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news

Financial Ombudsman Service

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essential reading for financial firms and consumer advisers

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about this issue

In this issue we set out our approach to complaints involving disputed plastic card transactions, where the card was used as what the Consumer Credit Act calls a 'credit-token' in order to obtain credit. Our case studies include that of a customer who discovered from her statement that her credit card had been used by her son – without her knowledge – to make cash withdrawals totalling £5,000.

We re-visit a topic that has featured in earlier issues – that of 'non-disclosure' in insurance cases – the situation where a customer fails to reveal a relevant fact when applying for, or renewing, an insurance contract. We outline some of the principles in the Financial Services Authority's *Insurance: Conduct of Business Rules*, introduced in January this year, and set out the approach we take when looking at non-disclosure cases, taking into account both the law and good industry practice.

Finally, we highlight our approach to complaints involving mortgage endowment policies that are referred to us *after* the customer has accepted the firm's offer of redress. In these cases, either the firm has failed to pay up or the customer has wanted to re-open the complaint.

guides to the ombudsman service

We have produced two guides to help financial services firms find out more about us and our processes.

- ***a guide for complaints handlers***
  This is a detailed guide designed for people working in the parts of firms that deal regularly with complaints and the ombudsman service, such as compliance units and customer service departments.

- ***an introduction to the Financial Ombudsman Service***
  This is a brief guide designed for those firms that don't generally have much contact with us.

Both publications are available on our website (www.financial-ombudsman.org.uk).

You can order copies free of charge by emailing publications@financial-ombudsman.org.uk

services for firms and consumer advisers

our **external liaison team** can

- provide training for complaints handlers
- organise and speak at seminars, workshops and conferences
- arrange visits and meetings

phone **020 7964 1400**
email **liaison.team@financial-ombudsman.org.uk**

contact our **technical advice desk** for

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

phone **0845 080 1800**
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using plastic cards as credit-tokens

We deal with a number of complaints from consumers about disputed card transactions – particularly cash machine withdrawals, where the consumer denies either making the transaction or authorising someone else to do so.

In some cases, the consumer may have made the transaction and then simply forgotten about it. But sometimes we conclude that the consumer failed to look after their card or PIN properly, thereby enabling a third party to make the transaction.

In many of the complaints we see involving disputed card transactions, the card was used to obtain credit – in other words, it was used as what the Consumer Credit Act calls a '*credit-token*'. Many firms appear uncertain about how to deal with disputes of this type, so this article explains our approach.

what is a credit-token?

The meaning of '*credit-token*' is set out in the Consumer Credit Act 1974. The definition is broad and open-ended, but it includes the use of a credit card or a debit card on an account which is overdrawn (up to the extent of its agreed limit) or which is taken overdrawn (up to the extent of its agreed credit limit) by the disputed transaction.

... many firms appear uncertain about how to deal with disputes of this type.

types of transaction

The principles discussed here apply to all disputed credit-token transactions, including:

- cash machine withdrawals;
- face-to-face transactions – whether retail purchases or counter withdrawals; *and*
- telephone and on-line transactions.

The person carrying out the transaction will usually have been asked to provide something in addition to the card or card details. In the case of a cash machine transaction, that will routinely be a PIN. For other transactions it could be one or more of:

- a signature;
- a password;
- the answers to security questions.

What is requested will depend on the nature of the transaction and – with the introduction of Chip-and-PIN cards – on the type of card and equipment used to process the transaction.

So where a consumer insists that they did not carry out the transaction in question and that an unauthorised third party must have been involved, we will consider both how a third party might have obtained the card (or card details) and how they might have had access to any additional security information that was used in making the transaction.

cardholder 'negligence'?

The Banking Code says that if the consumer acts '*without reasonable care*' and this causes losses, the consumer may be responsible for those losses. Acting '*without reasonable care*' may mean not following the Code's provisions about what to do to prevent fraud. The Code says that consumers should (among other things):

- take care of cards, PINs and other security information;
- learn PINs, passwords and other security information and not keep a written record of them; *and*
- tell the card issuer as soon as a card is missing or stolen or if someone else knows the PIN, password or other security information.

Many firms' terms and conditions broadly reflect the provisions of the Banking Code, by saying that a cardholder will be liable for the misuse of the card if that misuse is caused by the cardholder's failure to take reasonable care. Previous editions of the Code used the term '*gross negligence*' instead of '*without reasonable care*'. But the guidance notes issued with the Code say that the standard has not changed.

... difficulties can arise when family members are suspected of involvement.

Some firms think that if cardholders were grossly negligent in their care of a card and/or PIN, then they can always be held liable for the full amount of any transactions made with that card by a fraudster. But that is not the case. There must be an appropriate provision in the card's terms. The lack of care must have been the cause of the loss. And even then, the consumer's liability may be limited if the card was used as a credit-token. If it was, the effect of the Consumer Credit Act 1974 is that:

- Cardholders are liable for withdrawals that they have made (or that somebody acting as their agent has made).
- Cardholders can be made liable to a maximum of £50 for losses arising from the use of the card when it was not in the possession of someone authorised to have it. (The Act does not say in what circumstances, but we will look to the card terms in each case.)
- Cardholders can be made liable for losses arising from the use of the card by someone who has possession of it with the cardholder's consent. (Again, the Act does not say in what circumstances.)
- Cardholders are not liable at all after they have told the card issuer that the card has been lost or stolen.
- These provisions cannot be excluded by the account terms.

precedence

Where the Consumer Credit Act, the Banking Code and the account terms do not say the same thing:

- the Act takes precedence over the Code and the account terms; *and*
- the Code takes precedence over the account terms.

So because the Act says that liability for unauthorised use of a credit-token is limited to £50, a firm cannot use the cardholder's negligence in caring for the card and security information as its grounds for seeking to make the cardholder liable for more than £50.

Cardholders are only liable for losses of more than £50 if they:

- made the transaction; *or*
- authorised someone else to make it.

But they can be made liable for:

- losses arising from the use of a credit-token by someone who obtained possession of it with the cardholder's consent; *and*
- the first £50 of any losses caused by the cardholder's gross negligence in the care of their card or security details.

In the last two instances, however, the relevant part of the Act does not impose liability – it simply allows the card issuer to do so. Whether or not a cardholder is liable in any particular case is likely to depend on the account terms.

... firms will not always be able to provide evidence to support their suspicions.

summary

If a firm believes that a cardholder is seeking to disown transactions that they did – in fact – make or authorise, or that were made by someone who acquired the card with the cardholder's consent, it will not usually be enough to say simply that the cardholder was (or must have been) grossly negligent.

If the losses were caused just by the cardholder's negligence, then we would generally expect the card issuer to refund them (possibly with the exception of the first £50). But if the card issuer believes that the cardholder carried out the transactions, or authorised someone else to do so, then we would expect the firm to provide us with the reasons for that belief, and any supporting evidence.

Firms will not always be able to provide evidence to support their suspicions about disputed transactions. Particular difficulties can arise, for example, when family members are suspected of involvement. They might have legitimate access to security information, and might also be in a position to use cards without the holder knowing immediately. We are, however, familiar with the security systems which firms have in place – and the difficulties that these present to the opportunistic third-party fraudster.

case studies – using plastic cards as credit-tokens

46/1

disputed cash machine withdrawal – plastic card used as credit-token

Mr B came to us after the firm rejected his complaint about what he said was an unauthorised cash withdrawal made with his credit card.

He said he had given his credit card and PIN to his mother, so that she would have an emergency source of cash while she was on holiday in Spain for three weeks. She used the card to make several cash machine withdrawals during the first two weeks of her holiday. However, Mr B's credit card statement showed a further withdrawal of £500 that was made during the third week of her holiday.

Mr B said that his mother told him she had not made this £500 withdrawal. However, she recalled being distracted by a man who was standing behind her on one of the occasions when she had withdrawn money during her holiday. Mr B suggested that this man must somehow have been responsible for the £500 withdrawal.

complaint rejected

Mr B's mother had only used the card at cash machines. There was no evidence that any of the machines she used had been tampered with – so there did not appear to have been any opportunity for the card to be 'cloned'.

The card had remained in her possession throughout the holiday. So even if the man had deliberately distracted her in order to observe her entering her PIN, he had not been able to obtain her card, so could not have withdrawn any money.

The disputed withdrawal of £500 was followed just one minute later by the withdrawal of a much smaller amount (which was not disputed) from the same cash machine. Even if the card had been cloned, the chances of a cloned card being used at the same cash machine at the same time as the genuine card were remote in the extreme.

Initially, Mr B had not mentioned that he had given the card to his mother. When he first complained to the firm about an unauthorised cash withdrawal, he had said that the card had been in his possession at the relevant time. He later said that it had been lost – and it was only some months later that he said that he had lent it to his mother.

We did not consider Mr B's version of events to be either consistent or reliable. In any event, he had given his mother the card and PIN voluntarily. If she had then used them for purposes which he had not intended, that was a matter between them. We did not uphold his complaint.

46/2

plastic cash machine withdrawal – plastic card used as credit-token

Mrs A was very unpleasantly surprised when her statement showed that – over a 2-week period – withdrawals totalling £5,000 had been made from local cash machines. She knew that she had not made the withdrawals herself. She rarely used her credit card, which she kept in a desk drawer at home – together with the details of her PIN that the firm had sent her.

Mrs A contacted the firm to say that she had not made the withdrawals. She also reported the matter to the police – adding that she thought her teenage son might have been responsible.

The police later charged Mrs A's son, and he was convicted of offences under the Theft Act. He did not suggest in his defence that his mother had allowed him to use the card.

The firm told Mrs A that she was liable for the withdrawals because she had been grossly negligent in the care of her card and PIN. It cited the card terms to support its view. Unhappy with the firm's stance, Mrs A came to us.

complaint upheld

We were satisfied that the withdrawals had been made without Mrs A's authority. We thought that if she *had* authorised the withdrawals:

- it was *unlikely* that she would have told the police that she suspected her son; *and*
- it was *likely* that her son would have mentioned it in his defence.

The card had been used as a credit-token, so it did not matter that the card terms said that Mrs A would be liable if she failed to take reasonable care of her card and PIN. This was because the provisions of the Consumer Credit Act take precedence.

We agreed with the firm that Mrs A had been grossly negligent in the care of her card and PIN. So she was made liable for the first £50 of the losses. We required the firm to refund the rest.

46/3

plastic card used as a credit-token – cardholder lends card to a colleague for a specific transaction – cardholder denies liability when the colleague then uses the card for a further transaction

Shortly before he was due to take some clients out to lunch, Mr D remembered that his credit card was very close to its limit. He persuaded his colleague, Mrs G, to give him her credit card and PIN, on the understanding that he would use the card to withdraw sufficient cash to cover the cost of the meal. He said he would pay the money back to her at the end of the month.

A few weeks later, when Mrs G's card statement came through, she found that – on the same date that she had lent her card to Mr D – the card had been used to pay for a number of very expensive drinks at a club. Mr D strenuously denied making this second transaction and refused to reimburse Mrs G, so she contacted the firm.

The firm agreed with Mrs G's view that Mr D *had* made the additional transaction and it accepted that she had not specifically authorised it – in that her authority to Mr D had extended only to his withdrawing a certain amount from a cash machine. However, it said that she was still responsible for the transaction. Mrs G then came to us.

complaint rejected

The card terms said that the firm could hold Mrs G liable for all losses that arose from the misuse of her card by a third party who had possession of it with her permission. This provision was not inconsistent with the Consumer Credit Act, and we did not think it was unfair to allow the firm to enforce it.

It was, of course, arguable that Mrs G had been grossly negligent. But that, of itself, would not have been enough to make her liable for the unauthorised transaction – because the Act would have limited her liability to £50. The reason Mrs G was liable was because Mr D had the card with her permission; the card terms said that she would be liable for all losses arising in such circumstances.

non-disclosure in insurance cases

'*Non-disclosure*' refers to the situation where a customer fails to reveal a relevant fact when applying for – or renewing – an insurance contract. It is widely recognised that in some situations involving non-disclosure, applying the strict legal position can result in an unduly harsh outcome for the customer. For this reason, when we deal with insurance cases involving non-disclosure or '*misrepresentation*' – an incorrect statement made by a customer – we take account of both the law and good industry practice.

the legal position

An insurance contract is a '*contract of utmost good faith*', which means that all parties to the contract are under a strict duty to deal fully and frankly with each other. Customers must disclose all facts that are '*material*' (or relevant) to the risk for which they are seeking cover.

A '*material*' fact is one which would influence an underwriter when they were deciding whether to accept the risk, and the terms and conditions that should apply. If a customer fails to disclose (or misrepresents) a material fact and this induces the insurer to accept the proposed risk, the legal remedy is to '*avoid*' the policy. This means the insurer is entitled to treat the policy as though it never existed. Unless fraud is involved, the insurer will normally return the premium and will not pay out on any claim made under the policy.

good industry practice

The Association of British Insurers (ABI) provided important safeguards for policyholders. It published statements of practice which said that insurers should ask clear questions about facts they considered material. In deciding whether to avoid a policy, insurers should rely only on the answers given or withheld. They should also only avoid policies where the non-disclosure or misrepresentation was deliberate or *reckless*, not where it was *innocent*. The ABI made it clear that customers were required to answer questions only to the best of their knowledge and belief.

Most of the ABI statements have been withdrawn since the introduction of the Financial Services Authority's *Insurance: Conduct of Business Rules* (ICOB) on 14 January 2005. The principles found in the ABI statements remain useful examples of good industry practice, and as such we still take them into account. The ICOB also outlines some of those principles.

... we take account of both the law and good industry practice.

For example, ICOB Rule 7.3.6 provides that:

An insurer must not:

1. *unreasonably reject a claim made by a customer;*
2. *except where there is evidence of fraud, refuse to meet a claim made by a retail customer on the grounds:*
   a. *of non-disclosure of a fact material to the risk that the retail customer could not reasonably be expected to have disclosed;*
   b. *of misrepresentation of a fact material to the risk, unless the misrepresentation is negligent...*

ICOB Rule 4.3.2(3) deals with advising and selling standards, and states that:

In assessing the customer's demands and needs, the insurance intermediary must... explain to the customer his duty to disclose all circumstances material to the insurance and the consequences of any failure to make such a disclosure, both before the... insurance contract commences and throughout the duration of the contract; and take account of the information that the customer discloses.

ICOB Rule 4.3 goes on to stress that:

In relation to ICOB 4.3.2(3), an insurance intermediary should make clear to the customer what the customer needs to disclose. For example, in relation to private medical insurance, this could include any existing medical condition where relevant, or in relation to motor insurance, any modifications carried out to the vehicle.

... for non-disclosure to occur, the insurer *must* show that it asked clear questions.

the Financial Ombudsman Service approach

Taking account of the law and good industry practice, we approach non-disclosure/ misrepresentation cases in three stages. We summarise these three stages below, before describing each one in a little more detail.

1. When the customer sought insurance, did the insurer ask a clear question about the matter which is now under dispute?
2. Did the answer to that clear question *induce* the insurer; that is, did it influence the insurer's decision to enter into the contract at all, or to do so under terms and conditions that it otherwise would not have accepted?
3. Only if the answers to both (1) and (2) are '*yes*', do we go on to consider whether the customer's misrepresentation was an honest mistake, a dishonest attempt to mislead or due to some degree of negligence.

1 clear questions

The insurer must first provide evidence that it asked the customer a clear question when the customer asked to take out or renew a policy. The insurer may ask questions via a traditional proposal form, which records the answers.

In many cases the transaction will have taken place over the telephone. If there is no evidence, such as a call recording and/or a copy of the statement of facts that the insurer has sent the customer, then we will have to decide what is likely to have happened. If the customer gives a credible account of events, we may find it more likely than the insurer's version.

A similar statement of fact would be required for internet sales; as would some evidence of the questions asked during the website process, *as it existed at the time of the application*.

In order for non-disclosure to occur, the insurer *must* show that it asked clear questions.

2 inducement

Legally, the insurer must establish that the non-disclosure or misrepresentation '*induced*' (or influenced) its decision to enter into the contract. This was established in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd (Reported [1994]* in Volume 3 of the Weekly Law Reports at page 677).

If the insurer cannot prove inducement then the policy will remain valid, even if the non-disclosure was deliberate. The burden of proving inducement will not be high in clear-cut cases. For example, if a customer fails to disclose that their house has serious cracks, we are likely to believe the insurer would not have offered them full buildings insurance.

... everything turns on the individual circumstances.

However, it is rare for cases to be this clear-cut and we will usually require evidence that inducement took place. This may be in the form of a statement from the underwriters and/or a copy of the underwriting manual.

3 the customer's state of mind

Not all instances of non-disclosure or misrepresentation breach the duty of '*utmost good faith*'. We have identified four types of non-disclosure (*deliberate, reckless, innocent,* and *inadvertent*) to help us decide whether, with regard to all the available evidence, the customer acted in breach.

It is possible to deliberately non-disclose without being fraudulent. While dishonesty is one of the essential criteria for fraud, there must also be deception, designed to obtain something to which you are not entitled. For example, a customer might deliberately withhold information they are embarrassed about. Although, in doing so, they are acting dishonestly and deliberately, they are not acting fraudulently because there is no deceitful intention to obtain an advantage.

Only where there is clear evidence of fraud should the insurer retain the premium. In all other cases of deliberate or reckless non-disclosure, the premium should be returned, not least so as to protect the insurer's position. Retaining the premium could be interpreted as an intention to affirm the contract and/or waive the right to 'avoid'. Our experience is that most insurers return the premium in any event.

deliberate

Customers *deliberately* mislead the insurer if they dishonestly provide information they know to be untrue or incomplete. If the dishonesty is intended to deceive the insurer into giving them an advantage to which they are not entitled, then this is also a fraud and – strictly speaking – the insurance premium does not have to be returned.

reckless

Customers also breach their duty of good faith if they mislead the insurer by *recklessly* giving answers without caring whether those answers are true or false. An example of recklessness might be where a customer signs a blank proposal form and leaves it to be filled out by someone else. The customer has signed a declaration that '*the above answers are true to the best of my knowledge and belief*', but does not know what those answers will be.

innocent

Customers act in good faith if their non-disclosure is made *innocently*. This may happen because the question is unclear or ambiguous, or because the relevant information is not something that they should reasonably know. In these cases, the insurer will not be able to 'avoid' the contract and (subject to the policy terms and conditions) should pay the claim in full.

inadvertent

A customer may also have acted in good faith if their non-disclosure is made *inadvertently*. These are the most difficult cases to determine and involve distinguishing between behaviour that is merely careless and that which amounts to recklessness. Both are forms of negligence.

Inadvertence occurs when the customer unintentionally misleads the insurer. This can occur just by failing to read and check the questions and answers thoroughly enough. When this happens there is no breach of the duty of utmost good faith.

For example, a policy application may contain a clear question about motoring convictions and penalty points. The customer discloses a careless-driving conviction but fails to disclose that they have three penalty points for speeding. In that situation, we might believe that the customer genuinely overlooked his conviction. The customer clearly did not intend to mislead the insurer because he disclosed the more serious offence; he simply failed to realise that penalty points were also part of the question. So the insurer should act as it would have done if it had been in possession of the full facts.

Where there has been inadvertent non-disclosure or misrepresentation, we expect insurers to rewrite the insurance. This should be done on the terms they would originally have offered if they had been aware of all the information. In some cases this may result in a proportionate payment; in others it may result in no payment at all. This is because the inadvertently-withheld information would, if disclosed, have led to the firm declining the application altogether.

Everything turns on the individual circumstances. Customers will find it more difficult to prove that they acted inadvertently if they answered several questions badly. To get one or two questions wrong may be regarded as inadvertent; to get several wrong starts to look like recklessness.

mortgage endowment complaints referred to the ombudsman service *after* the customer has accepted the firm's offer of redress

We receive a small, but not insignificant, number of mortgage endowment policy complaints where the customer complained to the firm, the firm offered redress and then:

- the customer accepted the offer, but the firm failed to pay up; *or*
- the customer accepted the offer and the firm paid up, but the customer then wanted to re-open the complaint.

The following case studies highlight our general approach to such cases.

case studies – mortgage endowment complaints referred to the ombudsman service *after* the customer has accepted the firm's offer of redress

46/4

mortgage endowment policy – redress offered and accepted – but firm refuses to pay up

Mr and Mrs H were concerned when they received a 're-projection' letter from the firm, indicating that their mortgage endowment policy would not produce enough to repay their mortgage when it matured. The couple complained to the firm, saying that that this possibility had not been pointed out to them when they had taken out the policy in 1990.

After a three-month investigation, the firm wrote to Mr and Mrs H saying that it did not think its recommendation of a mortgage endowment policy had been suitable for them, bearing in mind their needs and circumstances at the time of sale.

The firm offered the couple compensation '*in full and final settlement*' of the complaint and it asked them to sign and return a pre-printed acceptance form, confirming that they were prepared to accept the offer on that basis. The compensation would put them in the position they would have been in if, at the outset, they had taken out a repayment mortgage instead.

Mr and Mrs H signed and returned the form, but the firm then refused to pay up, so the couple brought their complaint to us.

complaint upheld

We contacted the firm and asked why it had not paid the compensation agreed. The firm said that after Mr and Mrs H had returned the acceptance form it had reviewed its file – particularly the notes from the couple's initial meeting with the firm in 1990, when they were advised to take out the mortgage endowment policy.

These notes showed that in 1990 Mrs H had been working as a cashier for a building society – while Mr H had an existing endowment policy which he had taken out some years before for savings purposes. The firm decided that its recommendation had – after all – been suitable.

... we told the firm to pay the compensation it had promised.

Having considered the terms of the firm's offer and of the couple's acceptance, we concluded that it was not open to the firm to withdraw its offer in this way. The firm had entered a binding agreement which Mr and Mrs H were entitled to enforce.

In the circumstances, we decided not to look at the underlying merits of the original complaint. We told the firm to pay the compensation it had promised, together with a small payment to compensate the couple for the distress and inconvenience that the firm's delay had caused.

■ **46/5**

mortgage endowment policy – redress offered and conditionally accepted – firm refused to pay up.

Mr J complained to the firm that it had wrongly advised him to take out a mortgage endowment policy. The firm explained that it no longer had any documentation from the time of sale, so could not be certain whether or not its recommendation had been suitable for him. However, it offered to pay compensation that would put Mr J in the position he would now have been in if, at the outset, he had taken out a repayment mortgage instead.

The firm asked Mr J to sign and return a pre-printed acceptance form, confirming that he was prepared to accept its offer '*in full and final settlement*' of his complaint.

Mr J did not think the offer compensated him adequately. He told the firm that, in his view, the offer was '*acceptable*' for the '*out of pocket losses*' he had incurred. However, he said it did not compensate him for the distress and inconvenience he had suffered when he discovered the policy might not produce enough, when it matured, to pay off his mortgage.

Mr J asked for a further £1,000 and said he would exercise his right to refer the complaint to us if the firm did not agree.

At that stage, the firm made further enquiries about Mr J's circumstances at the time of the sale. It found out that he had become a financial adviser shortly after he had taken out the policy – and that he had subsequently arranged a number of endowment policies for himself. The firm then told Mr J that it was no longer prepared to offer him any compensation, so he came to us.

complaint rejected

Mr J said he was very unhappy with the firm's change in stance. He said it should honour the terms of its original offer and he supported his view by pointing out that when he first responded to the offer he had described it as '*acceptable*'.

Mr J *had* described the compensation as '*acceptable*' for some of the losses he had claimed. However, having considered the terms of the letter, we were not persuaded that Mr J had actually accepted the offer. We concluded that:

- The firm had made an offer '*in full and final settlement*' of the complaint. Mr J had not accepted the offer on that basis.

- Mr J's letter seeking a further £1,000 compensation to settle the complaint was a counter offer, which the firm was entitled to accept or reject.

- The counter offer replaced the original offer and the firm was not under any obligation to reinstate the original offer.

We also concluded that as there was no binding settlement agreement, we could go on to consider the merits of Mr J's original complaint about the sale of the policy.

46/6

mortgage endowment policy – redress offer made and accepted but customer then tries to re-open the complaint

When Mrs C became aware that her mortgage endowment policy might not pay out its target amount when it matured, she complained to the firm that sold her the policy. She said that the adviser had told her the policy was '*guaranteed*' to pay out at least the target amount, so the firm should '*honour its promise*'.

The firm did not accept that Mrs C had been given a guarantee about how much the policy would pay out at the end of the term. However, it was satisfied that it should not have sold her the policy. It agreed to pay compensation that would put her in the position she would have been in if she had taken out a repayment mortgage at the outset.

The firm explained how the compensation would be calculated and told Mrs C that its offer had been made in accordance with the regulator's guidance.

Mrs C accepted the offer in '*full and final settlement*' of her complaint and used the compensation to pay off part of her mortgage. However, she decided not to surrender her policy. A few months later, she received a re-projection letter from the firm. This indicated that the amount that her policy was likely to pay out when it matured was now even less than the amounts that had been quoted in earlier years.

Mrs C contacted the firm, saying that she was '*extremely distressed*' by this. She asked it to pay her more compensation, which she said should not only reflect the increase in the amount of the projected shortfall, but also compensate her for the 'guarantee' she believed the firm had given her at the outset. When the firm told her it was not prepared to re-open the complaint, she came to us.

complaint rejected

Having carefully considered the terms of the offer that Mrs C accepted, we concluded that the firm should not pay her any further compensation. We also decided that we should not investigate the merits of Mrs C's original complaint. This was because:

- when the firm responded to Mrs C's complaint, it had addressed her claim that she had been given a '*guarantee*';
- as it had claimed, the firm had offered her compensation – calculated in accordance with regulatory guidelines;
- Mrs C had accepted the offer in '*full and final settlement*' of her complaint, so she could not make a further complaint about the same issues;
- despite knowing the risks, Mrs C had kept the policy after receiving the compensation. She could not expect to be compensated for any further losses she had incurred as a consequence of that decision.

our 2005 series of conferences for firms

This year we are again running a series of conferences in various centres around the UK, focusing on current complaint topics, the handling of complaints and the ombudsman process. Aimed primarily at financial services practitioners, the conferences feature:

- presentations by our ombudsmen and senior adjudicators
- discussion groups and case studies
- first-class conference venues
- refreshments, including buffet lunch
- value for money – we run these conferences on a not-for-profit basis, charging just £125 + VAT per delegate, to cover our costs.

Places are limited and are filling up quickly. Book promptly to avoid disappointment.

For more information and a booking form, see our website www.financial-ombudsman.org.uk or complete this form, ticking the conferences(s) you are interested in, and send it (or a photocopy) to

Kerrie Coughlin, communications team
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

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☐	12 May	IFAs, mortgage and insurance intermediaries	The Brewery, Chiswell Street, London EC1
☐	30 June	IFAs, mortgage and insurance intermediaries	Weetwood Hall, Leeds
☐	6 October	life, investment, banking and Insurance firms	Glasgow
☐	27 October	banking firms	Barbican Conference Centre, London
☐	10 November	insurance firms	Barbican Conference Centre, London
☐	1 December	life and investment firms	Barbican Conference Centre, London

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ask ombudsman news

review of mortgage endowment complaints

the manager of a consumer advice bureau writes...

Q We have a client whose complaint about his mortgage endowment policy was rejected both by the firm concerned – Abbey – and by yourselves. He has been to see us this week to say he heard in the news that these complaints are now to be looked at again. Is this true?

A Abbey recently agreed with the regulator – the Financial Services Authority (FSA) – that it would review the decisions it made on a large number of mortgage endowment complaints that it had previously rejected. However, this does not include complaints that have already been referred to – and rejected by – the ombudsman service. For more information look on the FSA's website (www.fsa.gov.uk) or see the news page of our website (www.financial-ombudsman.org.uk).

on-line payment problems

a community advice worker writes...

Q My client recently bought a camera though an internet auction site, using their on-line payment system. She used her credit card to put money into her account with the payment system – so that the money could then be transferred to the seller's account with the payment system. But although the money was taken from her account with the payment system, the camera never arrived. She wants her money back, but no-one seems to want to help. Who should she be claiming against – the payment system, or her credit card company?

A Probably the on-line payment system rather than the credit card company. Sometimes customers of on-line payments systems can benefit from 'buyer protection' if things go wrong. But it's less likely your client will have a valid complaint against the credit card company, because she didn't pay for the camera directly with the credit card.

In other words, there was no 'debtor-credit-supplier' agreement under Section 75 of the Consumer Credit Act 1974, so there's no real basis for her to make a claim against the credit card company.

working at the ombudsman service

Q I am interested in working for the Financial Ombudsman Service. How can I find out what type of jobs there are, and the sort of qualities you look for when recruiting staff?

A A good starting point is the job opportunities pages on our website: www.financial-ombudsman.org.uk/recruitment/index.html. These list our current vacancies and, for each role, give information about the type of experience and personal competencies we are looking for. We also give details of our flexible benefits package.

As you might expect, the Financial Ombudsman Service employs staff in a wide range of roles – including IT specialists, front-line customer consultants and administrators.

Generally speaking, however, most of our vacancies are for adjudicators. When recruiting adjudicators we look for talented people with financial services, complaints-handling, compliance or legal experience/qualifications. Equally important, they must be able to remain unbiased, keep an open mind, and exercise sound judgement. Adjudicators we have recruited include former IFAs and trading standards officers, accountants, solicitors and people from banking and insurance backgrounds.

We recognise the importance of training and development. As well as providing a tailored induction programme and on-the-job instruction and mentoring, we offer employees the opportunity to take in-house and external training courses, and to study for relevant exams – as part of our commitment to the continuing professional development of our staff.

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