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

ombudsman news

issue 72

Financial Ombudsman Service

... settling financial disputes, not taking sides

the remittance men

Walter Merricks
chief ombudsman

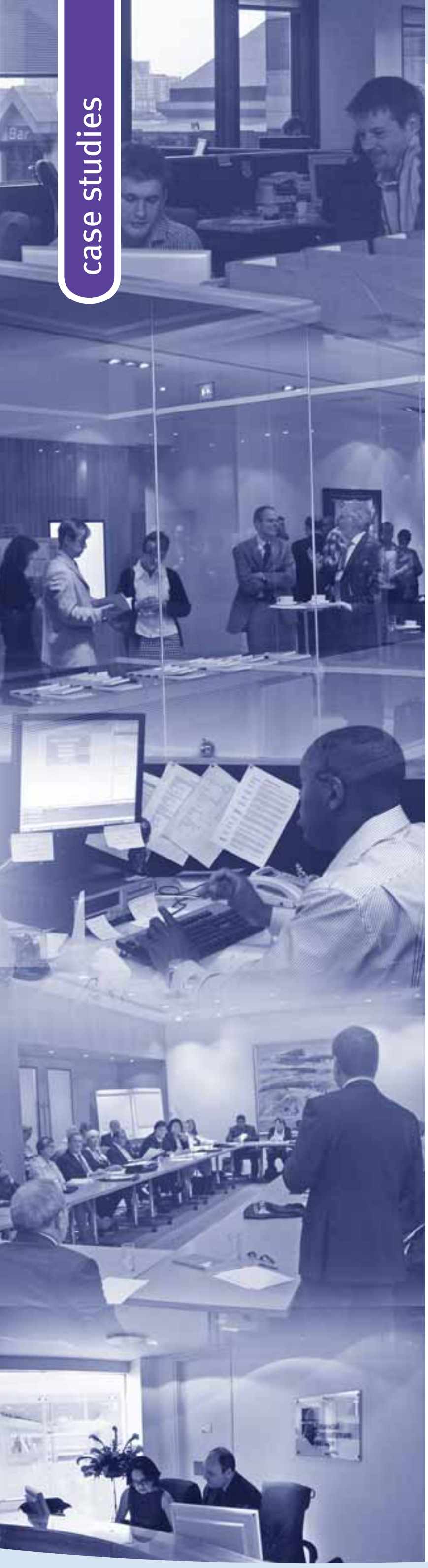
In Victorian times a 'remittance man' was an exiled (perhaps disgraced) Briton living abroad on a small allowance sent from home. Today the meaning has completely changed. Modern remittance men are more usually UK-based workers sending money home to their families in countries such as Poland or Bangladesh. Some of this money will be sent through banks, building societies or e-money issuers – but increasing amounts are being sent through other money-transfer agencies, many of which have small high-street outlets. An EU payment services directive, coming into force with effect from 1 November 2009, is intended to provide more of a level playing field between banks, building societies and e-money issuers on the one hand, and other payment-service providers on the other.

We immediately noticed that the complaints-handling provisions of the directive applied only to transactions made in European currencies and within the European Economic Area (EEA). As a consequence, consumers complaining about payments terminating or originating outside the EEA (or in some other currency) would have a different level of protection – depending on the type of payment-service provider they used.

For example, a remittance of £100 sent to Warsaw to be converted into zlotys, would be covered by us in relation to all payment service providers. But we would only cover a similar transfer to Dhaka, ▸

in this issue

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



for example, to be converted to Bangladeshi taka, if it were transacted by a bank, building society or e-money issuer. And given that our office is based next to the largest community of Bangladeshis outside Bangladesh, we weren't going to overlook that problem – and the difficulties that would arise in trying to explain these complexities of jurisdiction to consumers.

Happily our policy team, working with the FSA and HM Treasury, has found a way to ensure that the Financial Ombudsman Service will be able to cover complaints about all these transactions after the directive comes into force on 1 November 2009. There's no reason to think that this extension of our remit will bring a substantial increase in our workload. But at least we have managed to avoid the potential for much consumer confusion. The playing field in this area will be level, and consumer protection will cover all UK 'remittance men' – and women – including some of our closest neighbours here in the London borough of Tower Hamlets.

Walter Merricks, chief ombudsman

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technical advice desk **020 7964 1400** (this number is for businesses and professional consumer advisers only – consumers should ring us on 0845 080 1800 *or* 020 7964 0500)

motor insurance

complaints involving claims for theft

The following selection of case studies illustrates some of the complaints we have dealt with recently involving the theft of a motor vehicle.

■ 72/1

motor insurer declines claim for theft of car – on grounds that car could not have been taken without the use of the programmed key

Mrs D's teenage son arrived home one afternoon and said her car was missing from the spot where she always left it, just outside her house. Not long afterwards the car was discovered just a short distance away. It was badly damaged and appeared to have been driven off the road and to have caught fire.

The insurer turned down Mrs D's claim. It said its loss adjusters had noted that the car could only have been operated by someone using an 'intelligent' (programmed) key. The key had not been left in the car and Mrs D had not reported that either of her two keys had been lost or stolen. When asked to produce the keys, she had at first been able to find only one of them, although she later found the other key.

Mrs D challenged the insurer's insistence that the car could only have been taken by someone who had the programmed key. In response, the insurer cited a report from motor vehicle security experts, which it said supported its view.

The insurer also suggested that the only other way in which the car could have been moved was by means of a transporter or tow-truck. Either of these would have caused the car's alarm to sound, alerting Mrs D to the theft. But in any case, as far as the insurer was concerned, the fact that the car had been driven off the road immediately before the fire indicated that a key must have been used.

complaint not upheld

Mrs D then referred her complaint to us. She said she had been extremely distressed by the firm's stance and by its implication that she – or someone in her family – had taken the car and caused the accident. She produced evidence from the original dealer to support her argument that the car's security could be by-passed, and that the car could be operated without the use of the programmed key.

It was clear that the incident had caused Mrs D much distress and we did not doubt her honesty. However, we did not uphold the complaint. We noted that the technical evidence Mrs D produced, supplied by the original dealer, was of a very general nature. It did not make any specific reference to the make and model of Mrs D's car. By contrast, the technical evidence produced by the insurer referred very specifically to the exact make and model that Mrs D had owned.

We also took account of the particular circumstances of the case and the possible alternative explanations for what had happened. We concluded, on a balance of probabilities, that the firm had sufficient reasons to refuse to pay the claim.

72/2

motor insurance – theft claim turned down because policyholder failed to disclose relevant information

Mr G referred his complaint to us after his claim for the theft of his car was turned down. The insurer said Mr G failed to disclose relevant information when he applied for his policy. He had not mentioned a claim he made three years earlier for car theft. He had also failed to disclose an earlier accident claim, made the year before he took out this particular policy.

The insurer said that if he had provided all relevant information, the premium would have been approximately £1,000 higher than the amount he had been charged.

complaint upheld in part

Mr G did not dispute that he had failed to provide the information in question. He said the earlier theft had simply slipped his mind when he was filling in the application form, and he had '*not particularly concentrated on the issue of past claims*' when he was seeking a quote.

He argued that his claim should be paid in full, as he did not consider he had done anything wrong. He said he would have been happy to pay the additional £1,000 if he had been asked to do so, and he suggested the firm should deduct this sum from his current claim.

After seeking clarification from both parties, we concluded that Mr G's failure to disclose relevant information was unlikely to have been an 'accidental' or 'casual' oversight, which might in some circumstances have meant that the insurer should still meet the claim. Equally, we could find no evidence to suggest that Mr G had been dishonest in failing to provide the required information. But he did appear to have been very careless and we said the insurer was entitled to turn down the claim, even though there was no reason to doubt the car had been stolen.

However, we did not agree that the insurer had acted correctly when, after deciding not to meet the claim, it retained Mr G's insurance premium. We said it should return this sum to him, together with interest.

72/3

motor insurer declines claim for theft of car – saying car could not have been driven away without use of its programmed key

As he left the house on his way to work one morning, Mr F discovered that his car was missing from the spot where he always parked it overnight. He immediately reported the theft to his insurer and to the police.

The insurer subsequently refused to pay his claim. It said the car could only have been driven away by someone using one of the car's programmed keys. And it provided expert evidence illustrating just how difficult it was to start the ignition on that particular make and model of car without one of the original keys.

Mr F had only been able to produce one of his two keys when it had asked him to hand them over. In the insurer's view, this cast serious doubts over his story.

complaint upheld

Mr F referred the dispute to us. He said he had not had a working second key for some time. He had intended to buy a new one. However, the age of his car meant it was no longer serviced by the main dealer and he had not got round to finding an alternative supplier. As he was the only driver, he had not felt there was any urgency about the matter.

Mr F stressed that he had reported the loss of his car very promptly. He had also provided evidence that he had been at home the evening before he had found the car missing.

After reviewing all the evidence, we found nothing to indicate that it would have been *impossible* to start the car without one of the programmed keys, even though the firm's technical evidence indicated that this would clearly have been difficult.

More importantly, however, we noted that Mr F had very recently had some remedial work done on the car at a local garage. He had previously had the car serviced at several other garages in the area. All of these garages had access to the key – which could be replicated with the appropriate technology.

We noted that Mr F provided strong evidence that he had not left his house at all on the evening immediately before he had reported the car missing. And the insurer accepted that the police report did not indicate anything untoward. On the balance of probabilities, we decided the evidence pointed towards the car having been stolen. We said the insurer should pay Mr F's claim, reimbursing him for the value of the car.

■ **72/4**

several months after repair of accidental damage to his car, policyholder notifies insurer of damage apparently overlooked during the repair

After Mr B's car was damaged in a road traffic accident, his insurer accepted his claim under his comprehensive motor insurance policy. One of the insurer's approved repairers carried out the necessary remedial work and Mr B signed off the work as having been satisfactorily completed.

Four months later, Mr B was involved in another road traffic accident. He later said that as there was only minor damage to his car, he had not contacted his insurer but had simply gone ahead and arranged the repairs.

Mr B said that, while repairing the car, the garage had spotted some damage to the boot that did not seem to have been caused by the most recent accident. So he told the insurer the original repairers must have failed to complete the job properly.

The insurer arranged for a different garage to inspect the reported damage. It also asked the engineer who had inspected the car after the first accident to review his report and the photographs taken at the time.

... there was nothing to connect the damaged car boot to the original accident.

As a result of its findings, the insurer refused Mr B's request that it should pay for the repair of the boot as part of the original claim. It said there was nothing to connect this damage to the original accident. Mr B then brought his complaint to us.

complaint not upheld

After looking at all the evidence, we found nothing to support Mr B's view that his car's boot had been damaged in the original accident. And we did not agree that there had been any '*negligent act or omission*' on the part of the repairers who had carried out the remedial work after the first accident.

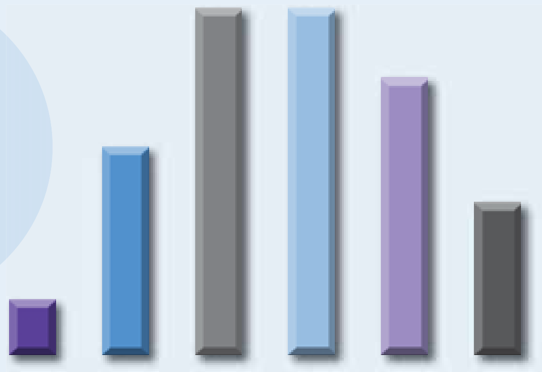
The insurer had not been required to disprove Mr B's allegations. However, by instructing independent experts and seeking clarification from the original inspecting engineer, it had gone to some lengths to try to establish whether it was liable for the damaged boot.

Although it had declined to consider the damaged boot as an outstanding issue from the original claim, the insurer had offered to deal with it as a *new* claim, subject to a new policy excess. We said we thought this was a fair and reasonable offer and we did not uphold the complaint.

knowing our customers

This month's *ombudsman focus* provides a snapshot of what our typical customers look like – using data collected in the first six months of this calendar year (January to June 2008).

what age are consumers who complain to the ombudsman?



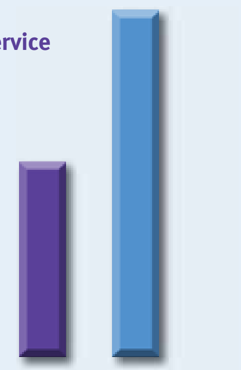
% of complaints to the ombudsman service

under 25	4%
25 to 34	15%
35 to 44	25%
45 to 54	25%
55 to 64	20%
over 65	11%

... and what gender are they?

% of complaints to the ombudsman service

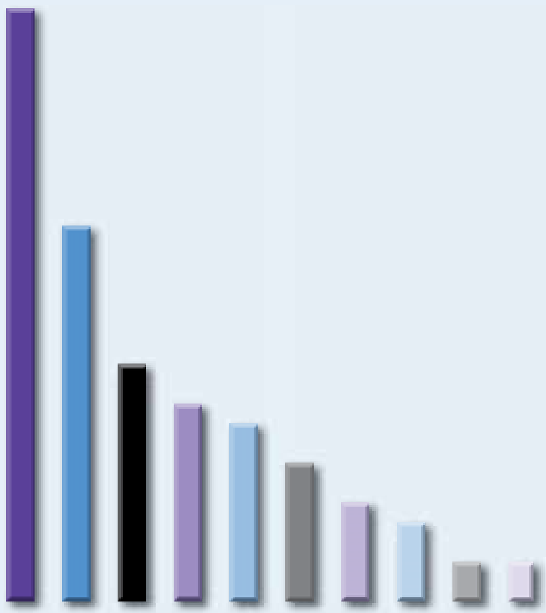
female	36%
male	64%



Each year in our *annual review* we publish a wide range of demographic details about the consumers who use our service.

Collecting demographic data about the kind of consumers who bring complaints to the ombudsman doesn't just give us a closer understanding of the types of people who use the ombudsman service. It also helps us identify specific areas and groups in the community where our service is used less. This is important, because it helps to pinpoint where we need to carry out further research – for example, to see how we should prioritise specific outreach and awareness-raising activities, or where we may need to adjust our casehandling procedures to address particular accessibility issues.

where do consumers who use the ombudsman live?

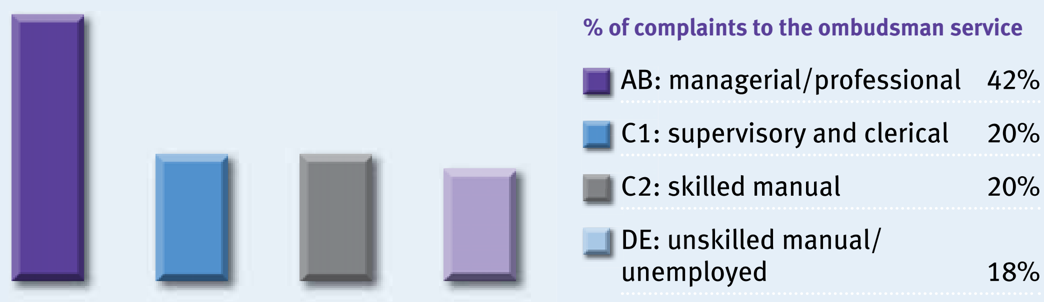


% of complaints to the ombudsman service

South East (including Greater London)	30%
Midlands	19%
North West	12%
South West	10%
North East	9%
Scotland	7%
East Anglia	5%
Wales	4%
Northern Ireland	2%
live outside the UK	2%

The location of people who use the ombudsman service continues broadly to reflect the spread of the population across the UK as a whole.

what's the occupational background of consumers who use the ombudsman?



Our recent policy statement on our strategic approach to accessibility, published in July 2008 and available from our website, included data on the socio-economic background of the consumers using our service. We pointed out that the figures reflected the fact that better-off consumers are likely to hold a larger number of financial products (and are therefore more likely to experience a problem that might give rise to a complaint).

Until recently, complaints to the ombudsman service have been dominated by financial products such as mortgage endowments, which have their own distinct demographic 'profile' of mainly middle-aged homeowners. But this is changing, as our remit has recently extended to cover consumer-credit businesses. These businesses include, for example, debt-collectors, hire-purchase companies and cheque-cashers, whose customers may now have access to the ombudsman for the first time.

As well as analysing demographic information about the consumers using our service, we carry out research into levels of consumer awareness of the ombudsman more generally across the adult population.

According to a *GfK Omnibus* survey in May 2008, 74% of people said they were aware of the Financial Ombudsman Service. Organisations with similar levels of awareness included the Greater London Authority (70%), the charity *Mind* (73%), *Which?* (75%) and the London Olympic Committee (79%). The same survey showed that people trusted the Financial Ombudsman Service more than the Church of England but less than Citizens' Advice.

We also track how many people can actively name us on an *un*prompted basis. As part of market research carried out by *ICM Omnibus*, a cross-section of adults – selected to reflect the adult population of the UK as a whole – are asked the question below:

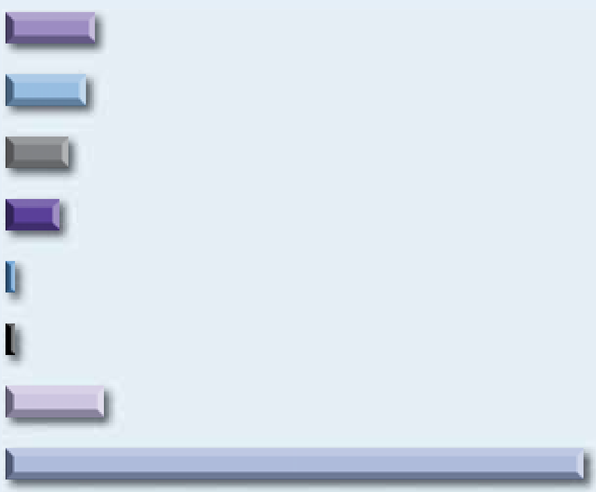
This research includes monitoring how general awareness of the ombudsman varies between different demographic groups. For example, the proportion of people who can name us, *un*prompted, ranges from 4% (for 18-24 years olds) to 14% (for those in the 45-54 age bracket). Awareness is highest in the Midlands and South East and lowest in Northern Ireland (where we are about to launch a targeted awareness-campaign).

The types of businesses that people complain to us about are also recorded and analysed. We will be highlighting some of this data (which we publish in our *annual review*) in a future *ombudsman focus*.

what's the name of the organisation whose job it is to help consumers sort out individual disputes with financial companies like banks, insurance companies and finance firms?

% of consumers

Financial Ombudsman Service	10%
Financial Services Authority (FSA)	9%
Citizens' Advice	7%
other ombudsmen	6%
Trading Standards	1%
Consumer Direct	1%
other	11%
don't know	65%



source: ICM Omnibus, July 2008

case studies involving

equity release schemes

A small but significant number of the cases we see involve investment and banking products aimed at older homeowners, enabling them to raise money by releasing some of the value (or 'equity') in their home without having to sell up and move out. In return, the homeowner agrees to the financial firm having a share in the value of the property.

'Equity release' schemes offering a means of raising money in this way include 'home reversion' plans and 'lifetime' mortgages, including 'shared appreciation' mortgages.

A feature common to all these schemes is the effect they will have on the value of any estate the homeowner wishes to pass on when they die.

Firms offering such schemes generally advise homeowners to discuss their intentions with family members before committing themselves. It is, however, entirely a matter for the individual concerned whether or not they wish to do this.

As our case studies illustrate, some of the complaints we see are made after the death of someone who signed up to one of these schemes. It may only be at that stage that a family member discovers that a financial firm has a substantial interest in the property they had been expecting to inherit in its entirety. In some situations, such as that outlined in case study 72/8, the complications of an underlying family dispute about inheritance may mean the complaint is more suited to resolution by the courts than by the ombudsman service.

72/5

whether firm acted correctly in recommending home reversion plan to elderly homeowner

At the age of 79, Mr V applied successfully for a home reversion plan, which provided him with a cash lump sum and a nominal annual annuity. In return, he transferred part of the freehold of his property to the firm providing the plan. He had already paid off his mortgage some years earlier and wanted to raise some cash to buy a new car and have a holiday in Barbados.

Mr V had not mentioned the home reversion plan to any of his family. It therefore came as quite a surprise to his daughter, Mrs K, when she found out about it several years later. By that time, Mr V had given his daughter power of attorney and it was in that capacity that she complained to the firm.

She said she had serious concerns about its sale of the plan to her father. She thought the firm's assessment of his assets had been inaccurate. And she said she doubted her father would have understood the agreement he was making, as his mental capacity had started to fail at around the time he applied for the plan.

In her view, the terms of the plan were onerous, so the firm should have discussed it with her and other members of the family before Mr V signed the agreement. When the firm rejected the complaint, Mrs K contacted us.

complaint not upheld

We noted from the firm's records that it was Mr V who had provided the firm with the information that his daughter considered inaccurate. The firm's adviser clearly recalled his meeting with Mr V and said that he had thought him perfectly capable of understanding the details of the plan and its implications.

The firm's records showed that, in response to a question about his health, Mr V had said that he was '*generally in good health*', given his age. He had chosen not to elaborate when asked if he was receiving treatment for any existing medical conditions. Mr V had, in fact, recently undergone medical investigations but he had not mentioned this to the adviser. Mrs K later suggested that this was probably because he had not been prepared to accept there was anything wrong with him.

... the firm had acted responsibly and appropriately

We did not think the adviser could reasonably have been expected to doubt the overall picture given by Mr V, unless there had been some clear indication of ill-heath, or mental incapacity which would have been apparent to a lay observer.

We noted that, as part of the application process, the firm had required Mr V to appoint solicitors to act on his behalf in arranging the freehold transfer. Mr V also took independent legal advice from the solicitors, based on written details of the offer that the firm had provided. The solicitors had signed a certificate confirming the issues they discussed with Mr V. These issues included the fact that, by taking out the plan, he would reduce the value of the assets he might wish to leave to his beneficiaries.

We thought it unlikely that the solicitors would have signed the certificate if they had any doubts about Mr V's ability to understand the details of the plan and the consequences of entering into the contract.

We understood Mrs K's disappointment at not having been consulted about her late father's decision to release some of the equity in his home. However, the firm produced clear evidence that it had suggested to Mr V that he might want to involve family members, and that he had decided to proceed alone.

Overall, we were satisfied that the firm had acted responsibly and appropriately when advising Mr V. The plan was not unsuitable for him and the terms and conditions had been fully explained to him. We did not uphold the complaint.

■ 72/6

whether elderly homeowner was appropriately advised to take a home reversion plan in order to pay for property repairs

Mrs B had been finding it increasingly difficult to afford essential repairs to her house, which she owned on a leasehold basis. The firm advised her to take a home reversion plan. This would provide her with a modest income for the rest of her life – and she would be able to use part of the money for property repairs.

The arrangement gave the firm a 90% interest in the value of Mrs B's house. She retained the remaining 10% and the firm lent her a certain amount of money against this. The loan attracted interest, but enabled Mrs B to buy the freehold of her house (since it was one of the conditions of the plan that the property was freehold).

After Mrs B died, the executor of her estate – her sister Mrs M – complained to the firm. She thought the plan had been inappropriate for her late sister's needs, as she considered its terms extremely onerous. She also thought the firm should have ensured that Mrs B obtained independent advice and consulted her family before agreeing to take the plan. When the firm rejected the complaint, she referred it to us.

complaint upheld

The firm had stressed that Mrs B's estate had benefited through her purchase of the freehold. It noted that Mrs B had signed all the relevant documentation and it said this indicated that she had been responsible for her own actions in taking the plan.

After investigating the complaint, our adjudicator upheld it. He accepted that Mrs B had signed the firm's documents, agreeing to take out the plan. However, he noted that she had consulted the firm for professional advice and had been heavily reliant on the firm's guidance. He considered that the firm should have investigated any alternative means of paying for home repairs – such as state benefits or local authority grants – rather than simply recommending the home income plan.

The adjudicator did not agree with the firm's view that Mrs B, or her estate, had received any material benefit as a result of obtaining the freehold. There was no reason to believe Mrs B would have wanted or needed to buy the freehold, if it had not been a condition of the home income plan. And Mrs B had funded the entire cost of buying the freehold, even though her estate would receive only a nominal benefit from it when the property was sold, after her death.

The firm refused to accept the adjudicator's view. It asked for the case to be referred to an ombudsman, for an independent review. After fully examining the case and considering all the evidence and arguments afresh, the ombudsman decided that the complaint should be upheld.

The firm was required to pay Mrs B's estate an amount comprising the proceeds of the sale of her house, together with the sum she had paid in legal fees when she entered into the agreement for the plan. However, the ombudsman agreed that the firm could deduct a certain amount in recognition of the fact that the plan had provided Mrs B with some financial benefit.

72/7

whether elderly couple were wrongly advised to take home reversion plan

Mrs J's complaint concerned the home reversion plan that she and her husband had been advised to take some years earlier. This provided the couple with a cash lump sum and an income for life, together with the right to continue living in the house. After both of them had died, the house would be sold and the firm would take a specified percentage of the property's value. The remaining value would pass to the deceased's estate.

Following her husband's death, Mrs J asked the executors of her late husband's estate – the family solicitors – to complain to the firm that provided the plan.

The solicitors told the firm that they considered its advice to have been inappropriate, in view of Mr and Mrs J's financial objectives at the time. They added that it was doubtful whether Mr J would have understood the complexities of the arrangement, as his mental health had started to fail at around the time he took the plan. The solicitors also thought it curious that they had not been asked to provide legal advice. The terms of the contract required the firm to ensure the couple took independent legal advice before signing up to the plan.

complaint not upheld

There was evidence to show that, at the time they received the firm's advice, Mr and Mrs J had been living beyond their means and were looking for ways of increasing their income. They had no assets that they could have used to generate additional income, other than their home. We considered that, in the circumstances, the firm's recommendation had been suitable.

The information we obtained about Mr J's mental health showed that there had been some deterioration in later years. However, we saw nothing to suggest that his judgement would have been impaired in any way at the time the advice was given – and neither Mrs J nor the firm's adviser had expressed any concerns about this at the time.

Although he had retired some years before he took out the plan, Mr J had formerly been a senior partner at the firm of solicitors that was now bringing the complaint. We thought it unlikely that he would not have understood the implications of the agreement he was entering into. And he *had*, in fact, taken legal advice about the plan – but not from the solicitors now bringing the complaint. It did not seem to us unreasonable that he would have wanted to keep his personal affairs separate from the family practice. We did not uphold the complaint.

72/8

next-of-kin complain about advice given to their late sister to take a home reversion plan

Mrs C named her three younger sisters as beneficiaries in her will. However, she did not tell them that, after seeking financial advice, she had entered into a home reversion plan. When Mrs C died, some years after the plan had been set up, her sisters found out about the arrangement from the executor of her will, a local solicitor.

They were shocked to discover that the firm that had given the financial advice was now entitled to most of the proceeds from the sale of Mrs C's house. When the firm refused to consider their complaint that it had wrongly advised their sister, they referred the matter to us.

complaint out of our jurisdiction – and better suited to the courts

Under our rules, we can only consider complaints brought by 'eligible complainants'. Executors are 'eligible complainants' but beneficiaries are not, so the complaint did not fall within our jurisdiction and we were unable to look into it.

However, even if the complaint *had* been within our jurisdiction, we would probably have decided it was more appropriate for the courts to deal with it. This is because as well as disputing the advice provided by the firm, the sisters were in dispute with each other and with the executor about how much of Mrs C's estate they should each be entitled to.

72/9

elderly homeowner complains about mis-sale of shared appreciation mortgage

Some years after she had retired, Miss G took a 'shared appreciation' mortgage from her lender. She needed to raise some capital to invest, in order to increase her income. Mortgages of this type are usually structured to require no monthly repayments from the borrower, when no interest will be charged on the debt. Instead, at whatever point the borrower decides to repay the mortgage (or on their death) the lender is entitled to a pre-agreed specified percentage of any increase in the property's value since the start of the mortgage.

In this particular case, Miss G took a loan of £36,250, representing 25% of the then value of her house. The mortgage agreement set out that the lender would receive 75% of any increase in the value of Miss G's property.

About eight years later, Miss G decided to sell up and move nearer to some of her family. Her house had increased very

... she had to pay the lender a significant proportion of the proceeds, when she sold her house.

substantially in value since she had taken the mortgage, and she was dismayed to find she would have to pay the lender a significant proportion of the proceeds when she sold the house.

Miss G complained to the lender, saying it had advised her badly when it recommended the shared appreciation mortgage. She said the lender should have discussed alternatives with her. She also said she had been hurried into taking the mortgage and had not had time to give the matter proper consideration. Unable to reach agreement with the lender, Miss G brought her complaint to us.

complaint not upheld
Our investigations revealed that the lender had been broadly positive in its discussions with Miss G about the shared appreciation mortgage. However, we found nothing to convince us that the lender had *advised* Miss G, or given her the impression that it was doing so.

Instead, we saw clear evidence that her decision had been based on advice she received from her solicitor. In a letter written shortly before she asked the lender to arrange the mortgage, her solicitor had said that a shared appreciation mortgage '*seemed to make very good sense*' for her. The solicitor suggested ways in which the money raised by means of the mortgage could increase her income. He also told her that the mortgage could, when repaid, provide the lender with a '*hefty benefit*'.

We were satisfied that the lender had not provided any misleading information about the features of the mortgage, or about how it would work in practice. And we noted that the agreement set out clearly and prominently the way in which the lender's share would be calculated. The lender's offer *did* include a time limit for acceptance (which is not an unusual feature of mortgage offers). However, we saw nothing to substantiate Miss G's view that the lender had rushed her into signing the agreement.

The proportion of the increase in the property's value that the lender would receive had been agreed at the outset, and could not be changed. And the extent to which the lender would benefit from the eventual sale of the property depended on the movement of the housing market, rather than on any factor within the lender's control.

It was clear that Miss G had not anticipated that the value of her house would increase to the extent that it did. It was also evident that she had been shocked by the effect this had on the amount she had to pay the lender. However, the lender had done nothing wrong in providing her with the shared appreciation mortgage. We did not uphold the complaint.

■ **72/10**

whether the bank wrongly advised couple to take shared appreciation mortgage

Mrs T complained about the advice she and her husband received from their bank to take a shared appreciation mortgage. They were both retired and in 1997 had approached the bank for advice, as they were finding it difficult to meet the £90 monthly repayment on their building society mortgage.

The bank set up a meeting for them with one of its mortgage advisers, a Mrs G, who was already known to the couple socially, through a charitable organisation to which they belonged. Mrs T said that Mrs G had advised them to arrange some form of equity release – and had said that the only product of this type that she would recommend for their particular circumstances was the bank's shared appreciation mortgage.

Mrs G told the couple they would need to borrow a further £7,700, over and above the amount needed to repay their building society mortgage. This was because she said the shared appreciation mortgage had to be for 25% of the value of their property.

The local solicitor, to whom Mrs G referred the couple for advice and to complete the legal formalities, told Mr and Mrs T that they should return to the bank and ask for a full explanation of the arrangement. The couple did this, and said Mrs G had confirmed that the mortgage was secured on only 25% of their property. The couple then proceeded with the mortgage.

Seven years later, Mrs T wanted to move to a smaller, more convenient house, as her husband's health was beginning to fail. It was at this point that she discovered the mortgage had, in fact, been secured on the whole of their property, as there would not be enough money left over from the sale of their house to enable them to buy the smaller property.

When the couple complained that the bank had misled them, the bank denied having advised them at all, and said that the couple had taken the mortgage after receiving advice from their solicitor.

... the adviser had not fully understood the features of this type of mortgage.

complaint upheld

We looked at the paperwork that Mrs G had completed in relation to the couple's mortgage. This suggested to us that she had not fully understood either the nature of shared appreciation mortgages or the requirements of the *Mortgage Code* (the relevant rules in place at the time) concerning different levels of mortgage service.

She had initially noted that she had given the couple '*level A*' service (advice and a recommendation). She had later crossed that out and written '*level C*' (signifying that she had only provided information).

From our examination of the evidence, we concluded that Mrs G had specifically advised the couple to take out the shared appreciation mortgage. Whether or not she had understood that she was providing formal advice and a recommendation under the *Mortgage Code*, the fact was that she had done so in the legal sense – and Mr and Mrs T had relied on what she told them.

Her advice that they had to top-up their application to 25% of the value of the property seemed to be based on a mistaken understanding that the mortgage had to be for a minimum of 25% of the property's value. In fact, it was available up to a *maximum* of 25%. We considered, on balance, that Mrs G *had* told the couple that the mortgage was applied against 25% of their home – again because she had not fully understood the features of the product.

We accepted the bank's point that the couple had signed an agreement setting out clearly how the product worked and what would happen when the property was sold. However, we thought the circumstances of this case were unusual. Mr and Mrs T had placed particular trust in Mrs G's opinion and advice, and relied on her as their sole source of information about the implications of the shared appreciation mortgage. They had made their reliance clear to Mrs G at the time, and we were satisfied that their decision was based on the information and recommendation that she had given them.

We accepted Mrs T's assertion that if Mrs G had explained the shared appreciation mortgage accurately, she and her husband would not have taken it – but would have chosen a different type of equity release product.

Sadly, Mr T had died soon after the couple complained to the bank, and Mrs T was no longer certain whether she would sell her house. It was therefore unclear what the eventual cost of redeeming the mortgage would be. That would depend on how the value of the property moved in future.

We said that when the mortgage loan was eventually repaid, the bank should calculate:

- what the balance of the loan was under the shared appreciation mortgage; *and*
- what the balance of the loan *would have been*, if the bank had charged its standard variable rate during the term – and had 'rolled' this into the debt (added it to the balance each month instead of requiring monthly repayments).

We said the bank should then allow Mrs T (or her estate) to clear the mortgage by paying whichever was the lesser amount. We also said the bank should pay Mrs T £500 for the distress and inconvenience she had been caused.

ask ombudsman news ...

cutting the cost of calls

a debt-advice charity asks ...

Q We're seeing a marked increase in the number of consumers consulting us about financial difficulties. And we're advising more of our clients to take complaints about aspects of the affordability of loans and debt collection to the ombudsman service. What's the cheapest way for them to contact you, without racking up big phone bills they can ill-afford?

A For BT customers phoning us from a 'landline' (fixed line), it will usually be cheapest to phone our consumer helpline on **0845 080 1800**. For these consumers, calls shouldn't cost more than 4p a minute – wherever in the UK they are calling from. We subsidise the cost of running this phone line. And the number should make it easy to remember and to dial.

Around 13% of those who call us do so on their mobile phones. For mobile users – especially people using 'pay-as-you go' phones – it will usually be cheaper to call our consumer helpline on **020 7964 0500**. This may also be the cheaper number to call for people who aren't BT customers. And the number will be 'free' for people who pay a monthly charge for calls to numbers starting 01 and 02.

We always stress that consumers who are worried about the cost of phoning us can ask us to take their number and call them back.

PPI mis-sales – should redress take benefit of cover into account?

a lender firm writes ...

Q I am dealing with a customer's complaint about payment protection insurance that we sold in similar circumstances to those of Mr and Mrs J, outlined in issue 71 of *ombudsman news* (case 71/2).

I understand why the ombudsman upheld that complaint. However, it seems that the redress ordered did not take account of the fact that Mr and Mrs J had had the benefit of cover under the policy for a period. I would be interested in your comments on this.

A Our approach to redress for the mis-sale of payment protection insurance (PPI) policies is broadly that the consumer should be put back in the position they would have been in, if the mis-sale had not taken place.

In most circumstances, where someone selling an insurance policy has failed to point out significant relevant features, the buyer can, in law, decide to cancel the policy and be returned to the position they were in before the sale.

We take a similar view. We frequently provide for consumers to get back the premium, plus any other amounts they have paid (such as interest on loans to cover the cost of the premium).

In most of our work on PPI mis-sales, we can see that the consumer would not have bought the policy, had relevant features been pointed out. This was the position in the case of Mr and Mrs J, in case 71/2 in the previous issue of *ombudsman news*.

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log on to our special resource at:

www.financial-ombudsman.org.uk/faq/smaller_businesses.html

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