ombudsman news

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

Financial Ombudsman Service

settling financial disputes, without taking sides

issue 66

not a rock in sight

Walter Merricks
chief ombudsman

Wherever I go at the moment, I find I'm greeted with a degree of sympathy – as people inquire about the avalanche of consumer complaints that they assume must have fallen on top of the ombudsman service as part of the Northern Rock affair.

In fact, we have experienced no such avalanche. The people we saw on TV and in the newspapers – waiting in patient, orderly fashion to withdraw their money from local branches – have not been forming similar queues to complain to us about problems or delays in accessing their savings. And we've received relatively few enquiries from consumers worried about the safety of their bank and building society accounts more generally.

So while commentators have talked about the blow that the Northern Rock crisis has caused to consumer confidence in financial services, this isn't something we have seen any particular evidence of at the ombudsman service.

But perhaps the number of consumers who did (or didn't) come to the ombudsman isn't the best indicator of how the Northern Rock affair affected consumer confidence. Instead, what's interesting is the number of consumers who responded to the news by immediately taking matters directly into their own hands.

It's a salutary lesson that the short, sharp shock of a bank in crisis appears to have done more to focus some consumers' interest in the management of their own finances than any number of educational campaigns and money-awareness initiatives.

in this issue

edited and designed by the publications team at the Financial Ombudsman Service

December 2007/January 2008

In response to the news about Northern Rock, people whose entire life savings had languished for years in low-interest current accounts – people too inexperienced, too uninformed, or perhaps just too busy or bored, to shop around for a better rate or better account – were suddenly making decisions and taking control of their finances in the most dramatic and empowered way.

So if we're looking for a silver lining to the grey cloud of Northern Rock, this demonstration of consumer engagement might just point to a world where the active involvement of well-informed customers could help create a more effective market in financial services. And in the longer run, that could mean fewer complaints to the ombudsman. We'll see.

Walter Merricks, chief ombudsman

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disputes about the valuation of motor vehicles

We regularly deal with complaints from people who believe that their insurer has not properly valued their car or motorbike. The problem usually arises after a vehicle has been so badly damaged in an accident that the insurer decides it is a 'total loss' (popularly known as a 'write-off') and not worth repairing.

In these circumstances, the policyholder is entitled to receive an amount equal to the vehicle's market value immediately before it was damaged – and the insurer should offer this amount straightaway.

These case studies are based on disputes we have dealt with recently. They illustrate some of the issues that can arise after a vehicle has been declared a total loss – as well as showing how we assess whether or not a disputed valuation was correct.

66/1

motor vehicle insurance – dispute over insurer's valuation

After Mr W's 1989 Saab saloon was badly damaged in a road traffic accident, the insurer offered him £700, which it said was the car's pre-accident value. The insurer had calculated that repairing the car would cost considerably more than the car's market value.

Mr W was far from happy with the insurer's offer. He thought it was based on an inaccurate valuation and failed to take the car's particular features into account. He sent the insurer details of these features and suggested that £2,600 was a more realistic figure.

The insurer subsequently increased its offer to £1,040. Mr W still thought this was inadequate. He complained to us about both the valuation and the poor service he felt he had received from the insurer. To support his view of the car's value he sent us copies of a number of newspaper and magazine advertisements for the sale of similar vehicles.

complaint upheld

The advertisements Mr W had sent us were not particularly persuasive. Apart from anything else, they featured many different models – including

convertible and turbo Saabs. We pointed out to Mr W that a number of apparently minor details – for example in the model type or mileage – can significantly affect value. And sellers usually inflate the price they state in such advertisements, to allow for a degree of negotiation. So advertisements rarely provide sufficient detail for an accurate 'like for like' comparison, such as that needed to provide a proper valuation.

We explained to Mr W that our usual approach when assessing the value of vehicles is to consult the major motor-vehicle trade-guides. These guides are published regularly and provide detailed information on the market valuation of most makes and models.

In this particular instance, we noted that the trade guides showed a value that was significantly higher than the £1,040 that the insurer had offered Mr W. However it was less than the £2,600 Mr W felt the vehicle was worth.

We had been surprised by the amounts the insurer had originally offered Mr W, as we could not see that they had any reasonable basis.

We told the insurer to offer what we considered to be a fair amount, based on the trade guides we had used. We said it should also pay Mr W £150 to compensate him for the distress and inconvenience it had caused him.

... our usual approach is to consult the major motor-vehicle trade-guides.

66/2

motor vehicle insurance – dispute over insurer's valuation

Mrs B paid £7,995 for a second-hand 2006 Vauxhall Corsa which had a specialist sports body. Ten days after she bought the car, it was badly damaged in an accident.

The insurer declared the car to be a total loss, as the estimated cost of repairs exceeded £7,000. So it offered Mrs B £6,900, which it said was the fair pre-accident retail value of the car.

After Mrs B rejected this offer, insisting that the insurer had not taken the car's special features into account, the insurer offered her £7,175. Mrs B felt this was still not a fair offer, so she brought her complaint to us.

complaint upheld.
Because Mrs B's car had fairly unusual features, it was not as quick and easy as is usually the case with more standard models to just check in the trade guides for a guide retail price.

However, we told the insurer that if it had contacted the compilers of these guides and made some further enquiries, it should have been able to obtain an accurate guide price for Mrs B's exact model.

The insurer then made the enquiries we said it should have undertaken when Mrs B first made her claim. As a result, it established that the guide price was higher than either of the amounts it had offered Mrs B. We said it should settle the complaint by paying Mrs B the correct guide price.

... the insurer had disposed of his car, even though he had specifically asked it not to do this.

66/3

motor vehicle insurance – dispute over insurer's valuation and its sale of car for salvage

Mr G's 1999 Daewoo was damaged in an accident in July 2006. When he contacted the insurer to make a claim, he stressed that even though the car was badly damaged, he wanted the insurer to return it to him in due course, so he could get it repaired.

However, after deciding that the car was a total loss, the insurer immediately sold it on for salvage. The insurer then offered Mr G £2,125 – representing what it said was the car's pre-accident market value.

Mr G was extremely unhappy to discover that the insurer had disposed of his car, even though he had specifically asked it not to do this. He also complained that the amount he was offered did not accurately reflect the car's value.

The insurer refused to comment on its sale of the car, and it would not reconsider its offer, so Mr G referred the complaint to us.

complaint upheld

Mr G pointed out that the car had benefited from the liquid petroleum gas (LPG) conversion he had carried out just over two years earlier, at a cost of £2,000.

He was firmly of the view that the car could have been repaired, allowing him to retain the benefit of the LPG conversion. He said that the insurer had not only prevented him from attempting a repair, it had also failed to take the LPG conversion into account when it valued the car.

We agreed with Mr G that the insurer had not valued the car correctly. And the insurer did not dispute that Mr G had made it very clear, when he reported the accident, that he wished to have the car repaired.

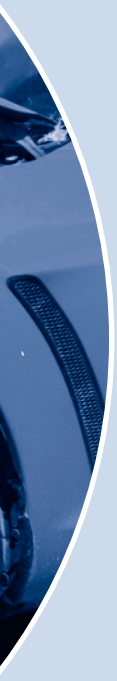
The car had been regarded as a Category 'C' in the '*Code of Practice for the disposal of Motor Vehicle Salvage*'. This meant that although it was uneconomical for the insurer to repair the car, the car *was* repairable.

We said that the insurer had clearly acted incorrectly. Mr G was still the owner of the car at the time the insurer disposed of it. And he had asked the insurer to return the car to him, so that he could arrange a repair.

We told the insurer it should pay Mr G £4,125. This was £2,000 more than the amount it had offered him, and would enable him to buy a car with LPG conversion, to replace the vehicle the insurer had disposed of. We said the insurer should also pay Mr G £400 for the distress and inconvenience it had caused him.

... repairing the car would cost considerably more than its market value.

... We said that the insurer had clearly acted incorrectly.



66/4

motor vehicle insurance – dispute over insurer's valuation – classic car insured on 'agreed value' basis

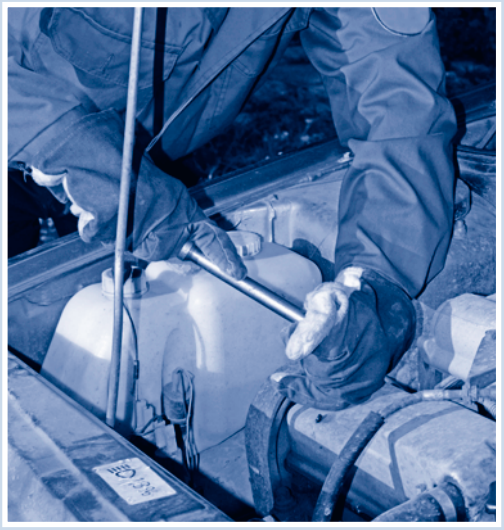
When Mr H bought a classic car, he took out a motor insurance policy on an 'agreed value' basis rather than on the more usual 'market value' basis.

Such policies are generally taken out only by owners of classic or particularly valuable cars, where the value is unlikely to depreciate substantially – if at all.

The value of the vehicle is agreed in advance and insurer is then obliged to pay that amount if the car is lost or damaged beyond reasonable repair. However, the insurer is not obliged to pay for the replacement cost of the vehicle.

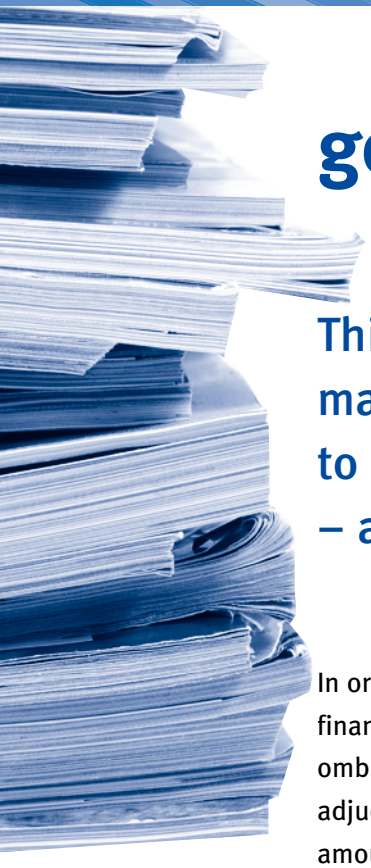
Mr H agreed the value of his classic car under this policy was £2,500. Unfortunately, the car was badly damaged when Mr H was involved in an accident. The insurer took the view that it would cost more than £2,500 to remedy the damage, so it offered him £2,500, in settlement of the claim.

Mr H thought that this figure was far too low. He told the insurer that, bearing in mind the good condition of the car before the accident, it would cost between £4,000 and £5,000 to replace. He therefore wanted the insurer to pay that amount.



complaint not upheld

We noted that Mr H had renewed his annual policy twice – on the 'agreed value' basis – before the claim in question. The policy terms, which had been clearly stated in the policy documents, said that Mr H was entitled to receive the '*agreed value*' of the car – not the cost of replacing it. So we told him we could not uphold his complaint.



getting the facts right

This month's *ombudsman focus* looks at some of the many different types of facts and figures we often need to have at our fingertips when resolving disputes – and how we obtain this information.

In order to resolve the many different types of financial disputes that are referred to the ombudsman service, our ombudsmen and adjudicators clearly need a considerable amount of technical knowledge and expertise in their specialist subject area (such as pensions, mortgages, banking or insurance).

For each individual complaint, our case-handling staff consider carefully all the information – and supporting documentation – provided by each party to the dispute, both when the dispute is first referred to us and in response to our subsequent questions.

But in many cases our staff will also need to obtain or confirm additional factual information. That's because the key to resolving the dispute may well lie in establishing the accuracy or otherwise of some factual detail that lies at the heart of the matter.

It may not come as too much of a surprise to learn that we frequently need to check specific share price data, for example, or that we need access to comprehensive legal and regulatory data. But the very wide range of financial disputes we cover – from banking to pension problems and from stockbroking to pet insurance, means there's potentially almost no limit to the type of factual information that might be needed when looking into the specific circumstances of a particular dispute.

For example, as we illustrate in this issue of *ombudsman news*, ready access to up-to-date price guides is essential when we are looking into motor insurance disputes over the valuation of an insured vehicle. And a long-running insurance dispute over damage to a roof – allegedly caused by storm-force winds – might only be resolved after one of our adjudicators has checked historic weather data, to establish precisely how strong the wind was in that particular policyholder's postcode area on the day in question.

> 'I need a detailed weather report for the following postcode. The dispute hinges mainly on whether there was a tornado here on 22 January 2007.'

> ‘Could you please find me some information about [xxx] Limited. It may have been dissolved by now, but it operated from about 1988 and purchased another company’s client base.’

It certainly helps that so much data is now readily accessible on-line. But getting hold of some of the required information is by no means always straightforward. Tracking down certain types of data may need specialist search skills or be extremely time-consuming. And some specialised on-line services may only be available to a limited number of licence-holders or subscribers.

So the Financial Ombudsman Service has a small team of professional researchers who provide our adjudicators and ombudsmen

> ‘I need to know the BSI requirements for kitchen cooker hoods/extractor fans. The insurance dispute turns on whether the workmen installed a cooker hood incorrectly.’

with a dedicated in-house library and information service. The researchers carry out detailed specialist information requests, as well as maintaining a wide range of library resources in both electronic and the more traditional paper-based forms.

Of the hundreds of queries the team researched last year in connection with the disputes referred to the ombudsman service, the most common involved legal or company-specific information, historic weather data, and details about the rules of previous regulatory bodies.

As well as having access to a wide range of electronic library and archive resources, our research team is able to borrow publications and obtain information from specialist libraries and subscription business information services. For example,

> ‘This consumer has backed up her argument by referring to a magazine article from May 1986. Can you help trace it for us?’

the British Library holds a copy of every book or journal published in the UK, and its document delivery service allows us to borrow publications or purchase photocopies. We also have access to the library collections, document supply services and enquiry services of organisations including the Chartered Insurance Institute.

The questions quoted on this page illustrate some of the wide range of queries that our research team tackles each day, to help provide our adjudicators and ombudsmen with all the information they need to resolve disputes. ❖

complaints involving mortgage intermediaries

These case studies illustrate some recent complaints brought to us involving mortgage intermediaries. By and large, such cases concern very similar issues to those we see in complaints about mortgage lenders, including advice, charges and administrative problems.

When something goes wrong with a mortgage arranged through an intermediary, consumers can sometimes be confused about whether responsibility for the problem lies with the lender or the broker. In such instances we can help consumers to identify where they should be directing their complaint.

... the broker had forgotten to act on her request.

66/5

intermediary arranges re-mortgage on a 'tracker' basis for customer who wanted a fixed-rate

After consulting a mortgage broker, Ms J took out a mortgage that offered a fixed interest rate for two years.

Soon after the fixed-rate period ended, she visited the broker again. She asked him to arrange a re-mortgage as she was having difficulties affording the new – variable rate – repayments.

On the broker's recommendation, Ms J agreed to take out a mortgage offering a 2-year 'tracker' deal. With mortgages of this type, the interest rate is usually directly linked to the Bank of England's base interest rate and rises (or falls) right away – as soon as the Bank of England announces a change.

A couple of days later, Ms J contacted the broker to say she had changed her mind and would prefer the certainty of a mortgage with a fixed rate of interest. The broker agreed to arrange this for her. However, as she later discovered, he never got round to doing so.

When Ms J rang him a few weeks later to find out what was happening, the broker had to admit that he'd left it too late to act on her request. Her application for the 'tracker' mortgage had been accepted by the lender and the new mortgage arrangement had already been set up.

... because of the broker's oversight, she was now unable to afford the repayments.

Within a relatively short period after Ms J had changed to the new mortgage, the Bank of England increased interest rates several times – so there had been immediate, corresponding, rises in Ms J's repayments.

Ms J complained to the broker and asked him to pay her compensation. She said that because of his oversight she now had '*the wrong type of mortgage*' and was unable to afford the repayments.

She said the broker should also compensate her for the fact she had not been able to proceed with the purchase of a new flat. This was because of the very high cost of the mortgage repayments she was now having to make. When the broker refused her request, Ms J brought her complaint to us.

complaint upheld in part
We established that that the broker could easily have obtained a fixed-rate mortgage for Ms J, had he dealt promptly with her request.

Ms J told us that – at the time she applied for the re-mortgage – she had been planning to buy a new flat. We accepted that the increased cost of her mortgage meant she had lost the opportunity to buy the particular property she had wanted. However, we were not persuaded that the broker should be liable for that. The broker was only ever arranging a re-mortgage, and could not reasonably have realised that this might also affect a separate property purchase.

So we upheld the complaint in part. We said the broker should pay Ms J compensation to cover the difference between what she would have paid, if she'd had the mortgage she had asked for, and the total amount she was likely to have to pay over the same period with the 'tracker' mortgage. We said the broker should also pay Ms J £250 for the distress and inconvenience his error had caused her.

66/6
intermediary persuades clients to re-mortgage when this was not necessary

After visiting a mortgage broker, Mr and Mrs C obtained a mortgage that offered a special rate of interest for the first two years. Towards the end of the two-year period, the broker made an appointment to see them again, to discuss their mortgage options.

... he said it would be better to take out a new mortgage with a different lender.

He told the couple that when the two-year deal came to an end, the interest rate on their mortgage would increase and they would then have to pay the lender's standard variable rate. So he said it would be better for them to take out a new mortgage with a different lender.

Acting on the broker's recommendation, Mr and Mrs C re-mortgaged. However, some months later they discovered that if they had stayed with the original lender, the rate would not have increased in the way they had been led to believe.

The broker refused to accept responsibility for the costs the couple had incurred as a result of a re-mortgage that had not, as it turned out, been necessary. Mr and Mrs C then referred the complaint to us.

complaint upheld
We found that the broker had misled Mr and Mrs C. Before recommending what he had told them was a '*more suitable*' deal, he should have carried out a proper review of the terms of their existing mortgage. He admitted that he had failed to do this. We said he should refund Mr and Mrs C's re-mortgage costs and pay them £150 for the inconvenience he had caused them.

... he should have carried out a proper review of their mortgage

66/7
mortgage intermediary asked by clients to compensate them for early repayment charge incurred after re-mortgaging

Mr and Mrs D were keen to pay off some large debts and thought the best way to raise the money they would need in order to do this was to re-mortgage.
They therefore consulted a broker.

The couple gave the broker details of their existing mortgage but told him they were not sure whether their existing lender would make them pay an early repayment charge, if they changed to a different mortgage at this stage.

The broker undertook to check on this before proceeding with the re-mortgage. However, he then forgot to do so.

Mr and Mrs D were very annoyed to discover, in due course, that they had incurred an early repayment charge on their old mortgage. They said that if the broker had checked things out properly, as he had promised, then they would have postponed the re-mortgage until the end of the period when an early repayment charge was payable.

complaint upheld in part
We thought it likely that Mr and Mrs D would have wanted to avoid paying the early repayment charge if at all possible – and might therefore have wanted to postpone the re-mortgage. But we also noted that the money they raised by re-mortgaging had enabled them to pay off a number of debts – thereby saving themselves a considerable amount of interest.

... he incurred a substantial early repayment charge on the first re-mortgage.

We said the broker should pay compensation to Mr and Mrs D.

We calculated the amount he should pay, taking into account what the couple had gained – as well as what they had lost – as a result of his failure to check the early repayment charge before he arranged a re-mortgage. We said the broker should also pay Mr and Mrs D an amount that reflected the inconvenience they had been caused.

66/8

client claims that intermediary misled him about the amount he could borrow

Mr K wanted to raise funds by re-mortgaging his home and he asked a broker to arrange this for him.

After having Mr K's house valued, the prospective lender concluded that the property was not worth as much as Mr K had thought. So although the lender made an offer – which Mr K accepted – it was for less money than Mr K needed.

Shortly after the re-mortgage was set up, Mr K applied to the same lender for more money. However, the lender said it would not consider any application for further funding for at least six months.

At the end of that period – still urgently needing more money than he had so far been able to obtain – Mr K decided to re-mortgage again. In doing so, he incurred a substantial early repayment charge on the first re-mortgage.

Mr K then complained to the broker, saying he wanted compensation for the cost of setting up the second re-mortgage and for the early repayment charge. When the broker refused to pay up, Mr K came to us.

complaint not upheld

Mr K told us the broker had encouraged him to accept the initial re-mortgage, even though the amount he was offered was much less than he had wanted. According to Mr K, the broker had assured him that as soon as the re-mortgage was set up, Mr K could immediately apply for more money and would have no difficulty in getting it.

The broker had kept good records of the mortgage advice he had given Mr K. When we examined these records we found nothing to suggest that Mr K had asked for – or received – any assurance about the possibility of obtaining further funds.

There were a number of inconsistencies in Mr K's account of events and he was unable to substantiate his claims that the broker had misled him. There was no doubt that – by re-mortgaging a second time – Mr K had incurred considerable costs. However, we did not agree that the broker should reimburse him for these costs. We did not uphold the complaint.

66/9

client blames broker when lender rejects re-mortgage application on house of non-standard construction

Mr F contacted a broker for help in arranging a re-mortgage. He had decided this was the best way of raising the additional funds he badly needed.

When giving the broker his details, Mr F stressed that the construction of his house was relatively unusual. He was concerned that this might affect his ability to re-mortgage.

However, the broker did not appear to think there would be a problem and he duly submitted Mr F's application. After contacting Mr F to ask a number of detailed questions about the construction of his house, the lender turned down his application.

Mr F was extremely annoyed and said the broker must have been aware, from the outset, that the lender would not lend on properties of non-standard construction. So Mr F complained that the broker should never have processed the application and charged an administration fee.

... the broker should have acted promptly on her request.

complaint not upheld

We were satisfied that the broker had placed the application appropriately. He had sent it to a lender that routinely accepted mortgage applications on many non-standard properties.

The questions the lender had asked Mr F covered specialised matters. These were not details that the broker could reasonably have been expected to ask his client about – or to reach a decision on – before processing the application.

We did not agree with Mr F that the broker should have realised that this particular application would be unsuccessful. We did not uphold the complaint.

problem solved!

Financial Ombudsman Service

... our technical advice desk can help consumer advisers by:

- explaining how the ombudsman service works
- providing informal assistance on how the ombudsman might view a particular issue
- helping you find the information you need about the ombudsman service

technical advice desk – a free and informal service for consumer advisers

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email **technical.advice@financial-ombudsman.org.uk**

or visit our website for more information
www.financial-ombudsman.org.uk

ask ombudsman news

power of attorney

a welfare officer at an older people's charity emails ...

Q Have you been seeing more complaints about the way banks, insurers and financial advisers are dealing with powers of attorney since the *Mental Capacity Act 2005* came into force on 1 October 2007?

A *The Mental Capacity Act 2005* brought the system of powers of attorney in England and Wales more in line with the system which has operated in Scotland since April 2001. Under the new system, the *lasting* power of attorney replaces the *enduring* power of attorney. Some of the more important changes are:

- the document must include a statement of belief, signed by a witness, that the donor* understands the nature of the document;
- it is possible to appoint different attorneys to carry out different acts on behalf of the donor; *and*
- a lasting power of attorney is not effective until it is registered through the Office of the Public Guardian.

* [*The 'donor' is the person who gives someone else legal authority to conduct their legal or financial affairs.*]

Despite all these changes, and the possibility of confusion arising from them, we have not seen any real increase in complaints involving powers of attorney. That may be because we have never seen very many of these complaints in any event, although those we do see tend to raise unusual issues.

It's perhaps also worth pointing out that complaints often do not arise until some time after the power of attorney has been executed, so we would not necessarily expect to see any great change immediately.

bank charges

the manager of a consumer advice agency emails ...

Q I'm dealing with a client at the moment who is unhappy with the way his bank dealt with his complaint about charges for an unauthorised overdraft. I've heard that you can't get involved with such cases at the moment. Could you please let me know what the position is.

A The Office of Fair Trading (OFT) is taking a 'test case' to the High Court in order to get answers to important legal questions about the charges that banks make for unauthorised overdrafts. So we have decided to suspend our work on complaints involving such charges, while we wait to hear the outcome of the test case.

If he has not already done so, your client should let his bank know that he is unhappy with its response to his complaint. Banks are keeping such complaints on hold until they know the outcome of the test case. This may take some time, but banks should then deal with the complaints in line with what the High Court decides.

If, at that stage, your client remains unhappy with the bank's response, then he will be able to refer the matter to the ombudsman service. For more information about unauthorised overdraft charges, see our consumer factsheet on the subject at (www.financial-ombudsman.org.uk/publications/factsheets).