 towards the first claim, and wouldn't pay the second claim at all.

Mrs N disagreed with the insurer's decision. She agreed the claim involved the removal of a tooth. But since the tooth was in her cat's nasal cavity, she said the treatment was to remove a "foreign body" – and there was no limit for this type of claim. She also pointed out that her cat had initially been diagnosed with rhinitis – which she didn't think should be treated as a dental problem.

The insurer maintained that since a dental vet had removed the tooth, the policy limit applied. When they wouldn't reconsider the claim, Mrs N called us.

putting things right

We asked the insurer for a copy of their policy documents. According to the policy terms, the insurer would only pay out a maximum of £500 per year for dental treatments – although "dental treatments" weren't given a specific definition in the policy.

In looking into the cat's rhinitis, the records showed a vet had considered a number of different symptoms. They'd checked the cat's eyes and nose – before scans eventually revealed the retained tooth. We didn't agree this was a dental investigation. So we said the insurer should have covered the claim.

On the other hand, after the initial diagnosis, a dental vet had operated on the cat. We thought a "foreign body" would more usually be understood as something that had come from outside the cat. And while dental treatment might generally involve teeth in the mouth, a dental vet had been involved. So we thought the insurer had acted fairly in applying the £500 limit.

Mrs N had covered the costs of both treatments herself. So to put things right, we told the insurer to pay the claim for rhinitis, as well as £500 towards her claim for removing the tooth. And we told them to add 8% simple interest from the date they should have paid the claim.

... since the tooth was in her cat's nasal cavity, she said the treatment was to remove a "foreign body"

case study 136/8

consumer complains after business takes money following ISA transfer error

Mr H wanted to transfer the investments in his ISA to another ISA he held with his bank. He contacted his ISA provider and arranged for them to transfer the units in his funds directly. But instead of transferring the units, the provider sold them and transferred the cash to the bank.

When Mr H pointed out the provider's mistake, the bank returned Mr H's cash. Mr H's ISA provider purchased the original funds again, registering them correctly with the bank.

But by that time the units had fallen in value. After re-purchasing the original funds, Mr H's original ISA still had £1,000 in cash remaining – so the ISA provider took the leftover money.

Mr H complained. He said the money was his – and the provider was benefiting from their own mistake. But the provider said they were only trying to put his account in the position it would have been if they hadn't made a mistake.

The provider said Mr H had the same number of units that he'd had previously. If they'd allowed him to keep the remaining £1,000, Mr H would actually be in a better position – which the provider said wouldn't be fair. Instead, they offered him £100 to make up for their original mistake.

Unhappy with this offer, Mr H phoned us.

putting things right

Looking into the complaint, there was no question that the ISA provider had failed to carry out Mr H's initial instructions to transfer the units. But they maintained they'd put things right by replacing the units. And they said they hadn't really benefited, because if the units had been more expensive, they "might have lost money in replacing them".

We agreed with the provider that putting Mr H in the position he would have been in was a factor in putting things right. But in this case, we didn't think the provider's approach was fair.

It was clear the units in Mr H's investment were his – so when the provider mistakenly sold the units, the money was then his. The fact that the provider repurchased units didn't change the fact that all the money from the sale belonged to Mr H. So we didn't think it was fair that the provider was trying to keep some of the money from the sale.

In the circumstances, we told the ISA provider to pay Mr H the £1,000 they'd taken from his account, in addition to the £100 they'd offered as compensation. And we told them to add 8% simple interest to the £1,000 from the time they took the money to the date they replaced it.

... Mr H's original ISA still had £1,000 in cash remaining – so the ISA provider took the leftover money

case study 136/9

consumer complains that business failed to assess affordability in lending for hire purchase agreement

Mr D, who lived with his parents, had a hire purchase agreement for a caravan he kept at a caravan park. When he moved out of his parents' house he started to pay rent – and began to struggle with his hire purchase payments.

Mr D also fell behind with his caravan park fees – and the owner of the site said he could no longer enter the park. Left with a caravan he couldn't access and unable to keep up repayments, he contacted the finance provider and agreed to terminate his agreement – leaving him with around £10,000 to pay off.

Mr D complained to the finance provider. He said they should have known the agreement was unaffordable for him – and he didn't think it was fair that he now had to repay so much money.

The finance provider didn't agree. They said their credit checks had shown Mr D didn't have any significant debts – and they had no reason to think his outgoings would increase significantly in the future. Unhappy with this answer, Mr D contacted us.

putting things right

Looking at the finance provider's records, it was clear they hadn't asked Mr D for evidence of his outgoings. Mr D had sent them a recent bank statement which showed that the repayments would take up more than half of his monthly income. But the finance provider hadn't considered this – because they only used the bank statement to check Mr D's address.

Given how much of Mr D's income was being put towards repayments, we thought it should have been clear that any change in his circumstances could have left him struggling to make repayments. But the finance provider hadn't considered this. And they hadn't warned him that any future change – like paying rent – might make his repayments unaffordable.

Mr D told us if he'd been able to move the caravan, he could have sold it himself – or his father could have helped him to continue making payments. But since he couldn't get access to the caravan site, he'd thought his only option was to terminate the agreement.

Listening to Mr D's phone calls with the finance provider, we were concerned to hear they hadn't discussed any alternative options – or offered Mr D any support in resolving the situation with the site owner.

All in all, we didn't think the finance provider had treated Mr D fairly. In the circumstances, we decided Mr D should be released from his finance agreement. We told the finance provider to write off the remaining balance of the agreement, and remove any relevant information from his credit file, including any late or missed payments.

... we thought it should have been clear that any change in his circumstances could have left him struggling to make repayments

case study 136/10

consumer complains that bank have unfairly repossessed house without court order

When Miss E lost her job, she started to struggle with her finances. And when she stopped making her mortgage repayments, her mortgage lender tried to contact her to deal with the arrears.

Miss E didn't respond to the lender. After a long time of not hearing from Miss E, the lender wrote to her saying they might have to take possession of the house. When they again didn't receive a response, they sent an agent to visit the house.

The agent who visited the house found it empty, and noted that it didn't seem lived in. After the neighbours said they hadn't seen her for several years, the agent reported that the house had been abandoned.

When Miss E returned to the house, she found the locks had been changed. She contacted her mortgage lender, who told her they'd repossessed the property two days earlier. They said that, since the property seemed to have been abandoned, they hadn't needed to get a court order.

Miss E was very upset. She said she'd been away for a couple of weeks, but still lived in the property – so the lender had now left her homeless. When the lender maintained they'd been entitled to repossess the house, Miss E contacted us.

putting things right

Looking at the lender's record of their attempts to contact Miss E, it was clear they'd tried to contact her several times over more than a year. We also looked at the agent's notes from his visit to the house – including the conversations he'd had with Miss E's neighbours. From what he'd seen and heard, we thought it was reasonable that he'd decided the house was abandoned.

We recognised that – in some circumstances – a lender can take possession of a property without a court order. But we also noted that the lender was a member of the Council of Mortgage Lenders – and as a member, they'd agreed not to repossess an occupied property.

In Miss E's case, we thought it was reasonable for the lender to conclude the house was unoccupied – meaning they didn't need a court order. But Miss E had returned to the house two days later. From that point, the lender had known the house was occupied – and as such, we thought they should have returned the house to Miss E and applied for a court order if they still wanted to take possession.

When we pointed this out to the lender, they agreed that they should have returned the property at that point.

Miss E had now been without a house for some time, and had had to pay for alternative accommodation. Given that Miss E had a few thousand pounds outstanding on her mortgage, the lender offered to write off the outstanding debt and release their charge over the property. Miss E was happy to accept this in place of compensation for her accommodation costs.

... we thought it was reasonable for the lender to conclude the house was unoccupied – meaning they didn't need a court order

case study 136/11

consumer complains that insurer has caused unnecessary stress and delays in paying claim for stolen car

After Mr P's car was stolen from outside his house, he contacted his insurer to make a claim. When the insurer asked Mr P for the keys to his car, he said the spare key must have been taken from inside his house.

The car was eventually found, damaged, a few days later. After getting the car inspected, the insurer told Mr P it was a "category C" write-off, so he wouldn't get his car back.

But a few days later, the insurer called Mr P again. They said they'd made a mistake, and the car was actually a "category D" write-off – so Mr P might be able to repair the damage.

After nearly two months, Mr P's claim was still ongoing. He asked the insurer to confirm the value of his car so he could make a decision about repairs. But Mr P was unhappy with the insurer's valuation – and it took a further two weeks to agree a value Mr P thought was fair.

After nearly three months of investigation, the insurer said they couldn't see any evidence that Mr P's house had been broken into. As a result, they said he must have given someone the key – so they wouldn't pay the claim.

When Mr P complained, the insurer reconsidered and finally agreed to pay the claim. They said paying the claim meant the matter was now settled – but when Mr P disagreed, the complaint was escalated to us.

putting things right

From the insurer's records, it was clear they'd made several mistakes in handling Mr P's claim.

Looking at the records, we saw that the insurer had simply made an administrative error in initially telling Mr P he wouldn't get his car back. But it was clear this had caused Mr P some distress.

And looking at the insurer's initial valuation of the car, we noted that they'd relied on just one trade guide – only checking other guides after Mr P had complained. We thought the insurer's revised valuation was fair. But again, they'd caused Mr P unnecessary inconvenience in having to question their valuation.

The insurer told us they'd taken a long time to deal with Mr P's claim because they'd had to decide whether the car had in fact been stolen. And we agreed it was reasonable for the insurer to investigate fully what had happened.

But looking at the records, we were concerned to see that the insurer had acknowledged that Mr P didn't seem to have breached his policy terms – yet they'd turned the claim down anyway. Since it was for the insurer to prove that Mr P's car hadn't been stolen, we thought they should have continued to investigate the claim until they were ready to make a decision they could justify.

Overall, it was clear the insurer's service had fallen a long way short of what Mr P had expected. So we told them to pay Mr P £250 for the unnecessary trouble and inconvenience their mistakes had caused.

... the insurer had acknowledged that Mr P didn't seem to have breached his policy terms – yet they'd turned the claim down anyway

... by the time he'd applied for his final loan, his total debt was higher than the amount he'd borrowed

case study 136/12

consumer complains that payday loans were unaffordable

Mr A took out a payday loan in 2010. When he was struggling for money again six months later, he took out another payday loan.

Over the next four years, Mr A continued to struggle financially and took out a further five loans from the same payday lender. At the same time, he was taking on more credit from other providers – and by the time he was applying for his final loan, he had five county court judgments against him for other debts.

When Mr A started to get back on top of his finances, he complained to the payday lender. He said the loans were unaffordable, and they shouldn't have lent him the money.

The lender told Mr A they'd be willing to write off the balance from his final loan. But they said they'd thoroughly checked Mr A's ability to repay the loans – and they were confident that all the loans had been affordable.

Unhappy with the lender's response, Mr A got in touch with us.

putting things right

Mr A sent us his credit file, showing the amount he'd borrowed and the debts against him. From this, we could see that by the time Mr A was taking out his second payday loan, he already had a county court judgment against him – and the debt was more than the amount he was borrowing.

As Mr A continued to borrow money, the number of county court judgments against him was also increasing. By the time he'd applied for his final loan, his total debt was higher than the amount he'd borrowed. And as he'd struggled to repay his loans, he'd had to roll them over several times – meaning he'd paid back more than three times the amount he'd originally borrowed.

Looking at the lender's response, we didn't think they'd done enough to put things right for Mr A. They insisted they'd taken Mr A's county court judgments into account – but we thought if they had done, they would have seen that he was unable to pay off existing debts, let alone keep up with the repayments on new loans.

In the circumstances, we thought the lender shouldn't have continued to lend to Mr A. From what we'd seen, we thought it was reasonable for the lender to decide, back in 2010, that Mr A's initial loan was affordable. But it was clear the later loans were less so.

We told the lender to record the second loan onwards as settled on Mr A's credit file, and remove any information relating to defaults on the loans. The lender also agreed to refund the interest and fees for the unaffordable loans – offsetting any outstanding balance on the loan against the total refund Mr A was due.

upcoming events ...

smaller business:		
meet the ombudsman roadshow	Sheffield	19 October
	Stockport	03 November
	Newcastle	09 November

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

Q? &A

my client isn't happy with an ombudsman's decision they received. If I write to your chief ombudsman, could she overturn it?

Nine in ten complaints people refer to us are resolved informally – and don't need a second, formal answer from an ombudsman. But this right of appeal is an important part of our process. The ombudsman will look at all the evidence afresh – and whatever decision they make, they'll reach that conclusion totally independently of the investigation that's happened before.

Recognising that both parties need closure on a complaint, the ombudsman's decision is final – and no one can overturn it, not even our chief ombudsman. If the consumer is unhappy with an ombudsman's final decision, they don't have to accept it. If they don't, they may be able to take their complaint to court – although we always suggest people get their own legal advice about this. And as we're a public body, the route of judicial review is open to both parties in certain circumstances.

Each week our chief ombudsman, Caroline Wayman, receives dozens of letters and emails from consumers and businesses. She personally reads everything she receives – and she and her small team make sure action is taken where appropriate, including considering any feedback we can use to improve our service.

my constituents contacted you some time ago, but they're still waiting for an answer on whether you can actually look into their complaint. I thought you were supposed to resolve complaints within three months?

We're now resolving more than nine in ten of the complaints we receive in less than three months.

But in some cases, there are initial issues to resolve before we can look into what's actually happened between a business and their customer. If a business tells us they're not responsible for the problem – or they say we can't look into the complaint under the official rules – we'll need to answer those questions first. And we've not been able to progress many PPI cases as quickly as we'd hoped because of ongoing legal and regulatory issues relating to *Plevin v Paragon Personal Finance Ltd*.

These kinds of situations aren't always straightforward. We might need to consider a significant amount of documentation and complex legal issues. And once we've given our answer, either side might choose to ask for an ombudsman's decision on our relevant jurisdiction.

Again, this could mean a delay before we begin our investigation into the merits of the complaint itself, if that's what we eventually decide.

If we think things are likely to take us longer than usual, we'll let you know – and we'll keep you updated along the way. In the meantime, if you have a specific question about a problem your constituents are having, you can call our technical helpline on 020 7964 1400.

Financial Ombudsman Service