Ombudsman news

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

Walter Merricks, chief ombudsman

issue 79

Motor Man

The love affair between the great British public and cars provides the backdrop to a substantial proportion of our caseload – and in this issue of *Ombudsman news* we present a fairly typical selection of complaints we have dealt with recently involving motor cars.

The consumer's amorous relationship is with the vehicle, not with the finance firm or insurer that makes its use possible or safe. When hopes are dashed and hearts are broken, acrimony develops and complaints follow. We should not, therefore, be surprised about the emotion that accompanies them.

Complaints about the settling of car insurance claims have always featured in the ombudsman's casebook. Disputed valuations of written-off vehicles, together with concerns over the quality of repairs carried out by or on behalf of insurers, form a steady and rising workload.

Financial Ombudsman Service

The trend has been for insurers to take charge of repairs rather than leaving consumers to arrange the repairs themselves and then claim for the cost. But does that account for some of the increase in our complaints in this area – from 2,500 in 2005 to over 6,200 last year?

Our jurisdiction over consumer credit has brought additional complaints about car finance businesses or the extent to which that they should be responsible for the quality of vehicles for which finance is provided. And many of the complaints we receive about payment protection insurance relate to cover for loans taken out in order to buy a car.

Our remit only covers the financial aspect of people's relationship with cars. But complaints about second-hand car sales, and car servicing and repair, are among the top five categories of complaints to *Consumer Direct*. Consumer bodies point out that there's no ombudsman for most of these disputes. Will there perhaps be a Motor Ombudsman one day?

Walter Merricks, chief ombudsman

Financial Ombudsman Service

South Quay Plaza
183 Marsh Wall
London E14 9SR

switchboard
020 7964 1000

consumer helpline
0845 080 1800 *or* 0300 123 9 123
open 8am to 6pm Monday to Friday

technical advice desk
020 7964 1400
open 10am to 4pm Monday to Friday

www.financial-ombudsman.org.uk

Complaints involving car finance

The coverage of the ombudsman service was extended in April 2007 to include all regulated consumer credit activity. Since then we have seen a steady increase in the number of complaints made to us about car finance. Most of these complaints concern hire purchase, although some involve leasing agreements or loans taken out through car dealers.

We are able to consider complaints about car dealers as well as those about credit or hire businesses – but only in relation to their consumer credit activities. For dealers, that will usually be credit broking; for the credit or hire businesses it will be hire purchase, lending or leasing.

Hire purchase is a type of financial arrangement where the consumer makes a monthly repayment for a set period of time, during which the car remains the property of the hire purchase business. At the end of the period, the consumer can either hand back the car, or pay a further lump sum (often called a '*balloon payment*') to buy the car outright.

Consumers frequently find the technicalities of hire purchase transactions confusing. Typically, they believe they simply went to a dealer and bought a car with the aid of credit, when what actually happened is rather different:

- they chose a car, and asked the dealer for credit to help them pay for it;
- the dealer acted as a credit broker, arranging hire purchase through another business;

Complaints involving car finance

- the hire purchase business bought the car from the dealer, and then provided it to the consumer under a hire purchase agreement – so the car is owned by the hire purchase company (not the consumer).

Hire purchase agreements are covered by the *Supply of Goods (Implied Terms) Act 1973*. This says there are *implied conditions* in a hire purchase agreement, including a condition that the goods will be of satisfactory quality and will be fit for purpose. (*Implied conditions* are those that can be assumed to be included in the agreement, even if they do not actually appear in writing.) So where a consumer has a complaint about faults in a car that was bought by means of a hire purchase agreement, we can consider the complaint if it has been made against the hire purchase business. We are not able to pursue such complaints if they are made against the dealer. This is not just because the selling of cars is not a consumer credit activity but because, under a hire purchase agreement, the dealer does not sell the car to the consumer. In our experience, some businesses encourage consumers to complain to the dealer in these circumstances, which adds to the consumer's confusion. This is what happened in case 79/4 below.

Another form of car finance that features fairly regularly in the complaints we see is the type of loan that is often called a '*fixed-sum loan*'. Here the dealer acts as a credit broker and – at the time of the sale – arranges the loan for the buyer from a separate business – the lender. The lender pays the proceeds of the loan direct to the dealer and the consumer makes regular repayments to the lender.

When this type of loan is used to buy the car, then under Section 75 of the *Consumer Credit Act 1974* the lender may, in some circumstances, be *equally* liable with the dealer if something is wrong with the car. Most commonly, that will be where the dealer seriously mis-describes the car, or where the car has faults of a

kind that amount to a breach of contract by the dealer. Even where the car is second-hand, it must still be safe and in appropriate condition for its age and price – as we see in case 79/2.

In these sorts of cases, we will explain to the consumer that the complaint must be brought against the business that provided the hire purchase or fixed-sum loan, and that is therefore responsible for the quality of the car provided (under the hire purchase agreement – or through Section 75 if the credit was a fixed-sum loan).

Lenders and hire purchase providers are sometimes reluctant to look properly into a consumer's complaint about faults in a car, and prefer to take the dealer's word for it that the car was in good condition when it was supplied. However, we would expect them to take reasonable steps to satisfy themselves in the matter, before they decide whether or not to uphold a consumer's complaint.

Sometimes the complaint is about the activity of credit broking, and so is properly brought against the dealer. As car dealers are covered by us when they carry out credit broking, they need to be prepared to answer our questions about any complaints that are brought to us.

Where we uphold a consumer's complaint, we are able to consider a range of potential measures when deciding on an appropriate settlement. These could include refunds, compensation, replacement vehicles or the early termination of a credit agreement, without charge. Our aim is to bring about an outcome that does justice to the individual case, taking account of what each party did (or failed to do).

Complaints involving car finance

Consumers, as well as consumer credit businesses, should take care to act reasonably during the dispute. Hiding or abandoning the car, or damaging it, for example, will just make a difficult situation worse (as in case 79/3).

As always, it is important for businesses to keep proper records in case a complaint is made against them. The business complained about in case 79/5 was able to produce contemporaneous photographic evidence to support its claim that the car had been damaged. This was particularly helpful in enabling us to make our own independent assessment of the nature of the damage.

The following case studies illustrate some of the complaints that we have dealt with recently involving car finance.

79/1

consumer attempts to cancel agreement when car bought on hire purchase turns out to be faulty

A call-centre supervisor, Miss Q, obtained a brand-new hatchback with the help of hire purchase arranged by the car dealer. Only a couple of weeks after taking delivery of the car, she found that a significant amount of rainwater had leaked through the roof. She took the car back to the dealer, who repaired it and returned it to her the following day.

Unfortunately, the problems with the roof continued. Miss Q returned the car for repairs on five more occasions over the next three months. On the final occasion, the dealer kept the car for nearly a month before returning it to her.

By then, she had given up hope that the problem would ever be resolved. She wrote to the hire purchase business and said it appeared to be impossible to obtain an effective – and permanent – repair to the roof. As she had already given the dealer '*a fair chance to put things right*', she felt she was now '*entitled to cancel the agreement and hand the car back*'.

Initially, the hire purchase business responded by telling her it was unable to help as it was '*a finance company, not a garage*'. After she had pursued the matter for some weeks, it eventually told her it was prepared, '*as a goodwill gesture*' to liaise between her and the dealer to help her get the car repaired. Miss Q did not think this an acceptable option, but the hire purchase business refused to discuss the matter further. She then brought her complaint to us.

complaint upheld

We were satisfied, from the reports the dealer had provided, that there was a substantial and seemingly irreparable problem with the roof of the car. We agreed with Miss Q that a fault of this nature was unacceptable in a brand-new car – and that she had given the dealer ample opportunity to try to correct the fault.

We pointed out to the hire purchase business that, under the hire purchase agreement, *it* (rather than the dealer) was the provider of the car – and was therefore responsible to Miss Q for the quality of the car.

In our view, the facts of this case justified Miss Q being released from her liability under the hire purchase agreement. So we said the hire purchase business should cancel the agreement and arrange to collect the car from Miss Q.

The faulty roof and the frequent need for repairs meant that her use of the car had been limited and far from trouble-free. So we said the hire purchase business should retain just £50 from each of the monthly repayments Miss Q had made. It should return the rest of the money to her, plus interest. We said it should also pay her £200, in recognition of the inconvenience caused by its poor handling of her complaint.

79/2

consumer asks to cancel loan agreement after discovering major faults in car bought with the loan

A retail manager, Mr B, bought a six-year-old car with the aid of a fixed-sum loan, arranged by the car dealer. Within two days of taking the car home, he discovered that neither the fuel gauge nor the speedometer were functioning properly and the cooling fan did not work at all. He therefore returned the car to the dealer for repairs.

Very shortly after getting the car back, Mr B had to take it for further repairs, as there was a problem with one of the pedals. And a few weeks after that, he found that water had leaked into the driver's foot-well area – and the fuel gauge and speedometer had broken again.

... the lender said that any problems with the car were '*down to the dealer to sort out*'.

After that, a problem developed with the front brake discs and the fixings for the driver's seat. The dealer arranged for a mechanic to collect the car from Mr B and take it away for repairs.
But an hour before the mechanic was due to arrive, Mr B rang him to say the car would have to be towed away, as it would be too dangerous to drive it.
He had noticed a strong smell of petrol inside the car – and petrol had leaked on to his driveway.

It was over three weeks before the car was eventually repaired and returned to Mr B. For a short while all appeared to be well. However, while the car was having its MOT inspection at an independent garage, an electrical burning smell was detected in the engine compartment, so the inspection had to be abandoned.

By then, it was nearly six months since Mr B had bought the car. Its existing MOT certificate would shortly run out.
He had lost faith in the dealer's ability to carry out lasting repairs.
And although the dealer had offered to exchange the car for another used car of similar value, Mr B was unwilling to take the risk that a replacement car might turn out to be of a similarly poor quality.

He told the lender he wanted to return the car and cancel the loan agreement. However, the lender said that this was not possible and that any problems with the car were '*down to the dealer to sort out*'. Mr B then came to us.

complaint upheld

We were satisfied, from the evidence Mr B provided, that the car had significant defects which the dealer had failed to put right within a reasonable period of time. In the particular circumstances of this case, we accepted that it was reasonable for Mr B to have refused the dealer's offer to exchange the car for another used vehicle.

We accepted the lender's view that '*some issues*' might be expected to come to light with a second-hand car of this age. However, it seemed to us that the '*issues*' in this case went beyond what Mr B might reasonably have expected to encounter, given the car's age and price.

The car would not obtain an MOT certificate in its current state.
The problems had started to become apparent very shortly after Mr B had bought the car – and they were well-documented. So it seemed likely that the car had been faulty at the time it was sold – and that there had therefore been a breach of contract.

Because of the type of loan he had taken, Mr B was able (under Section 75 of the *Consumer Credit Act 1974*) to claim against *either* the dealer or the lender for the breach of contract.

That meant the lender was liable for Mr B's losses in the matter. We said it should release him from the loan agreement and that – for each month when the faults had prevented him from using the car – it should refund his repayment. We said the lender should also pay Mr B £200, in recognition of the inconvenience caused by its poor handling of the complaint. ■

... he said he was not prepared to continue paying for a '*faulty car*'.

■ 79/3
consumer asks to cancel agreement because car being bought on hire purchase was faulty

Mr G's local car dealer arranged hire purchase to enable him to buy a two-year-old used car. Three months later, Mr G told the dealer that the car kept breaking down, so he wanted to return it and cancel the hire purchase agreement.

The dealer insisted that it was unable to help, as there was nothing wrong with the car. Mr G then decided to cancel the direct debit for his monthly hire purchase payments.

The hire purchase business contacted him a few weeks later to ask why he had missed a payment. He said he was not prepared to continue paying for a '*faulty car*' and that he would hand it back as soon as the hire purchase agreement was cancelled.

The hire purchase business said that – as a first step – it would get the car inspected to establish exactly what was wrong with it. But Mr G was adamant that the agreement must be cancelled before he would hand over the car to anyone. ▸

The business again explained that it could not know how best to proceed until the car had been inspected.
Mr G then locked the car in a friend's garage. He later told us this was to ensure the hire purchase business would not be able to find the car if it tried to take it away.

Unable to reach any agreement with the business, Mr G eventually brought his complaint to us.

complaint not upheld

Mr G told us that as he was '*not particularly knowledgeable about car engines*' he could not tell us exactly what was wrong with his car.
And although he gave us a list of the dates when he said the car had broken down, he was unable to offer any evidence to back this up. He said he had not used a breakdown service but, on each occasion, had arranged for a friend to help him out by towing the car home.

We thought the hire purchase business had acted reasonably in saying it needed to get the car inspected before it could decide how to proceed. Mr G had not helped the situation at all by refusing to cooperate with such an inspection and by then moving the car to an undisclosed address.

We saw no evidence that he had been provided with a faulty car, and he was unwilling to allow anyone to inspect it.

So we said there did not appear to be any reason why he should be released from the hire purchase agreement.
We did not uphold the complaint.
We told Mr G he should consider carefully the potential consequences of keeping the car hidden and continuing to withhold his payments.

79/4

consumer asks lender to pay for repairs when the used car bought with a loan is found to be faulty

A trainee hairdresser, Miss W, took out a fixed-sum loan so she could buy a three-year-old used car. While she was driving the car home after collecting it from the dealer's, she heard a loud noise in the engine and then noticed a large quantity of black smoke coming from the exhaust.

She took the car straight back and was assured by the dealer that all would be well once he had arranged for the fuel injectors to be cleaned.

Initially, this seemed to solve the problem but a few weeks later the car broke down altogether. Rather than going back to the dealer, Miss W had the car assessed by a local garage.

She was told that new fuel injectors were needed, at a total cost of around £1,500.

... she heard a loud noise in the engine, then noticed a large quantity of black smoke coming from the exhaust.

When she asked the lender if it would pay for this work, it said it would first have to arrange its own inspection of the car. This was carried out several weeks later and confirmed the need for new fuel injectors. However, the lender told Miss W not to get the car repaired before it had obtained the dealer's comments on the car's condition.

Over the next few weeks, Miss W rang the lender at regular intervals to ask what was happening. Each time, the lender said it was still waiting to hear from the dealer. Miss W made several attempts to contact the dealer herself, but her calls were never returned.

Eventually, she sent the lender a letter of complaint. She said that travelling to and from work was difficult and expensive without the use of her car. She did not want to delay the repairs any longer – but could not afford to pay for them herself unless the lender confirmed that it would refund the cost of the work.

The lender said it was unable to comment until it heard from the dealer. Shortly after that, the dealer rang Miss W, offering to exchange her car for one that he said was of a similar age and value and had only just come into his showroom.

Miss W wanted to keep her existing car but to have it properly repaired. The dealer told her that was not an option. And when she contacted the lender, it said it was not prepared to pay for repairs as she had now been offered an alternative car.

Miss W then complained to us about both the lender and the dealer.

complaint upheld

We told Miss W that we would only be able to look into a complaint about the dealer if it concerned his regulated consumer-credit activities. The relevant activity in this case was credit-broking – but there was no suggestion that the dealer had done anything wrong when arranging Miss W's loan.

... we did not accept his view that the business had '*forfeited its right*' to pass on the cost to him.

We were, however, able to look into her complaint against the lender because the type of loan she used to buy the car meant she was covered by Section 75 of the *Consumer Credit Act 1974*.

It was clear, from the inspections that both Miss W and the lender had commissioned, that the car had been sold with a major fault.

We contacted the lender and explained why, given the circumstances of this case, we thought it should pay to have the car repaired. It agreed to do this, and to give Miss W £500 to cover her out-of-pocket expenses and compensate her for the inconvenience she had been caused. ■

... he was liable for the cost of any damage to the car beyond '*normal wear and tear*'.

■ **79/5**

consumer disputes repair bill after returning car at the end of three-year lease period

Mr D leased a sports car under a three-year *regulated consumer hire agreement*, which allowed him to drive the car for up to 8,000 miles each year. One of the conditions of the lease was that he was liable for the cost of any damage to the car beyond '*normal wear and tear*'.

When the lease period came to an end, he returned the car to the leasing business with 18,162 miles on the clock – well under the maximum mileage he was allowed.

Soon afterwards, the business sold the car at auction (as is usual practice). It then asked Mr D to pay £177.50. This was the estimated cost of repairing damage that it said had been caused to the car while Mr D had the use of it.

Mr D refused to pay. He told the business that the low mileage on the car when he returned it should '*more than make up for any defects the car might have had*'.

He denied that the car had sustained any damage beyond what could be considered '*normal wear and tear over a three-year period*'. And he said that, in any event, the business had left it too late to expect him to pay, as it should have had the car repaired before sending it to auction.

complaint not upheld

The leasing business sent us the photographs it had taken of the car when Mr D returned it. These clearly showed a large rip to the fabric of one of the seats, as well as a cut on the near-side rear tyre.

After referring to the guidelines on fair wear and tear produced by the British Vehicle Rental and Leasing Association (BVRLA), we said the business was right to say the damage to the car could not be regarded as '*normal wear and tear*'.

... he said the business had left it too late to expect him to pay.

The business provided evidence that £177.50 represented a fair estimate for the cost of the repair work. We did not agree with Mr D that his low mileage would '*off-set*' the cost of any damage. Nor did we accept his view that – in putting the car into the auction before getting it repaired – the business had '*forfeited its right*' to pass on the cost to him.

Under the leasing agreement, Mr D was liable to pay the cost of the damage in question – and it was immaterial whether these repairs were carried out before or after the car went to auction. We did not uphold his complaint. ■

The Ombudsman in the Highlands and Islands

A small team from the ombudsman service recently spent a week in the Scottish Highlands and Islands, meeting some of our most geographically-distant customers. Working in partnership with a number of front-line consumer advice agencies, we ran a series of informal 'complaints clinics' for local residents, as well as organising training sessions for community and advice workers.

The tour formed part of our ongoing commitment to carrying out a wide range of activities across the UK, aimed at sharing our experience and knowledge with the outside world. This includes undertaking outreach work with different local communities – raising awareness of our role among those less likely to use – or be aware of – the ombudsman service.

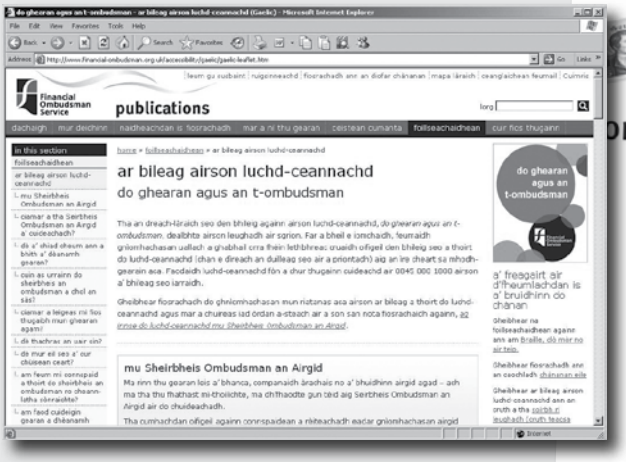
We targeted the Scottish Highlands and Islands because we receive proportionately fewer complaints from consumers based there than we do from consumers in the rest of Scotland. We were also aware that the Scottish Highlands and Islands has a higher than average proportion of older residents – and consumer research consistently shows that awareness of the ombudsman service among consumers aged 65 and over is significantly lower than among those in most other age groups.

Intensive preparation in the weeks leading up to the tour enabled us to make the most of our limited time in the area – and ensured that we generated plenty of advance publicity for our programme of events.

Establishing partnerships with local organisations formed a key part of our strategy and we are grateful for the enthusiastic support and practical assistance we received from Citizens Advice Scotland, Trading Standards in Scotland, Money Advice Scotland, Consumer Direct Scotland, the Highlands Council, Argyll and Bute Council, and Orkney Council. As well as helping to publicise our events, these organisations provided us with free venues for the complaints clinics and training days – and handled the booking of appointments for consumers wanting to attend our clinics.

Set up in the main centres of population – Inverness, Kirkwall, Oban and Stornoway – the clinics offered a free 15-minute appointment to anyone who needed help sorting out a problem with their bank, insurance company or finance firm.

Advertising our forthcoming visit was quite a challenge, given that the local population is spread sparsely over a relatively large area. As well as getting prominent coverage in the local and regional press – and on local



radio stations – we enlisted the help of local MPs, schools, libraries, doctors' surgeries, rural post offices, churches and faith groups in distributing our publicity materials.
We designed a special set of posters and leaflets for use on the boats plying the key ferry routes between the mainland and the islands. We also expanded the information available in Gaelic on our website (shown above).

It quickly became clear that all the effort that had gone into spreading the word about our visit had paid off. We had to squeeze in a few extra slots at all our clinics, so as not to disappoint anyone by turning them away.
At each of the venues we met a wide range of consumers – some of whom had travelled a considerable distance to see us. The issues they raised with us ranged from a query about the appropriateness of advice to put life savings in an investment bond to a dispute over the quality of repairs arranged by an insurer on a storm-damaged farmhouse.

In tandem with the complaints clinics, we provided complaints-handling training sessions for consumer advisers in Oban and Inverness. We also ran training sessions in dispute-resolution to community and advice workers based in a variety of locations from Skye to Kirkwall. A trading standards officer who attended one of the sessions later told us '*Everyone who attended the event found it worthwhile. As well as providing a greater insight into the ombudsman's role, it has given us confidence about the types of cases we can refer to the Ombudsman in future*'.

In the months following the initiative, we have noticed a three-fold increase in the number of people accessing the information we provide on our website in the Gaelic language. And recent consumer research shows that Scotland now has a higher unprompted level of awareness of the ombudsman service than any other area of the UK. ✪

What's next?

Following the success of our Highlands and Islands tour, we are planning a similar initiative in Wales in the early part of 2010.

Motor insurance – disputes about the quality of repairs and the non-disclosure of vehicle modifications

As we noted in our last *annual review*, motor insurance is the second most-complained-about area of general insurance after payment protection insurance (PPI). A sizeable number of the motor insurance complaints we see concern the quality of repairs carried out following an accident.

Generally, the insurer is responsible for the quality of such work if the policy says that the insurer will arrange the repair – or if, in practice, this is what happens. If the policy simply offers to reimburse the consumer for the cost of the repair – and the consumer arranges that repair – then the insurer is *not* responsible for any failings in the quality of work undertaken.

Some disputes involving motor repairs arise from disagreements about the cause of the damage, for example, did *all* the damage result from the accident (in which case it is the insurer's responsibility to sort it all out) – or did some of the damage come about because of wear and tear or an earlier accident? When deciding such disputes, we will need to consider the evidence to decide the most likely cause of the damage.

Sometimes the insurer has refused to pay a claim because it says the consumer failed to disclose that the vehicle had been modified. In such cases we look at what questions the insurer asked – at the time the consumer applied for the policy – to try to establish whether there had been any modifications to a vehicle. We will also consider whether any non-disclosure on the part of the consumer was material to the claim and the extent to which the non-disclosure was deliberate, reckless or inadvertent.

79/6

motor insurer rejects claim for repair on grounds that damage resulted from '*normal wear and tear*'

Mr K's insurer arranged for one of its approved repairers to carry out some remedial work on his car, after it was involved in an accident. When the car was returned to him, Mr K was concerned to find it had developed a strange creaking noise.

At the insurer's request, the repairer took the car back for inspection but was unable to establish what was causing the problem. The insurer then asked an independent motor engineer to inspect the car. He, too, was unable to say what was causing the creaking noise. Finally, the insurer suggested that Mr K should ask his local car dealer to try to pinpoint the cause of the problem.

The dealer told Mr K the noise was related to damage sustained in the accident, so he agreed it should carry out additional repairs to resolve the matter. The bill for this work came to £1,616.58. Mr K settled up with the garage and then put in a claim.

He was very surprised when the insurer refused to reimburse him. It told him he should have obtained its approval before having the work done. And it said that, in the view of the independent motor engineer, the damage his dealer had rectified was not caused by the accident but had come about through '*normal wear and tear*'. It was therefore not covered by the policy.

Mr K strongly disputed this and the insurer eventually offered him £400 as '*a gesture of goodwill*'. However, it refused to pay him more than this, so Mr K brought his complaint to us.

complaint upheld

We agreed with the insurer that Mr K should have obtained its approval before asking his dealer to carry out the additional work. However, the main issue here was whether the damage put right by the dealer had been caused by the accident, or through normal wear and tear.

The report prepared for the insurer by the independent engineer did not seem to us to be particularly conclusive. However, it appeared to indicate that it was more likely than not that the creaking arose because of the accident. We therefore upheld the complaint and said the fair and reasonable outcome was for the insurer to reimburse Mr K for the cost of the additional work.

79/7

consumer complains of poor workmanship by motor insurer's approved repairer

Mrs G asked her insurer if she could get her car repaired by her local dealer, after the car's offside rear body panel and door were badly damaged in an accident. However, the insurer said it would arrange for one of its approved repairers to carry out the necessary work. She later told us she had been assured that the quality of the workmanship would be '*as good*' as that provided by her local dealer – and the parts and materials used would be '*of the same high standard*'.

Unfortunately, Mrs G was not at all happy with the quality of the repair work. And she complained to her insurer that additional damage had appeared, in the form of scratch marks that had not been present before the car went in for repair.

Although the insurer arranged for its approved repairer to carry out further remedial work, the scratch marks were still evident when the car was returned to Mrs G. And she established that the paint used for the re-spray was not '*dealership-approved*', as it was required to be under the terms of the paintwork warranty she held with the dealer.

The insurer was at first reluctant to accept that Mrs G still had any grounds for complaint. Eventually, it agreed that the paint had not been of the required standard and it offered Mrs G £100 compensation. She thought this inadequate, as she had asked the insurer to pay for the whole car to be re-sprayed. She therefore referred the complaint to us.

complaint upheld

We found the standard of the work carried out by the insurer's repairer was very poor – and we did not think the insurer had treated Mrs G fairly when dealing with her claim.

We said the insurer should pay for the repair work to be rectified at a car-body shop approved by Mrs G's dealer. The work would be inspected when completed and would include removing the paintwork from the affected areas and re-spraying those areas using dealer-approved paint. The rest of the car would be machine-buffed and polished with a paint-protection lacquer to seal the paint and provide a high-gloss finish.

In view of the distress and inconvenience caused by the insurer's poor handling of the claim, we said it should also pay Mrs G £200.

... the insurer agreed to cover the cost of additional repair work, as a gesture of goodwill.

79/8

consumer complains of poor standard of work by motor insurer's repairer after her car was involved in an accident

Mrs J had an accident while driving home from work one evening. Her car was badly damaged and the necessary repair work was carried out by a repairer approved by her insurer. However, when the car was returned to her, Mrs J complained that the brakes and clutch appeared to be faulty.

She told the insurer this must have been the result of damage caused while the car was being repaired. She was unable to produce any evidence of this, but the insurer agreed to cover the cost of additional repair work, as a gesture of goodwill.

Soon after this work was completed, Mrs J asked her local garage to carry out repairs to the car's braking system, suspension and tyres – at a total cost of £1,778.

She then put in a claim for this amount to her insurer. She said that problems had persisted even after the car had gone back to the insurer's repairer for a second time. She said she had lost faith in the repairer's ability to do the work to an acceptable standard, so had asked her local garage to '*get the car back to the condition it had been in before the accident*'.

Mrs J said her garage had '*confirmed*' that all the work it had carried out on the car was related to the accident – and that the cost would be covered by her policy. However, the insurer refused to meet the claim. Mrs J then came to us.

complaint not upheld

Mrs J told us the insurer's repairer had '*not made a proper assessment of the structural and mechanical damage*' and had '*failed to restore the car to its pre-accident condition*'. She said the extent of the work her own garage had subsequently carried out '*proved*' that the initial repair job had not been done properly.

We looked at the details of Mrs J's claim for the additional repairs. We also examined the report prepared after the accident by an engineer appointed by the insurer. We found nothing to back up Mrs J's assertion that the damage had not been properly assessed at the outset. And there was nothing to suggest that the work subsequently carried out by Mrs J's garage was related to damage sustained in the accident.

As Mrs J had insisted that her garage '*confirmed*' its work was related to the accident, we asked her to obtain a report from the garage. She told us this was not possible. In the absence of any evidence to support her claim, we did not uphold her complaint. ■

79/9

consumer dissatisfied with quality of work provided by insurer's repairer after car accident

Mr A was very dissatisfied with the standard of the repairs carried out on his car after it was damaged in an accident. The insurer said it would arrange for its approved repairer to take the car in again and carry out further work. However, Mr A said he had no confidence that the repairer would complete the work successfully.

So after arranging an inspection of the car and agreeing details of the work still outstanding, the insurer said it would pay for Mr A's local garage to carry out these remaining repairs.

Once the work was completed, Mr A settled the bill and put in a claim to the insurer. However, it refused to reimburse him for the full amount. It pointed out that one of the items on the invoice related to repairs to the car bonnet – and this was not on the list of outstanding repairs that it had agreed.

Mr A argued that the insurer was liable to meet the cost of *all* the repairs, as they all related to the accident. The insurer did not agree, so Mr A brought the dispute to us.

complaint not upheld

The insurer had agreed with Mr A that the original repairs were not completed to an acceptable standard. And it had responded to his concerns by agreeing to pay for an alternative repairer – of his choosing – to put matters right.

Before the additional work was undertaken, the insurer had asked one of its technicians and a representative of Mr A's local garage to inspect the car together and produce a detailed list of the outstanding work. We thought it unlikely that any damage to the car's bonnet would have been overlooked – either during this inspection or when Mr A checked through the list before agreeing it with the insurer.

... he was very dissatisfied with the standard of the repairs carried out on his car.

But in any event, we found no evidence to suggest that the bonnet of the car had been damaged in the accident. We therefore agreed that the insurer should not reimburse Mr A for this part of his claim.

79/10

insurer refuses to pay claim for theft of car because consumer had not disclosed the modifications made to his vehicle

Mr T's car was stolen from the street where he parked it while he was visiting his local gym. He put in a claim under his motor policy and later told us he was '*totally shocked*' when his insurer refused to pay out.

The insurer said it was clear from the information Mr T provided in his claim that the car had been modified. However, he had never notified the insurer of any modifications and he had answered '*no*', when asked on the proposal form if he had modified or altered the car.

The insurer had therefore '*voided*' his policy (in effect treating it as though it had never existed) and it told Mr T he was not covered for the theft. Mr T complained that he was being treated unfairly, but the insurer would not alter its view, so he came to us.

complaint upheld

Mr T confirmed that he had added '*a satnav unit, Bluetooth kit, Playstation and CD changer*'. However, he said he regarded these as '*simple additions, not modifications*'.

We looked at the proposal form that Mr T had completed when applying for his policy. This included a question headed '*Modifications*', asking if there had been '*any changes to the engine, plus any cosmetic changes to the bodywork, suspension, wheels or brakes*'. Mr T had answered '*no*'.

We accepted the insurer's point that the changes Mr T had made could well have made his car more attractive to thieves. However, there was nothing

... The insurer said it would never have offered him insurance if it had known about the modifications.

on the proposal form to indicate that it considered changes of this type to be '*modifications*'. We did not see that Mr T could reasonably have been expected to know, from the examples given by the insurer, that he should have answered '*yes*' to the question about modifications.

We upheld the complaint and said the insurer should settle the claim in line with the usual terms and conditions of the policy. We said it should also add interest, from the date when the car was stolen to the date when the claim was settled. ■

■ **79/11**

insurer refuses to pay claim for theft of car because consumer had not disclosed the modifications made to his vehicle

Mr C returned from a short business trip to find his car had been stolen from the side-road where he usually parked it, close to his house. He rang the insurer to report the theft and, while confirming the details, he mentioned that several modifications had been made to the car.

The insurer was not aware that the car had been modified in any way. It told Mr C it would never have offered him insurance if it had known about the modifications. It declared his policy '*void*' and rejected his claim. Very unhappy with this outcome, Mr C brought his complaint to us.

complaint upheld

Mr C accepted that he had made a number of changes to his car – but he disputed the insurer's view that these changes amounted to '*modifications*'.

We looked at what the insurer had said about modifications when Mr C applied for his policy. He had completed his application online and we noted that there was a clearly-worded section asking for details of any modifications. Applicants were told to phone the insurer if they were at all unsure about the type of information they were required to provide in this section.

We then checked what Mr C had told the insurer when he reported the theft of his car. The insurer's recording of the call showed that Mr C had not had any difficulty understanding the question when asked if his car had '*any modifications*'. He had responded by detailing all the changes that had been made to his car. We therefore concluded that he had been aware these changes amounted to modifications and that he had failed to disclose them when he applied for his policy.

The insurer argued that Mr C's failure to disclose the modifications was a '*material fact*'– in other words, something that would influence an underwriter when deciding whether to offer insurance in a particular case, and the terms and conditions that should apply.

In cases where a consumer '*deliberately*' or '*recklessly*' fails to disclose a material fact, the insurer is able to '*void*' the policy (treat it as if it never existed). But if the non-disclosure was '*innocent*' or '*inadvertent*', then the insurer should re-write the insurance on the terms it would have offered – if it had known all the facts.

When we asked the insurer to provide evidence of the approach it would have adopted, if it had known the full facts in this case, it sent us a copy of its underwriting manual. This indicated that if the insurer had known about the modifications, it would still have offered to cover Mr C, but it would have increased the premium by 75%.

We had found no evidence to suggest that Mr C had acted '*deliberately*' or '*recklessly*' in failing to disclose the modifications – and we concluded that his non-disclosure was '*inadvertent*'. The premium he had paid was only a proportion of the full amount he would have paid – if the insurer had known all the facts. So we said the insurer should pay part of Mr C's claim to reflect the proportion of the (correct) premium that he had actually paid. ■■■

... he disputed the insurer's view that these changes to his car amounted to modifications.

the Q&A page

featuring questions that businesses and advice workers have raised recently with the ombudsman's technical advice desk – our free, expert service for professional complaints-handlers

Q. How do I get hold of copies of the leaflet that my business needs to send consumers as part of the complaints process?

A. Copies of our consumer leaflet, *your complaint and the ombudsman,* are available from us in packs of 25 – at a cost of £5 per pack including postage and packing.

Simply complete the order form (which you can download from the *publications* pages of our website) and send it to us, together with a cheque for the correct amount.

Copies are free to public libraries and consumer advice agencies, such as Trading Standards departments and Citizens Advice Bureaux – who should phone us on 020 7964 0092.

Businesses that regularly require a very large quantity of leaflets and have complex distribution arrangements may prefer to print the leaflet themselves '*under licence*'. Broadly speaking, this means we give businesses copyright permission to reproduce the leaflet to our exact specifications and to have it printed, using sheet-fed offset litho. For more about this see the *publications* pages of our website.

Businesses must not send consumers photocopies of our leaflet – or hard-copy print-outs of it from the website. But where a consumer has referred their complaint to a business by email – then rather than posting a printed version of the leaflet, the business may email the consumer a hypertext link to the version of the leaflet that is on our website. However, the business should still remind the consumer that it can post a hard-copy of the leaflet to them on request.

As with all our other publications, the consumer leaflet is available on request in other languages (Welsh, Urdu *etc*) and in different formats (audiotape/CD, Braille, large print *etc)*. Please call us on 020 7964 0766 or email accessibility@financial-ombudsman.org.uk for more information.

Q. I see that the questions on this page are issues that have been raised with your technical advice desk. Could you let me know a bit more about the technical advice desk – and the kind of things it can help with?

A. Our technical advice desk is a resource for the businesses we cover and for community advice workers (for example, trading standards officers, Citizens Advice staff, community workers *etc*).

As well as explaining how the ombudsman service works and helping you find any information about us that you need, our technical advice desk can give an informal steer on how the ombudsman service is likely to view specific issues.

However, it does not decide cases. The informal help it gives is based on information provided by only one of the parties to a complaint – and is not binding if the complaint is later referred to the ombudsman service.

You can contact the technical advice desk on 020 7964 1400 (10am to 4pm, Monday to Friday) or email technical.advice@financial-ombudsman.org.uk

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