ombudsman news

from the **banking** division

Financial Ombudsman Service

March 2002

Financial Ombudsman Service

ombudsman news is published monthly and aimed at financial firms, professional advisers and consumer advice agencies. Each issue focuses on news from one of our three case-handling divisions: investment, insurance and – this month – banking and loans.

in this issue

about this issue of *ombudsman news*

We start with the 'hot topic' of dual variable mortgage rate cases. In previous issues of *ombudsman news*, we promised to say more about these once we had issued some final decisions. We have now decided 'lead' cases involving three lenders, and our decisions are summarised in this issue.

Contrary to some reports, we have not said that lenders cannot have more than one variable rate. The cases concerned how the mortgage terms of borrowers who took out their mortgage when there was only a single standard variable rate should be interpreted, when the lenders subsequently introduced more than one rate. S

Members of the banking and loans assessment team with ombudsman, **David Millington** (back row far right). On page 13, **Peter Bristow** (centre front) describes his work as an assessment team caseworker.

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We also focus in this issue on the caseworkers in our assessment team – who resolve the majority of cases in the banking and loans division. We illustrate their work with summaries of some typical cases they have resolved.

We are required to reach our decisions on the basis of what is fair in the circumstances – taking into account any relevant law, regulations or code and, where applicable, what we consider to have been good industry practice at the time. In this context, the Banking Code can be important. So we conclude this issue with the submission we made to the Code's independent reviewer.

David Thomas
principal ombudsman
banking and loans division

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1 mortgages – dual variable mortgage rate cases

We have received a significant number of cases concerning lenders that moved from having a single variable mortgage rate to having two variable mortgage rates – one higher than the other.

This move by some lenders was said to be part of a strategy to give loyal existing borrowers the same rates as those borrowers who kept switching their mortgages from lender to lender in pursuit of the best new deal.

The cases we received related to borrowers who had taken out their mortgages before the change. So, whatever the underlying motive for the change, we had to consider how those particular individual borrowers had been treated in the process.

So far, we have issued ombudsman final decisions in three cases, brought against three different lenders. In one case this followed a hearing, where both sides were represented (at the lender's expense) by Queen's Counsel. In each of the cases:

- The borrowers had taken out their mortgages at a time when the lenders had only a single variable rate.
- The lenders had promised the borrowers a discounted or capped rate, using the single variable rate as the yardstick.
- The lenders now said that the higher of the split rates should be the yardstick, but the borrowers said that the lower rate should be the yardstick.

Our decisions in these cases have been misunderstood in some quarters. The decisions did ***not*** mark any change in approach from that of predecessor ombudsman schemes. They did ***not*** outlaw lenders having more than one variable mortgage rate. They did ***not*** interfere with lenders' freedom to set rates for their products.

The decisions ***did*** say what rate should be used as a yardstick, in the circumstances of those particular cases, in order to fulfil the contractual promises the lenders had previously made – to those particular borrowers – about the rates the lenders had set for those particular mortgages.

We are considering other cases that raise similar issues in different circumstances. So we cannot summarise an overall approach at this stage. But we can comment on the legal principles of interpretation, and summarise the final decisions we have actually issued.

...our decisions in these cases have been misunderstood in some quarters.

legal principles of interpretation

We are required to reach our decisions on the basis of what we consider to be fair in the circumstances of the particular case. In doing so, we take into account the legal principles of interpretation.

The House of Lords (acting as ultimate appeal court) considered the legal principles for interpreting contracts in the case of ***Investors Compensation Scheme Ltd v West Bromwich Building Society and others***.

That case is reported in volume 1 of the ***Weekly Law Reports*** for 1998, starting at page 896. A passage from the judgement of Lord Hoffman at pages 912 and 913 contains a helpful summary of principles. The gist is:

- The law disregards what the parties said they intended to do, and what they said in prior negotiations. Parties can change their position during the negotiation process.
- Apart from this, the law avoids a technical approach. It follows the commonsense principles that would be applied to any serious utterance in ordinary life.
- The aim is to decide what the contract would have meant to a reasonable person who had all the background knowledge reasonably available to the parties at the time of the contract.
- That background knowledge includes anything that would have affected the way in which a reasonable person would have understood the language of the document.
- The meaning of a document is not the same as the dictionary meaning of its words. It is what those words would be understood to mean in the circumstances.
- The circumstances can help choose between possible meanings where words are ambiguous, or may even show that the parties used the wrong words or syntax.

It is also a general principle of English law that an ambiguous term must be given the interpretation that is less favourable to the party who supplied the wording (the lender, in the case of a mortgage).

And the Unfair Terms in Consumer Contracts Regulations require an unclear term to be given the interpretation that is most favourable to the consumer (the borrower, in the case of a mortgage).

summaries of final decisions

The following summaries are highly condensed. The actual decisions in the three cases ranged from 12 to 25 pages.

In each case, the lender had promised the borrowers a rate based on its standard variable rate (though the lenders called this by different names). We had to consider whether the lender had broken its promise and, if it had, how this should be redressed. In interpreting the lender's promise, we took into account what the relevant mortgage contract would have meant to a reasonable person who had all the background knowledge reasonably available to the parties at the time.

That background included the fact that a lender wishing to retain its position in the market needed to set its standard variable rate at a level that retained alert existing borrowers who were not locked in by an early repayment charge, and that also attracted new borrowers.

In examining the cases, we looked beyond the names the lender now gave its rates. We considered whether what the lender asked the borrowers to pay was based on a rate that could fairly be described as fulfilling the function of a standard variable rate – in accordance with the promise the lender had given to the borrowers.

In all three cases we decided that it did not. So we looked to see whether the lender still had a rate that could fairly be described as a standard variable rate, which fulfilled the promise it had given to the borrowers – and which could be used as the basis for redress. In each of the three cases, we found that there was such a rate.

If we had found that any of the lenders no longer had a rate that could fairly be described as a standard variable rate, we would have faced a more complex task in ensuring the borrowers were fairly compensated. In some circumstances, we might have had to calculate what a standard variable rate would have been.

The remaining circumstances of the first two cases we decided were comparatively similar. The remaining circumstances of the third case differed much more.

case 1

Mr and Mrs J took out a mortgage with lender K, which had a single variable mortgage rate. Under the mortgage agreement:

- Lender K promised Mr and Mrs J a three-year discount off its variable mortgage rate.
- After three years, Mr and Mrs J would revert to paying the full variable mortgage rate.
- There was no early repayment charge, such as some lenders attach to discounted-rate mortgages.

About a year later:

- Lender K adopted two differing variable mortgage rates.
- It used the lower of the two rates as the basis for all new variable-rate mortgages.
- It put all its existing variable-rate mortgages (apart from those with discounts) on to the lower rate automatically, without the borrowers having to apply.
- It said that its existing variable-rate mortgages with discounts would be put on to the lower rate when the discounts expired. S

2 Mr and Mrs J believed their discount should be calculated from the lower of the two rates – payable by lender K's ordinary variable-rate borrowers.

But lender K said:

- Mr and Mrs J's discount should be calculated from the higher of the split rates. That was the continuation of the original single variable rate.
- The higher rate minus discount was already less than the lower rate without discount.
- It would put them on to the lower rate when their three-year discount ended. They were free to swap to the lower rate earlier if they gave up their discount.

We decided that lender K still had a rate that could fairly be described as its variable mortgage rate. That was the lower of the split rates – which was the only rate lender K used:

- as the basis for all new variable-rate mortgages;
- as the basis for all existing variable-rate mortgages, apart from those with discounts;
- for existing mortgages that had come to the end of a fixed-rate or discounted-rate period.

The only variable-rate mortgages that lender K said were based on the higher rate were those where it had promised a discount.

So we decided that Mr and Mrs J's discount should be calculated from the lower rate, backdated to the date it was introduced. In addition, lender K should refund any overpayments and pay Mr and Mrs J £150 for the inconvenience they had been caused.

In effect, we decided that lender K had promised Mr and Mrs J a three-year discount from the rate available to ordinary variable-rate borrowers – and the rate available to ordinary variable-rate borrowers was the lower rate.

case 2

Mr and Mrs L took out a mortgage with lender M, which had a single variable mortgage rate. Under the mortgage agreement:

- Lender M promised Mr and Mrs L a five-year discount off the standard (variable) rate that applied to all its variable-rate mortgages.
- After five years, Mr and Mrs L would revert to paying the full standard (variable) rate.
- There was no early repayment charge, such as some lenders attach to discounted-rate mortgages.

About a year later:

- Lender M adopted two differing variable mortgage rates.
- It used the lower of the two rates as the basis for all new variable-rate mortgages (except that higher-risk mortgages, exceeding 95% of the property value, were to be on the higher rate for the first three years).
- It put all its existing variable-rate mortgages (apart from those still subject to discounts, caps or early repayment charges) on to the lower rate automatically, without the borrowers having to apply.
- It said that its existing variable-rate mortgages that were still subject to discounts, caps or early repayment charges would be put on to the lower rate when those special features expired.

Mr and Mrs L believed their discount should be calculated from the lower of the two rates – payable by lender M's ordinary variable-rate borrowers.

But lender M said:

- Mr and Mrs L's discount should be calculated from the higher of the split rates. That was the continuation of the original standard (variable) rate.
- The higher rate minus the discount was already less than the lower rate without discount.
- It would put them on to the lower rate when their five-year discount ended. But the transfer of existing borrowers to the lower rate was merely a concession.

We decided that lender M still had a rate that could fairly be described as its standard (variable) rate. That was the lower of the split rates – which was the only rate lender M used:

- as the basis for all new variable-rate mortgages (apart from the first three years of higher-risk loans that exceeded 95% of the property value);
- as the basis for all existing variable-rate mortgages (apart from those still subject to discounts, caps or early repayment charges);
- for existing mortgages that had come to the end of a fixed-rate, discounted-rate or capped-rate period (once any early repayment charge expired).

So we decided that Mr and Mrs L's discount should be calculated from the lower rate, backdated to the date it was introduced. In addition, lender M should refund any overpayments and pay Mr and Mrs L £150 for the inconvenience they had been caused.

In effect, we decided that lender M had promised Mr and Mrs L a five-year discount from the rate available to ordinary variable-rate borrowers – and the rate available to ordinary variable-rate borrowers was the lower rate.

case 3

Mr and Mrs N had a mortgage with lender O, which had a single variable mortgage rate. Mr and Mrs N transferred their mortgage to a capped variable-rate deal. Under the mortgage agreement:

- Lender O promised Mr and Mrs N that they would pay its base rate, but capped at a maximum of X% for five years.
- In return Mr and Mrs N promised to pay an early repayment charge if they repaid their mortgage within six years (a year after the cap expired).

About two and a half years later:

- Lender O adopted two differing variable mortgage rates.
- It used the lower of the two rates as the basis for all new variable-rate mortgages.

Lender O did not transfer existing variable-rate mortgages to the lower of the two rates automatically. It said:

- A change in the method of calculating interest required existing variable-rate borrowers to sign a document before being put on to the lower rate.
- So existing variable-rate borrowers were 'encouraged' (lender O's word) to contact their branch in order to be put on to the lower rate.
- That encouragement included prominent advertisements in the national press, and a rolling programme of letters to existing borrowers.

Mr and Mrs N contacted their branch in order to be put on to the lower rate (which was below the cap on their mortgage), as that was the rate available to lender O's ordinary variable-rate borrowers.

But lender O said:

- Mr and Mrs N were tied to the higher of the split rates. That was the continuation of the original base rate.
- They could only be put on the lower rate if they paid the early repayment charge.

We decided that lender O still had a rate that could fairly be described as its base rate. That was the lower of the split rates.

- The lower rate was the only rate lender O used as the basis for new variable-rate mortgages.
- The lower rate was available on all its existing variable-rate mortgages (apart from those still subject to discounts or caps). And lender O 'encouraged' those borrowers to contact their branch to be put on the lower rate.

2 ■ A rate exactly equal to the lower rate (though described as a discount off the higher rate) was available on existing mortgages that had come to the end of a fixed-rate, discounted-rate or capped-rate period but were still subject to an early repayment charge.

So we decided that Mr and Mrs N's mortgage should be calculated at the lower rate, backdated to the date on which their application to transfer should have been completed. In addition, lender O should refund any overpayments and pay Mr and Mrs N £150 for the inconvenience they had been caused.

In effect, we decided that Mr and Mrs N had been promised, subject to a cap, the rate available to ordinary variable-rate borrowers – and the rate available to ordinary variable-rate borrowers was the lower rate. So Mr and Mrs N should have been put on to the lower rate when they asked.

The early repayment charge in Mr and Mrs N's mortgage contract was the price of their cap. It was not to be used to lock them into a rate higher than that available to ordinary variable-rate borrowers. But it would continue to apply in conjunction with the lower rate.

2 case-handling

Regular readers will know that the banking and loans division has four case-handling teams comprising an assessment team and three investigation teams.

We thought it would be helpful to tell you a little more about each of these case-handling teams, and how they approach their work. In this issue of ***ombudsman news*** we start, as most cases start, with the assessment team. In future issues, we will deal with the investigation teams.

where does the assessment team 'fit in'?

The assessment team is not the beginning of our process for handling complaints. That starts with our colleagues in the customer contact division who receive complaints direct from customers. Where customers come straight to us without first having raised their complaints with the firm concerned, the staff in the customer contact division pass the complaints on to the firm to deal with. In many instances, we hear nothing more – because firms and their customers are able to sort out their differences themselves.

But sometimes firms and customers reach stalemate. This occurs when the firm issues a 'final response' letter that the customer does not accept, or when the firm has taken more than eight weeks to look into the complaint.

In these circumstances, when we receive the complaint (provided it isn't clearly outside the rules governing what we can deal with) it is converted from an 'enquiry' into a 'case'. It's then passed to the relevant division. Cases sent to the banking and loans division usually go straight to the assessment team. But before we get into the detail of what the team does, let's have a quick look at who's in it.

who makes up the assessment team?

There are 15 case-handlers – called 'caseworkers' – in the banking and loans assessment team. They all have very different backgrounds; some have worked in the financial industry, some are lawyers, and others are complaint-handling professionals who have worked in the customer relations departments of household-name companies. As you'll see from the photo of the team on the front cover, there's also a wide age range – from mid 20s to early 50s.

what does the assessment team do?

In the early days of ombudsman schemes, everything was built around the ombudsman's decision – in other words, the end of the process. But when the case-handling process for the new Financial Ombudsman Service was being put together, we decided to turn things around.

Our role is to resolve as many cases as we can, just as soon as we can, only passing on for an ombudsman's decision those cases that cannot be resolved in any other way.

Most customers and firms want an early resolution. A formal decision is not what's wanted, or needed, in a great number of cases. So our focus has shifted. Instead of automatically undertaking a detailed investigation into each case, we look at whether there are any ways in which we can resolve the case quickly and fairly without the need for a detailed investigation, which can sometimes be quite a long-drawn out process. The former Banking Ombudsman Scheme had already started to move in this direction.

This is where the assessment team comes in. It acts as a kind of filter – receiving complaints from the customer contact division and exploring a variety of ways to try and resolve them at this stage – only passing on those which really cannot be settled properly except by a full investigation.

... we look at whether there are any ways in which we can resolve the case quickly and fairly without the need for a detailed investigation.

how does it do this?

The first thing to remember is that the caseworkers in the assessment team are problem-solvers, not investigators. That's not to say that they don't look carefully at the details of the case – they do. But they don't duplicate the important investigation work done by the adjudicators in our three investigation teams. Instead, they check through the case papers, focusing on the following areas:

- jurisdiction
- early termination
- mediation.

jurisdiction

Under Financial Ombudsman Service rules, jurisdiction issues are much narrower than they used to be under the rules of the old schemes. They are limited to whether the firm is covered, the activity is covered, the customer is covered and the complaint is in time.

Most of these issues are fairly clear-cut and are dealt with by the staff in our customer contact division when the complaint first reaches the ombudsman service. But there can be some grey areas, particularly over time limits. So these grey areas of jurisdiction are issues for a caseworker in the assessment team to decide – though both customers and firms can appeal to an ombudsman if they disagree.

early termination

Many issues that the old scheme rules treated as jurisdiction issues are now treated as matters of procedure – the whole area of 'early termination' is a prime example of this. Essentially, it means that the Financial Ombudsman Service has discretion to stop dealing with a complaint in certain circumstances. The rules specify 17 grounds for early termination – some of which are used more frequently than others.

A typical example is where the firm has offered as much as we could ever see a complaint being 'worth' – assuming we were to accept everything the customer has said about what happened. There would be no real point investigating such cases because, even if we upheld the complaint, we could not award any more than is currently 'on the table'. So we give the customer a choice – either to accept the offer or to take alternative action against the firm.

Some customers are reluctant to accept such an outcome. They can, of course, always appeal to an ombudsman and occasionally the ombudsman comes to a different view. But this doesn't happen often – largely because the caseworker has already put a lot of time and thought into considering what the customer has said.

mediation

This means exactly what it says. Typically, a caseworker will receive a complaint where the two parties are still quite a way apart and will then try to bring them together, using the knowledge and experience of how similar cases have been settled in the past.

Often, the underlying issues are not in dispute – the parties are just unable to agree on how the firm can best put matters right. But if the assessment team caseworker can't bring the parties together by acting as a 'go-between', we won't force a settlement. The caseworker may, however, negotiate quite firmly or add a fairly clear recommendation.

passing cases on for investigation

Of course, the assessment team cannot resolve all the cases it receives. Some can only be resolved fairly by an investigation and a formal decision. But the percentage of banking and loans cases that need to be passed on for investigation is small compared with the number the assessment team receives from the customer contact division. For every hundred cases in, the assessment team resolves almost eighty.

what's the team's caseload like?

Inevitably, it's a wide and representative cross-section of the complaints we receive – ranging from a single simple issue to a series of complex issues that have arisen over an extended period of time. Business banking complaints, for example, often fall into the second category.

At the moment, the assessment team is handling more than 2,000 cases – but these are not spread equally amongst the caseworkers. That is because the figure includes about 900 'hot topic' cases (such as dual variable mortgage rates – mentioned elsewhere in this edition). These 900 cases are 'parked' with a small number of caseworkers, pending the outcome of lead cases. The December 2001 edition of *ombudsman news*, (available on our website at www.financial-ombudsman.org.uk) how we deal with 'lead' and 'follow-on' cases. Across the assessment team as a whole – caseworkers are normally dealing with about 80 cases each at any one time.

how can firms help?

In two main ways:

- by understanding the role of the assessment team; and
- by co-operating with our caseworkers – especially when they ask for information.

Firms should react promptly when they receive a letter from our customer contact division saying a complaint is being passed to the assessment team. That letter details the sort of basic information that is always needed in a particular type of complaint and asks the firm to provide the information.

Firms should also respond quickly if the assessment team caseworker subsequently requests additional details. This won't happen for every case. Our caseworkers are not in the business of asking for papers just for the sake of it – they only ask for as much information as they need to try to resolve a case. And sometimes a caseworker will conclude that – with just a bit more information from the firm – there will be a reasonably good chance of settling the complaint. A speedy response from firms helps everyone, because settling a case is often a question of timing – leave it too long and the will to reach agreement can quickly evaporate.

If you have any questions about the assessment process, just contact our technical advice desk:

- *phone* 020 7964 1400
- *e-mail* technical.advice@financial-ombudsman.org.uk

... mediation is one of our real strengths. Every day the assessment team solves a large number of cases this way.

but what's it actually like being a caseworker?

Peter Bristow (pictured centre front on our cover photograph), tells us about his work as a member of the banking and loans assessment team.

Peter's been an assessment team caseworker for about two and a half years. He joined the old Banking Ombudsman Scheme after working for a high street bank for about 15 years. He has a general law degree and a master's degree in public law.

What attracted you to becoming a caseworker?

A number of things, really. I'd worked for the bank for quite long enough when I decided to go back to studying full-time. At first I had ideas of becoming a solicitor. But after I'd seen at first hand what that was likely to involve (particularly in the early years) I decided to wait until I'd got my degree and then see what else was on offer.

What finally made your mind up?

Partly being in the right place at the right time, but also because I had a strong feeling of wanting to do something worthwhile. Something that was for the public good, I suppose – to help see justice done. Very few lawyers in private practice get the chance to do that as much as we do in the ombudsman service. Finding something that meant I could blend my banking and legal knowledge in the same job seemed ideal.

Describe a typical day in your working life.

The easy answer is that there isn't really a typical day – every one is different. But to do the job properly you need to be pretty organised – there are so many complaints coming through, particularly at the moment. If I tell you how I spend my time on Tuesdays and Wednesdays each week, that might give you a fairly good idea of how things work.

I tend to devote Tuesdays to reading all the new cases I've been allocated. That needs concentration. I find it easier to get to grips with my new cases by locking myself away with just a pile of files for company (away from the phone and the e-mails). I make notes about each case, and I always make a point of coming to a decision about what I think should be the next thing to happen on each of them – even if that's just to say I'm in two minds, and need to ask someone else!

Who do you ask – colleagues, or one of the casework managers?

It can be either – but that's a part of what happens on Wednesdays. There are times when I'm pretty sure what to do with a case but I need just to get hold of a final piece of information, or to check that I've understood things properly. So my first job of the day is usually to pick up the phone – to firms or to customers.

Quite often, this is also the time when I ask firms if they're prepared to make – or increase – offers to try to mediate complaints. We find we generally have much more experience in resolving complaints through mediation than the smaller firms, or those who are relatively new to the Financial Ombudsman Service. So we often have more of an idea of what any particular complaint might be 'worth' – in the sense of what would be a reasonable way to settle the matter – and one which would be readily acceptable to the customer.

Are firms generally receptive to this idea? Or do they see it more as unwelcome meddling – especially since all these complaints will have reached the end of the firm's in-house complaints procedure?

Well, that depends. Bearing in mind that all the complaint-handling departments of the firms we deal with are, essentially, doing the same job, it's surprising how different their approaches – and reactions – can be. But, in the main, once a firm understands that our approach is simultaneously impartial and pragmatic – and takes into account similar cases involving other firms (which, obviously, they won't have seen) – then it all tends to work out well. Mediation is one of our real strengths. Every day the assessment team solves a large number of cases this way.

All that must take up quite a bit of time.

Yes, but it varies according to the type of cases I have. It certainly takes up much of the morning – at least until it's time for my regular weekly meeting with my casework manager. That tends to be very much a two-way discussion. I don't discuss every case. But I may need to get a second opinion on cases I'm in two minds about, or just to bounce ideas around. The point of our discussion is to come to an agreement about how to deal with the case in question, so we don't stop until we've done this. That can sometimes take a fair while.

But you can't solve every case, can you? There must be some that need a full investigation.

Yes but it's a pretty small proportion. Our guiding principle is to try to get the earliest possible fair resolution in each case. Almost 80% of the cases passed to us from the customer contact division are closed, for one reason or another, in the assessment team.

But back to my Wednesday schedule. After my case discussion, I go back to trying to settle complaints. Some of this is done by phone – but by this point in the day I usually find I've got the more complex cases left. The most appropriate way of dealing with them is generally by letter.

This is also when I deal with cases that fall within our 'early termination' criteria – the ones that, for one reason or another, shouldn't go any further. More often than not cases reach this stage when – following our intervention – firms agree to offer at least as much as we would ever award at the end of a full investigation, assuming we accepted everything the customer says.

There'd be no point our investigating those cases. Even if we found entirely in favour of the customer, they'd not get more than is now on offer. All this needs to be explained to the customer pretty carefully. People often get the wrong end of the stick and think we're preventing them getting their 'right' to a full investigation. They don't always realise we're doing them a favour – recommending they get full settlement now rather than later.

All that makes for a very full day. Challenging – but usually very rewarding, too. To round things off – and in case you think I've not got much left to do for the rest of the week – there's always lots more letter writing and a lot of post arriving in response to enquiries I've made (and, with luck, a few accepted settlements too).

a selection of cases

To round off this focus on case-handling, here's a selection of cases that our assessment team caseworkers have considered recently, and which have been:

- decided as being outside our jurisdiction;
- concluded by early termination; or
- settled by mediation.

case study – case decided as being outside our jurisdiction

- 15/01

  Mr and Mrs V used to run a business. It got into financial difficulties in the late 1980s and, in 1991, the firm called in the loan with more than £300,000 outstanding. According to Mr and Mrs V, that decision by the firm caused their business to 'go under'. They had used their house as security for the loan so they ended up losing that as well as their business and their livelihood. Shortly after all this happened, Mrs V had a nervous breakdown.

  Mr and Mrs V had complained bitterly to the firm at the time about what it was doing. But it was not until late 1996 that they felt able to challenge properly its decision to call in the loan and to ask some serious questions about the way it did so.

The firm consistently maintained that it had done nothing wrong and, in early 2001, Mr and Mrs V turned to us. They claimed £100,000 (the maximum we can formally award). They explained that, although their problems clearly had their roots in the events of 1991, they had not really started pursuing their complaint until several years later.

Our rules say that we cannot usually look into a complaint where the events complained about happened more than six years before the matter was first referred to us. When the complaint arrived in our customer contact division, it was not immediately clear whether 1991 or 1996 was the right starting point. So the complaint was passed to our assessment team for further consideration.

After questioning Mr and Mrs V, the caseworker decided that – even though she understood why Mr and Mrs V had delayed pursuing the matter until 1996 – they had clearly had concerns about what the firm had done as far back as 1991. So that was the date from when the clock had started ticking. It was ten years before they came to us so their complaint was 'out of time'.

Like the courts, we cannot deal with cases once they are too old. Memories fade and relevant documents may no longer be available so many years after the event. No one is required to keep papers forever and it can be very difficult to establish what did actually happen some years earlier.

Mr and Mrs V asked for a review of the caseworker's view. When the ombudsman looked at the complaint, he agreed with the caseworker's conclusions. It was clear that Mr and Mrs V's complaint centred on the firm's decisions about lending and security back in 1991. Mr and Mrs V had known about these decisions – and been unhappy about them – at the time. But they had delayed bringing their concerns to the ombudsman scheme for 10 years.

Mr and Mrs V then turned to their MP – a high-profile former minister. He wrote to ask if we could bend the rules in this case. The ombudsman explained that we have no power to do that.

case studies – cases concluded by early termination

■ 15/02

Mrs C was on a very low income and the firm would not lend her the amount she wanted to buy a car. It would only make the loan if she took it out jointly with her husband.

Mr C readily agreed to this and the loan was set up in the joint names of Mrs C and Mr C – in that order. The couple also agreed to take out the firm's loan protection insurance to cover the loan.

Several months later, Mr C died suddenly and unexpectedly. Mrs C put in a claim under the loan protection insurance but this was turned down on the grounds that only Mrs C, as the first-named person on the loan, was covered. Mrs C turned to her solicitors for help, but they didn't get anywhere with the firm so they came to us on her behalf.

The crux of Mrs C's claim was that she said the firm had failed to bring to her and her husband's attention the significance of her being the 'first name' on the loan. Had the firm done this, the couple would unquestionably have set up the loan the other way around, because Mr C was the main breadwinner.

However, immediately above the signature boxes on the loan agreement form, the firm ***had*** clearly spelled out that, if the insurance option were taken, only the first-named person on the loan agreement form would be covered. The couple had either not read or understood the significance of this clause at the time, or had not thought it was likely to be relevant – particularly because the car was to be a second car, mainly for Mrs C's use.

We pointed out to Mrs C, through her solicitors, that the firm had not been under any duty to point this out to them orally, but it would have been under a duty to reply accurately if they had asked a question about the insurance option. There was no evidence that the couple ***had*** asked any questions about it.

Although we sympathised with Mrs C's position, we really didn't think that the firm had done anything wrong. So we confirmed to her solicitors that her complaint had no reasonable prospect of success and that, therefore, we would not be considering it any further.

■ 15/03

On 4 April 2001, Mr B asked the firm to transfer £3,000 from his current account to his maxi-cash ISA. But the firm didn't do this – it actually made the transfer the other way about. By the time Mr B spotted what had happened, it was too late for the firm to make a correcting transfer because, by then, a new tax year had started.

Mr B told the firm that, because of its error, he had lost the tax benefit of the ISA 'in perpetuity'. He claimed compensation of over £10,000. The firm accepted its error and the consequent need to make sure Mr B did not suffer a loss. However, it offered him only £3,500, mainly because it didn't agree with his method of working out the loss.

We concluded that the firm's way of calculating compensation was more appropriate than Mr B's. But we suggested that the firm should add something for the inconvenience its error had caused him. The firm increased its offer to £4,000, which we thought was reasonable. After we explained our overall thinking to Mr B and told him we couldn't see any way that he was likely to get more than that, he accepted.

■ 15/04

Mr K was on holiday in Madeira when he signed up for membership of a holiday club on the island. He signed a credit card voucher for the local currency equivalent of £3,000 to pay for the membership. However, two days later, he decided the membership wasn't very good value for money. He asked the holiday club to cancel his membership and give him his money back.

Although the club said it would cancel the membership, it didn't give him his money back. So when he got back to the UK he asked the firm for help. But the firm told him it wouldn't give him his money back either, because he had signed a 'cash withdrawal' voucher. The money had been withdrawn from his card account in cash on the day he signed the holiday club membership agreement.

Mr K argued that he had not withdrawn the money in cash. However, when he was shown a copy of the voucher he had signed, he saw that it was clearly marked as a 'cash withdrawal' (even if, as seemed to be the case, he hadn't gone to the bank himself to get the money).

But, added to that, the reason Mr K wanted his money back was not because there had been any misrepresentation about the holiday club, or anything wrong with the deal he had signed up for – he had simply changed his mind about the purchase. Because of this, we told Mr K that he didn't appear to have a valid claim against the firm under Section 75 of the Consumer Credit Act 1974. Albeit with some reluctance, Mr K accepted that.

■ 15/05

Mrs S had a credit card with the firm. Monthly payments to the card account were taken by direct debit from her current account with a different firm.

In June 2001, the credit card firm mistakenly took three times as much as it should have done under the direct debit. It was Mrs S who spotted what had gone wrong, but she felt it took the firm far too long to sort things out – even though, in doing so it gave Mrs S the extra money back, plus interest, and offered her £50 compensation. However, Mrs S described the £50 as 'pathetic' and she brought her complaint to us.

We felt that Mrs S had certainly been messed around a bit, but nowhere near as much as she claimed. We suggested that the firm should increase its offer to £200 and it readily agreed. Mrs S accepted the £200 after we explained that, in our view, it was the most her complaint was 'worth'.

■ 15/06

The firm did not think that N Limited was conducting its account properly. So, after several warnings, it gave N Limited 28 days' notice to close the account. At the same time, the firm cancelled all standing orders and direct debits on the account.

N Limited objected – on the basis that the firm's terms and conditions for business accounts said that it would give 30 days' notice in such circumstances. In response, the firm extended the notice period for N Limited by another two weeks, giving six weeks notice in total. However, when the firm did finally close the account, it made an error by closing it a couple of days before the end of the extended notice period.

N Limited complained again, saying that the firm had been inconsistent and unclear about its intentions. It also said that the firm's arbitrary cancellation of the standing orders and direct debits had resulted in its not realising that its phone bill had gone unpaid. The first that N Limited knew of the problem was when it received a red reminder from the phone company. Added to that, the firm had sent N Limited a cheque for the closing balance of the account, made out incorrectly. N Limited demanded significant, but unquantified, compensation – which the firm countered with an offer of £200.

When the matter was referred to us, we felt that N Limited's claim was rather over-inflated. Nevertheless, the firm had made a number of mistakes. We felt that while £200 was probably a bit on the light side, £350 was the maximum we would ever be likely to award N Limited at the end of an investigation, even if we found entirely in its favour on all aspects of the complaint. The firm readily agreed to increase its offer to £350. So we told N Limited that since there was nothing more we could do, if it did not wish to accept the increased offer, the alternative was to take the firm to court. It opted for the £350.

■ 15/07

Mr L had a credit card account with the firm, with a limit of £3,000. In May 2000, with the balance almost up to the limit, he made a payment to the account of £98. But the firm wrongly credited the account with £981. Mr L seemed not to notice the error – and he spent up to his card limit again. But the firm then spotted the error and during June it debited Mr L's account with the over-credit of £883 (£981, less £98). However, this meant that the card statement at the end of June showed that Mr L owed the firm about £3,800 against his limit of £3,000.

The firm refused Mr L's request to increase his card account limit to £4,000. Mr L then went abroad, and no money was paid into the card account for several months. So the firm passed the debt to its debt recovery agents for collection. It also gave details of the debt to the credit reference agencies.

When the recovery agents eventually made contact with Mr L, he told them he was unemployed and could only afford to make token payments to the account. The firm offered to reduce his debt to £3,500 – on the basis that its error had, in part at least, been the cause of the increased debt. But Mr L would not accept that offer and he came to us.

He told us that he wanted the firm to:

- give him his card account back;
- remove his name from the credit reference agencies; and
- give him £3,000.

We thought that that was far too much to ask for, but we did ask the firm if it might be prepared to give him back a bit more than it had previously offered. The firm came back with an increased offer of £950, and agreed to wipe out the adverse credit reference entry. We thought this was a very good offer, and we put it to Mr L. He rejected it, still holding out for his original claim.

An ombudsman then wrote to Mr L saying that he did not think we could better the firm's offer, so Mr L's choice was either to accept the offer or to take alternative action against the firm. Mr L accepted the offer.

■ 15/08

Back in 1982, Mr R asked the firm for a mortgage. The firm commissioned a standard valuation report from a local valuer. This report confirmed, among other things, that the property was suitable security for a mortgage. So the deal went ahead and everything was fine until the summer of 1999, when Mr R decided to sell the house.

He agreed a price of £250,000 and the potential buyer had a survey done. The survey revealed that the property was built of a particular type of pre-cast concrete panel (covered with pebbledash rendering). Because of problems with that type of pre-cast concrete panel, the property was worth much less than £250,000. In the end, Mr R had to accept just £170,000 for it.

Mr R complained to the firm and asked it to make up the £80,000 difference. His reasoning was that the firm should have been put on notice that the property might have been built of these pre-cast concrete panels. This was because the 1982 valuer had said in his report that he could not tell what lay behind the pebbledash rendering.

Mr R supported his argument by saying that the firm had, at the time, been a new entrant into the mortgage market. He suggested that an established lender would have known about these concrete panels, and would have protected him from buying the property. In essence, he claimed that the firm's maladministration in not checking things thoroughly enough in 1982 had led directly to his £80,000 loss.

The firm strongly disagreed with Mr R's allegation. It said there was no reason for it to have been put on notice by the valuer's report, and it disputed whether any other firm would have thought, or done, anything different at the time. Added to that, Mr R had not even got his own survey. He relied on the simple valuation report which was done primarily for the bank as the lender, not for him as the borrower. The valuation report clearly said that the inspection of the property was limited and – on the form itself – it recommended potential purchasers to consider getting their own, independent, survey.

We agreed with the firm. There was no evidence of any maladministration by the firm in 1982. It had relied on a report from an independent valuer and, in the caseworker's view, had done all that could reasonably have been expected of it. The reduction in value, and the resultant reduction in the selling price, could not have been the firm's fault. So the caseworker told Mr R that, in his view, his complaint had no reasonable prospect of success. Mr R asked for a review of the caseworker's view. This resulted in the ombudsman reaching the same conclusion as the caseworker.

■ 15/09

Mr T's business premises were broken into and quite a lot was stolen. After he made a claim under his insurance policy, he was sent a cheque for £9,000, which he paid into his account with the firm. He said that he paid in the cheque during early January 2001, but the credit only appeared on his bank account on 1 February. Mr T said that, because of this delay, the firm bounced a number of cheques that it should otherwise have paid.

When the firm looked into what had happened, it discovered that the paying-in slip Mr T had used had been date-stamped '1 January 2001'. Clearly, that was wrong because 1 January was not a working day. The firm concluded that the cashier had simply made an error in not altering the stamp properly before starting work on 1 February. Mr T accepted that an error had occurred, but said that the error was in not making the date stamp read '10 January', the day on which he claimed to have paid in the cheque.

Stalemate was reached between the firm and Mr T – so he came to us. Our caseworker looked at the paying-in slip, which had been taken from a book of pre-printed slips, all numbered in sequence. He then asked the firm for copies of the two previous paying-in slips. They bore date stamps of '29 January' and '31 January' respectively. The caseworker concluded that the cheque had indeed been paid in on 1 February, rather than 10 January as Mr T had alleged. He wrote to Mr T outlining his conclusions, and we have not heard from Mr T since.

case studies – cases settled by mediation

■ 15/10

In 1998, Mr H invested just over £5,000 in a stock market bond with the firm. But two years later, someone pretending to be Mr H withdrew the money from the bond and transferred it all to another account with a different firm.

Mr H did not discover what had happened for several months – and he only did so because he received a letter from the firm which didn't make sense to him, concerning the withdrawn investment. The firm accepted that it had acted on a fraudulent instruction. It reinstated the bond in such a way that Mr H did not suffer any loss. It also offered Mr H £250 for the inconvenience he had been caused.

Although Mr H was pleased to get his investment back, he was still out of pocket despite the £250, because he had taken time off work to try to sort things out. When we looked into the problem we thought that something nearer £500 would be more appropriate. We told the firm this and Mr H accepted the £500 it offered him.

■ 15/11

Mr D and Ms E were directors of a company, G Limited. On 24 January 2001, they authorised the usual monthly payroll. The money was to be available for each employee (including themselves) to draw from their personal accounts on 29 January.

At about the same time, the board of G Limited, which was in financial difficulties, consulted a firm of insolvency practitioners. At its meeting on 29 January, the board agreed to place the company into voluntary liquidation. The following day – 30 January – the board informed the firm.

Also on 30 January, Mr D and Ms E noticed that the firm had withdrawn their salaries from their private bank accounts. After failing to get an explanation from the firm as to why it had done this, they asked their solicitors for help. The firm then gave a number of different, and contradictory, reasons for the removal of the money. These reasons were mainly tied up with the liquidation, and with who the firm believed to be authorised to act on behalf of G Limited.

By the middle of June, stalemate had been reached. The firm said that it would hold the amount in dispute in a separate account 'to the order of the liquidators' – in other words, only payable to the liquidators – but that was all it was prepared to do.

The liquidator would not agree to pay the money back to Mr D and Ms E. But we felt that the real problem was with the firm. At a first reading, it seemed to us that when it got wind of the liquidation it had been – at best – hasty and over-zealous in removing the money from Mr D and Ms E's personal accounts. We put those initial thoughts to the firm by phone and, shortly afterwards, it offered to:

- re-credit the money to Mr D and Ms E's accounts;
- pay them each a further £300; and
- give them £800 towards their legal costs.

Mr D and Ms E accepted that offer.

■ 15/12

Mr A took out a life policy in 1988. The sum assured was £19,000. He set up a direct debit to pay the monthly premiums from his account with the firm. All went well until 1996, when the firm stopped making the payments. It's not clear why this happened; it certainly wasn't a case of Mr A having no money in his account – there was always plenty available.

However, it was not until three years later – in 1999 – that Mr A noticed that payments were no longer being made. He phoned the life company, which told him he could re-instate the policy by making up the missed payments and by completing a new declaration of health.

There was no problem in Mr A making the money up, but there was a problem with the health declaration. By then, Mr A had a terminal illness.

So the life company wouldn't re-instate the policy. It also said that it wasn't to blame for Mr A's failure to keep the payments up to date. It said it had written to Mr A several times in 1996 and 1997 but hadn't had an answer – some of the letters had been returned by the Post Office marked 'Gone Away'.

Mr A complained about the life company to the Personal Investment Authority Ombudsman Bureau – now part of the Financial Ombudsman Service – but it couldn't find any reason to criticise what the company had done. It didn't award Mr A any compensation. Mr A then decided to complain to the firm for – apparently – stopping paying the policy premiums without good reason.

After looking into what had gone wrong, and without really explaining why, the firm made an offer to Mr A – which he could take either as an immediate cash sum or as an indemnity for the remainder of the policy term. The indemnity option meant that the firm would guarantee to pay just over £8,000 to Mr A's personal representatives, at any time before the policy's expiry date. This sum was what it worked out as being the average net, discounted difference between the sum assured and the policy's surrender value – which Mr A had, by then, received from the life company.

Mr A was tempted to accept the indemnity offer, but he wasn't happy with the firm's calculation – he thought it should have been more than £8,000. So he came to us for help.

However, very soon after doing so, Mr A died. Shortly after that, his personal representatives got in touch with us. They decided to take over, and continue with, the complaint. We contacted the firm on their behalf and, after we had explained Mr A's misgivings about the figure of £8,000, it made a substantially higher offer – just over £15,000 – which Mr A's personal representatives accepted.

■ 15/13

Mr G likes the occasional flutter on the horses. Back in June last year he identified a 'sure winner' – so, before placing his bet, he phoned the firm to find out how much money he had in his account.

Armed with the answer, Mr G then set off for the betting shop and tried to place the bet, using his Switch card. But the transaction was refused – even though the firm had only just told him there was money in his account to cover the amount he wanted to bet.

Mr G's betting plans failed – but the horse didn't; it romped home. If Mr G had placed his bet, he'd have won almost £900.

Upset, Mr G complained to the firm. But it said that the Switch transaction had been properly declined; there hadn't been enough money in his account. It kept on saying this even though it had a tape of Mr G's earlier call which proved what Mr G was saying about what he'd been told he had in his account.

After Mr G complained to us, and we asked the firm some questions, it discovered that Mr G's call had been taken by someone in a different department from the usual customer call centre. This person would not have known about any transactions 'in the pipeline'. This is why Mr G was told he had more money available to him than the amount that could actually be authorised by the Switch system.

The firm decided to offer Mr G his lost winnings – plus another £100 – which he was happy to accept.

■ 15/14

Miss P applied to the firm for a mortgage, through her financial adviser. She had understood that the particular mortgage package she was applying for gave her a £500 cashback. However, when she got the mortgage offer from the firm, there was no mention of the cashback. So Miss P phoned her financial adviser, who phoned the firm. The firm told the adviser that a mistake must have been made and that it would send out a new, correct, mortgage offer letter. But when that arrived, there was still no mention of the cashback.

Miss P phoned her financial adviser again, who phoned the firm again. It said that there must have been another mistake. But when the third mortgage offer letter arrived, the cashback was still not mentioned. By that time, Miss P needed to complete the deal or she risked losing her new home. She didn't have enough time left to get another mortgage from another lender, so she went ahead with the deal without the cashback, and then complained to the firm herself.

The firm told her that the particular mortgage she had asked for had never included a cashback. However, it said it was keen to resolve things and so it offered her a different mortgage deal that ***did*** have a cashback. But that deal meant that she would be tied into a fixed rate for longer than she wanted.

Miss P referred her complaint to us. We told her that, because she had not been a party to the conversations between the financial adviser and the firm, it was difficult to know exactly what had been said between them, and therefore to be able to decide if the second and third offer letters really were incorrect.

But because there was at least a chance that the firm had given the financial adviser the wrong information over the phone, we asked it if it would be prepared to 'split the difference' with Miss P and offer her £250. It agreed – and she accepted the £250.

■ 15/15

Mr J bought his son a second-hand car costing £5,000. He paid for the car in three parts:

- by part-exchanging his car for £3,000;
- with a cheque for £1,500; and
- by charging £500 to his credit card issued by the firm.

Things started to go wrong with the car more or less straight away. It spent most of the next six weeks back at the garage. The garage paid for all the repairs, which cost more than £1,200, but Mr J thought they should also compensate his son for the distress and inconvenience he had been caused, and for the six weeks worth of insurance and road fund licence he felt had been wasted.

The garage didn't agree – so Mr J turned to the firm, putting in a claim under Section 75 of the Consumer Credit Act 1974 (the 'Act'). However, the firm also refused to pay up. It said that there wasn't a valid debtor-creditor-supplier relationship under the Act, and that it therefore had no obligation to meet Mr J's claim. The reason for there not being such a relationship was, it said, because the garage's invoice for the car had been made out to Mr J's son, not to Mr J himself, and 'any statutory right under the Act could not be extended by way of gift'.

Mr J then came to us. It was not up to our caseworker in the assessment team to decide whether Section 75 did, or did not, apply (that would have needed an investigation and a finding on the merits of the complaint). There were, in her view, arguments both ways. But, just as importantly, if Section 75 ***did*** apply, it seemed clear that only some of Mr J's claim could ever be successful, because we could only ever make an award for Mr J's losses, not for those of his son.

By then, the firm had offered Mr J £250 as a gesture of goodwill. The caseworker explained her initial thinking to Mr J and said he could either accept the firm's offer, or reject it and wait while we conducted an investigation. After taking into account what the caseworker had said about the limitations on the amount we might ultimately award, Mr J accepted the £250.

3 the Banking Code

A new version of the Banking Code is due in January 2003. The Code is sponsored by the industry – through the British Bankers' Association, the Building Societies Association and the Association for Payment Clearing Services (APACS). They accepted the recommendation of the Julius Committee (appointed by the government to review the role of the Code) that the process should involve a review conducted by an independent person.

Elaine Kempson was appointed as independent reviewer. To assist her review, she asked various bodies to submit brief comments and to attend a round-table meeting on 27 February 2002. Following that meeting, she would discuss issues directly with some key organisations and then convene another round-table meeting. She is due to report by the end of June 2002.

Here are the comments we submitted before the 27 February 2002 meeting.

Financial Ombudsman Service comments on the Banking Code

This summary focuses on major issues of principle, and so excludes areas where we consider the Code could be improved by minor drafting changes.

Introduction (1*)

Treating personal and small business customers alike

The 2001 Code is for personal customers only. A small business version of the Code is to be launched soon. It is almost identical to the personal Code. We welcome that. Maximum commonality facilitates promotion of the Code principles and staff training. These objectives would be simpler to achieve if the personal and small business versions of the Code were amalgamated.

Observing the spirit, as well as the letter, of the Code

As the Guidance now states, the Code is a statement of principles – to be applied in the spirit as well as the letter. That is a crucial statement, which should be in the

** the numbers refer to the numbered sections of the Code.*

Code itself. And in many areas (*eg* superseded accounts) the Code is drafted in a level of detail that encourages some subscribers to worm their way around the letter, while ignoring the spirit.

Observing the law as well

Some subscribers think the Code is a definitive statement of their obligations. It should be stated that compliance with the Code does not absolve the subscriber from complying with the general law. And Code provisions that are out of line with the law should be altered. We give two instances of such provisions in the comments below.

No duty to offer advice

Subscribers and lawyers know that subscribers are not required to volunteer advice – though any advice they actually give must not be negligent. The fact that subscribers have no duty to volunteer advice should be stated. Many customers have been led to think of their banker as a professional adviser. It comes as a shock to discover the banker can see them walking into danger without having to say anything.

Interest rates (4*)

This section of the Code causes us vastly more difficulty in practice than any other.

Communicating interest rate changes

The Code does not limit the ability to avoid personal notification of interest rate changes on branch-based accounts to cases where the change is for a valid reason specified in the contract. So the Code requirement does not comply with the Unfair Terms in Consumer Contracts Regulations.

In any event, the alleged distinction between branch-based and other accounts is outmoded in practice. It enables some subscribers to downgrade interest rates to a comparatively nominal figure without properly letting customers know. Elderly people with a nest egg are particularly vulnerable.

Where a credit interest rate is reduced or a debit interest rate is increased, the Code should require personal notification to the customer, in a form that brings the change home to the customer. This should apply whether or not the account is described as branch-based.

The requirement to notify could be subject to an appropriate ***de minimis*** mechanism that excludes circumstances where, because of the amount involved, there is little

** the numbers refer to the numbered sections of the Code.*

prospect of significant detriment to the customer. That could be achieved in a number of ways, but the Code should specify one – to give customers clarity.

It is for consideration whether it is possible to devise a workable method of ensuring customers are also notified when a credit interest rate is not increased following an increase in Bank of England repo rate, or when a debit interest rate is not reduced following a reduction in Bank of England repo rate.

Tracker accounts that are linked to Bank of England repo rate could be exempted from the requirement for personal notification, provided the account terms clearly state the differential and the time limit within which any change in Bank of England repo rate will be followed.

Superseded savings accounts

If there were a robust and transparent regime for communicating interest rate changes to customers, it is possible that the superseded savings accounts provisions would become redundant. Aspects of the existing provisions have proved difficult to apply – particularly, whether or not an account is actively promoted (paragraph 4.9*).

Whether and how the current provisions apply to Tax Exempt Special Savings Accounts (TESSAs) has been the subject of contention between various subscribers and/or industry bodies on the one hand and the Financial Ombudsman Service and/or the Banking Code Standards Board on the other.

The drafters of the Code did not foresee the circumstances of the government's withdrawal of TESSAs. If the Code provisions had concentrated on the underlying principles, there might have been less dispute about what those principles were – leading to less dispute about whether, and how, they applied to this unforeseen situation.

Lending (11*)

Financial assessment

The purpose should be made clear. At present, it is open to misunderstanding. Subscribers tend to think the assessment is solely for the lender's protection. Customers tend to think it is also for the borrower's protection, and absolves them from liability if (in practice) they find they cannot afford to pay.

Guarantees

The final bullet point ('tell them what their liability will be') is generally interpreted as meaning the maximum liability. But the person who gave the guarantee or security also needs the right to ask from time to time the amount of their current liability.

the numbers refer to the numbered sections of the Code.

A third-party security has the same effect, in practice, as a guarantee. So the prohibition of unlimited guarantees should be extended explicitly to prohibiting unlimited third-party guarantees. In Scotland, for technical reasons relating to Scots law, that might have to be effected by coupling an unlimited security with a side letter.

Confidentiality (13*)

Credit reference agencies

The effect of paragraph 13.4* is open to misunderstanding. Customers tend to think it refers to permission to be given at the time of the disclosure. Subscribers use it to refer to permission already given in the application to open the account.

Customers are ***not*** surprised to discover that serious defaults are communicated to credit reference agencies. But they ***are*** surprised to discover that: the monthly status of payments on all their credit products is routinely registered; credit searches are registered; and the number of credit searches is taken into account in credit-scoring, so that they can acquire a 'bad' record simply by shopping around.

Protecting your accounts (14*)

Paragraph 14.8* refers to customers acting 'without reasonable care'. One has to go to the Guidance to discover that this actually means 'gross negligence', which is quite different. If 'gross negligence' is considered not to be plain English, another synonym is required.

In any event, the application of this provision in some cases is unlawful. Where the card was used as a credit token (e.g. to create an overdrawn balance on a current account) without authority, the customer's liability is limited to £50 by the Consumer Credit Act 1974 – whether or not there has been gross negligence.

Complaints (17*)

The Code should summarise the key features of the FSA-specified regime – viz, unless the problem is solved by close of business on the next business day:

- Within 5 days: the subscriber must send an acknowledgement.
- Within 4 weeks: the subscriber must send either a final response, confirming the customer can go to the ombudsman if still dissatisfied, or a holding response explaining why the subscriber needs more time.
- Within 8 weeks: the subscriber must send a final response – and, even if no final response is sent, the customer can go to the ombudsman if still dissatisfied.

** the numbers refer to the numbered sections of the Code.*

working **together**

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This year we'll be running a unique series of conferences in various centres around the UK. These events will all feature:

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Places are limited. For more information and a registration form, please complete the form, ticking the event(s) you are interested in. Send the form (or a photocopy) to Graham Cox, Liaison Manager, Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR or email the details to: conferences@financial-ombudsman.org.uk

Please note that the dates are still provisional. Each conference apart from the Belfast event will focus on a specific area of complaints – investment (including life assurance), insurance, or banking and loans. The Belfast conference will cover ***all*** these areas.

Please send information about the *working* together conferences to:

name(s)

firm

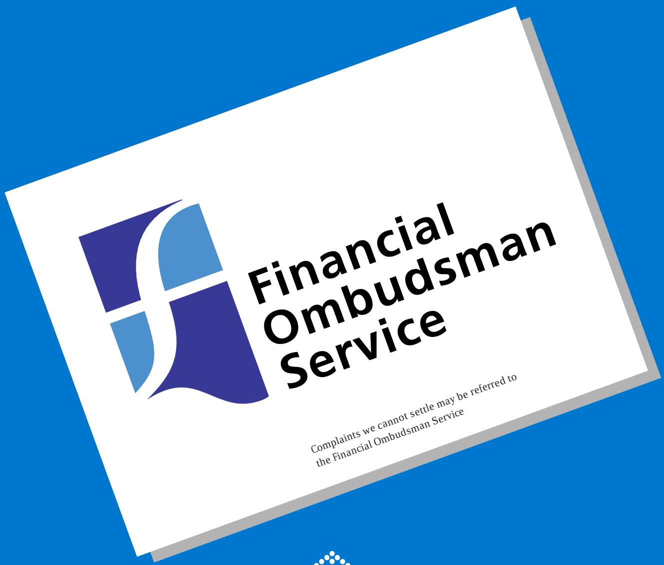
phone

email

office address

please tick

☐	July 3	Bristol	Jury's Hotel	banking and loans
☐	July 25	London	British Library	investment and life assurance
☐	August 14	London	British Library	insurance
☐	August 22	Manchester	Conference Centre	investment and life assurance
☐	August 28	Belfast	Europa Hotel	all
☐	September 18	Leeds	Royal Armouries	banking and loans
☐	October 2	Leeds	Royal Armouries	insurance
☐	December 4	London	British Library	banking and loans



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Our window sticker is now available for firms to display on their entrance doors, windows etc, to show customers that they are covered by the Financial Ombudsman Service.

The sticker measures 21cm x 15cm. It is made of transparent vinyl which attaches to glass by static (no adhesive) – just peel off the backing-card and apply.

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