Ombudsman news

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

Natalie Ceeney, chief executive and chief ombudsman

issue 88

Plans and Trends

For many people, August remains the traditional holiday month – when the usual pace of life slows down a little. For the ombudsman service, however, August is a critical time of year as it marks an important stage in our annual planning cycle. Even though we are not yet half-way through the financial year, we have been taking stock of the trends emerging in the complaints we have seen over the past few months – and focusing on what we believe both the rest of this year and the next financial year may hold for us.

Our review of the trends emerging from our complaint numbers during the year to date indicates some good news – and some news that is not so welcome. The good news is that the numbers of complaints relating to banking and investment are levelling off – or falling very slightly.

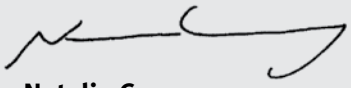
Of course, the reason for that may simply be seasonal. But it may be an encouraging sign of a change we've been hoping for – that some businesses are starting to deal with complaints more effectively, at an earlier stage.

Financial Ombudsman Service

The less welcome news is the ongoing trend we have been highlighting for some time, where a hardening of attitudes on both sides means that disputes are becoming more hard-fought, as consumers and businesses adapt to a tougher economic environment. Some businesses are clearly taking a more legalistic approach, consumers are increasingly less willing to concede, and there is a growing reluctance to reach agreement. As a result, a larger proportion of the cases referred to us are those that are particularly complex and difficult to resolve – with increasing numbers of disputes requiring final ombudsman decisions as the last stage of the process.

As far as our annual planning cycle is concerned, our next step – as we plan for the future – will be the publication in September of a new strategic planning document. This will outline some of the wider changes in the world around us – changes that we believe are likely to have a significant impact both on us and on our customers. The document will highlight how some of the challenges we face are likely to become even more complex in the future. And it will form the basis of important conversations we will be having with our stakeholders over the coming months.

Also in September, we will be publishing for the third time our six-monthly complaints data about named financial businesses. There are clear signs that our publication of this data is already helping businesses to benchmark their standards of complaints handling against others in their sector – and to learn from those who are handling complaints better. Our *ombudsman focus* feature on page 12 of this issue summarises key points from the information already available on our website about the background to this data and the lessons that can be drawn from it.



Natalie Ceeney
chief executive and chief ombudsman

Financial Ombudsman Service

South Quay Plaza
183 Marsh Wall
London E14 9SR

switchboard
020 7964 1000

consumer helpline
0800 0 234 567
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

Disputes over the quality of repairs arranged as part of an insurance claim

Although many of the insurance complaints we see require us to resolve disputes about whether or not a claim should be paid, in a sizeable number of cases the actual payment of the claim is not at issue. The insurer has already agreed to pay – but a dispute has then arisen over the repair or restoration work authorised by the insurer, in connection with the claim.

This selection of recent case studies illustrates some of the insurance complaints we have dealt with recently where the consumer has been unhappy with the overall quality of such work – or with what they consider to be unreasonable delays in getting the work completed.

88/1

insurer held responsible for poor standard of cleaning and incomplete repairs after caravan was vandalised

When Mr and Mrs D went away for a few days they left their caravan parked in its normal spot, on the driveway immediately outside their house. When they returned home they found the caravan had been broken into and vandalised.

Soon after they reported the damage, their insurer arranged for one of its representatives to come and inspect the caravan. He then arranged for it to be taken away to be cleaned and repaired.

Mr and Mrs D were far from happy when the caravan was returned to them. They said that the interior had not been properly cleaned and that the damaged toilet had not been repaired.

Initially, the insurer insisted that all the required work had been carried out to a proper standard. Mr and Mrs D argued that this was not the case. Eventually, a couple of months later, the insurer sent its representative back to take another look.

The representative did not think the cleaning had been unsatisfactory in any respect. However, he agreed that the toilet had not been repaired.

He said that if Mr and Mrs D were willing to arrange the necessary work themselves, the insurer would cover the cost. Otherwise, the caravan could be taken away again for the insurer to arrange the repairs. The representative also offered the couple £250 as compensation for the inconvenience they had been caused.

Unhappy that the representative had not agreed with them about the standard of cleaning, Mr and Mrs D raised this again with the insurer.

The insurer repeated its view that the cleaning had been completed to a good standard. It told Mr and Mrs D that '*this initial state of cleanliness had in all probability deteriorated*', over the time the caravan had been back with them.

Mr and Mrs D told the insurer that the reason for the recent deterioration in the caravan's condition was that water had seeped in around some of the windows and caused damp patches. The couple said the water had got in because some of the rubber window seals had been removed by the cleaning firm appointed by the insurer to work on the caravan. Mr and Mrs D therefore thought the insurer should pay them an additional amount to compensate them for the damage this had caused.

... we explained that their insurance did *not* cover damage that occurs naturally over time, as a result of normal wear and tear.

The insurer refused to do this. It told the couple it had already '*fully met*' its obligations under the policy terms and conditions. Mr and Mrs D then referred their complaint to us.

complaint not upheld

The insurer sent us photos of the interior of the caravan, taken by the cleaners immediately after they had finished work on it. We were satisfied from these photos that the cleaning had been carried out to a good standard.

Fortunately, the photos included some close-ups of the windows. These showed no signs that the window seals had been damaged or removed.

There was insufficient evidence to show that the damp patches that Mr and Mrs D reported had come about *either* as a result of vandalism *or* because of any failings on the part of the cleaners. And given the age of the vehicle, we thought it more likely that the patches resulted simply from normal wear and tear that, over the years, had made the caravan less watertight.

We did not uphold the complaint. We told Mr and Mrs D that we thought the insurer's offer of compensation for the delay in repairing the toilet was reasonable. But we did not agree with them that the cleaning had been sub-standard or that the cleaners had removed the window seals, leading to water damage.

We explained to Mr and Mrs D that it was important to distinguish between the types of damage that *were* and were *not* covered by their insurance. Damage such as that caused by whoever had broken in to their caravan *was* covered. But their insurance did *not* cover the kind of damage that occurs naturally over time, as a result of normal wear and tear and gradual depreciation. ■

88/2

consumer says that poor standard of repairs arranged by her insurer affected the sale price of her house

Miss G complained about the poor quality of repair work carried out on the roof of her house, after she put in a claim under her household insurance policy.

She had first realised there was a problem with the roof when damp patches began to appear on her bedroom ceiling, after a period of particularly bad weather. The insurer's loss adjuster visited the house and agreed to cover the cost of repairs.

Miss G said that even before the work was completed, she had concerns about the contractors sent by her insurer to carry out the work. Once the work was finished, she told the insurer she thought the standard of workmanship was poor.

... She complained about the poor quality of repair work carried out on the roof of her house.

The loss adjuster visited the house and authorised remedial work by different contractors. But Miss G remained unhappy even after this further work was completed. On several further occasions she complained to the insurer. Each time it sent its loss adjuster to inspect the roof – and he then authorised further remedial work.

Eventually, Miss G sold her house. She then complained to the insurer that the poor quality of the repairs had forced her to accept a lower price than she would otherwise have been able to obtain.

The insurer did not accept that her complaint was justified, so Miss G came to us.

complaint upheld in part

The insurer sent us a report prepared by its loss adjuster, following the final set of repairs.

After considering this, together with the evidence submitted by Miss G, we concluded that the repairs *were* eventually completed to a good standard. So we did not agree with Miss G that the quality of the repair work had adversely affected the value of her house.

... She had suffered significant delay and disruption before the work was finally completed properly.

However, it was clear that the initial repair work had been sub-standard. And we considered that Miss G had suffered significant delay and disruption before the work was finally completed properly. So we said the insurer should pay her £400, in recognition of this.

88/3

farmer complains of financial losses resulting from delay in getting his grain dryer repaired

A farmer, Mr M, contacted his insurer after his grain dryer was damaged. The insurer agreed to cover the cost of repairs and it authorised a mechanic, based in Mr M's nearest town, to carry out the work.

Unfortunately, the mechanic experienced problems obtaining the parts needed to complete the repair. He therefore carried out a temporary 'fix', so that Mr M would be able to continue using the machine until the parts became available and a more permanent repair could be carried out.

The machine was finally repaired a few months later and Mr M was happy with the standard of work. However, he complained to the insurer that he had lost out financially because of the length of time it had taken to get his machine fully repaired.

He said the delay had meant he was late in selling his crop. He had been obliged to pay for the grain to be stored in the interim. And he had then been unable to get as high a price for it as he would normally have received. He therefore wanted the insurer to pay his storage costs and compensate him for loss of income. When the insurer refused to do this, Mr M came to us.

complaint not upheld

We noted that it took almost six months from when Mr M first reported the damage until his grain dryer was fully repaired. However, there was clear evidence to show that the delay related solely to the sourcing of the necessary parts. There was nothing to suggest that either the insurer or the mechanic had directly contributed to any delay.

Mr M sent us information to back up his claim that he had lost out financially. This included details of the varying prices he could have expected to receive for his crop, depending on when he sold it.

Mr M told us that if it had not been for the problems with his grain dryer, he would have sold his crop at his '*usual*' time, when it would have commanded a higher price. However, he was unable to provide any evidence to show that he had always been in a position – in previous years – to sell at a time when he was likely to get the best price.

After examining all the available evidence, we concluded that Mr M had received a reasonable price for his crop. We thought he had been somewhat selective in deciding, with hindsight, exactly when he would have sold his grain if his dryer had been fully functional.

... It was a further year before the problems were eventually resolved.

It was clear that the mechanic had taken all reasonable steps to obtain the necessary parts as quickly as possible. And by acting promptly to carry out a temporary repair, he had enabled Mr M to continue using his machine until the parts became available.

We did not think the insurer could reasonably be held responsible for the delay in repairing the machine, nor did we agree that it should reimburse Mr M's storage costs. We did not uphold the complaint. ■

88/4

consumer complains about delays in remedying defects in his newly-built house

Mr T's newly-built house was protected by a warranty. This provided cover if a building defect arose during the first 10 years after the property was built.

Almost from the day he moved in, Mr T experienced problems with the heating and plumbing. He reported these problems to the builder, in accordance with the terms of the warranty. However, the builder failed to resolve the problems adequately within two years, so responsibility for the work then passed to the insurer.

It was a further year before the problems were eventually resolved. The first contractor hired by the insurer failed to complete the work properly. After Mr T complained about this, the insurer asked an independent expert to produce a report. This concluded that the original heating system had not been '*fit for purpose*' and that neither the initial remedial work undertaken by the builder, nor the work done subsequently, had addressed this.

When the problems were finally put right, Mr T complained to his insurer about the length of time it had taken, the amount of disruption caused, and the fact that he and his young family had been without adequate heating for most of this period.

The insurer accepted that Mr M had suffered some inconvenience and it offered him £500 in recognition of this. Mr M argued that, in the circumstances, the insurer should pay more. Unable to reach agreement, Mr T then referred the matter to us.

complaint upheld

Because the builder had failed to carry out effective repairs within two years, the insurer had then become liable for the work needed to put right the problems Mr T had reported.

The insurer's original contractor failed to identify the underlying problem and, in our view, the insurer had failed to progress matters with sufficient speed. As a result, Mr T had been put to a considerable amount of inconvenience and had been left with inadequate heating for an unreasonably lengthy period of time.

We therefore upheld the complaint. We told the insurer that its offer of compensation was too low – and that it should pay Mr T a further £750.

88/5

consumer complains when asked to pay installation costs for replacement of defective furniture, covered by warranty

When Mrs C bought a new bedroom suite she decided to buy a warranty as well, giving her insurance cover for the furniture. Around eighteen months later she noticed that the veneer on one of the fitted wardrobes had begun to lift, so she put in a claim under the warranty.

She was very disappointed when the insurer told her that the wardrobe could not be repaired. When she asked if the wardrobe could be replaced, the insurer told her the particular style she had bought was no longer available.

... he said the insurer had twice sent insufficiently-skilled contractors to re-lay the floor.

After some negotiation, the insurer eventually agreed to replace the entire bedroom suite. However, it told Mrs C that she would have to pay approximately £500 to cover the cost of fitting the new furniture.

Mrs C did not think this was fair. She said she had already paid once to have the furniture fitted. She did not see why she should pay again – particularly as it was not her fault that the entire suite needed to be replaced.

After further negotiations, the insurer agreed to meet half the costs of fitting the furniture but it refused to pay more than this. Mrs C then referred the dispute to us.

complaint not upheld

We looked carefully at the terms and conditions of the warranty. These clearly stated that if a replacement item of furniture could not be sourced, the insurer would be liable only for the cost of obtaining a replacement item. The policy expressly excluded '*any costs associated with re-installing a replacement product*'.

So we explained to Mrs C that we were unable to uphold her complaint. The policy document, given to her when she bought the warranty, set out the terms and conditions very clearly.

Under these terms and conditions, the insurer was not required to pay any of the installation costs for the replacement furniture. So we said the insurer had treated her more than fairly in offering to pay half of the costs.

88/6

dispute over failure of insurer's contractors to re-lay wooden floor satisfactorily after floodwater damage

Mr A submitted a claim under his household insurance policy when floodwater seriously damaged the wooden flooring in his family home. The flooring had been laid only 18 months earlier and covered the entire ground-floor.

In due course the insurer appointed a contractor to re-lay the floor. However, several months later Mr A contacted the insurer to complain that the floor had begun to distort in places.

After sending a representative to inspect the floor, the insurer accepted that the quality of its contractor's work had been unsatisfactory. It arranged for a different contractor to re-lay the floor but after only a short time, the floor began to distort again.

This time, after sending its inspector to examine the flooring, the insurer told Mr A that it was unable to take any further action. It said the problems resulted from '*seasonal movement*.'

Mr A then complained to us. He said he was unhappy overall with the standard of service provided by his insurer. And he said there had never been any problems with the original wooden flooring. He thought the subsequent problems remained the responsibility of the insurer – which had twice sent insufficiently-skilled contractors to re-lay the floor.

complaint upheld

The insurer was unable to provide any evidence to support its claim that the problems were caused by '*seasonal movement*.' And, unlike the firm that Mr A had engaged to lay the original flooring, neither of the contractors subsequently employed by the insurer were specialists in laying wooden flooring.

The insurer had accepted that sub-standard workmanship caused the problems reported by Mr A after the floor was re-laid for the first time. Very similar problems had occurred after the second contractor re-laid the floor. In the absence of any evidence to the contrary, we thought it reasonable to assume that these problems also related to poor workmanship.

We upheld the complaint. We said that Mr A should appoint a suitably experienced flooring contractor to carry out the necessary remedial work. We told the insurer to cover that contractor's costs in full. We said it should also pay Mr A £350 to compensate him for the disruption and delay he and his family had experienced while pursuing the claim.

ombudsman focus: more complaints data

In September 2010 we will be publishing the latest set of our complaints data relating to *named* financial businesses. The data will show the number of new complaints we received – and the proportion of complaints we upheld in favour of consumers – for each business that had 30 or more new cases (*and* 30 or more resolved cases) referred to us in the first half of 2010.

We first published this type of data – naming the 150 or so businesses that together generate around 90% of our complaints workload – in September 2009. This followed extensive public consultation – and the unanimous decision of our board to make this information publicly available, to encourage businesses to:

- benchmark their standards of complaints-handling against others in the financial services industry;
- learn from businesses who are handling complaints better; *and*
- reduce the number of unresolved complaints referred to the ombudsman service.

Before this, the ombudsman service had already been making this information available *privately* to the largest financial services groups.

helping businesses with the data

In preparation for publishing this type of data, we worked closely with financial businesses, trade associations and consumer groups – to explain our approach and to work through the practical issues. This included setting out the background and reasons in our policy statement, *publication of complaints data: what we will do* (March 2009) and publishing answers to the most frequently-asked questions on this topic (under '*complaints data*' in the publications section of our website).

We also produced a guide for businesses, explaining the practicalities involved. This *ombudsman focus* summarises that guide, to remind businesses how, why and what we will be publishing in September.

the names of businesses

We publish the data in tables that list alphabetically the relevant 'legal entities' against which the complaints are recorded. These 'legal entities' are FSA-regulated firms and/or OFT-licensed credit businesses. Complaints are not recorded against the trading names or brands that these 'legal entities' may trade under – and they are not recorded against any larger group that the 'legal entity' might be part of. But because some trading names and group names are more recognisable than the 'legal entity' behind them, we also:

- Provide a list of the trading names used at the end of each period by each of the legal entities covered by our complaints data. This list of trading names comes from the FSA. Firms are required under the FSA's Handbook (under SUP 15.5.1(2)) to give the FSA advance notice of any changes in the names they may trade under.

- Show for each 'legal entity' the name of any larger group which it formed a part of at the end of the relevant period. This list of groups also comes from the FSA. Because the columns of data in the complaints tables are sortable (by clicking the triangle symbol), a user can sort the data by group, which brings all the relevant 'legal entities' together.

To ensure that the data – particularly the data about the proportion of complaints we upheld in favour of consumers – is statistically meaningful, we exclude from the published data any 'legal entity' that did *not* have at least 30 new cases and 30 closed cases during the relevant six-monthly period (even if it formed part of a larger group). This means that the data we have published so far has covered around 150 legal entities that together make up around 90% of our caseload.

ombudsman focus: more complaints data

the number of new cases

The number of new cases shown in the complaints data is the number of new *chargeable* cases during each relevant period. Our computer system counts them as part of the process, when a complaint *enquiry* becomes a (chargeable) case. At the same time, our computer system generates a 'case-conversion' letter to the 'legal entity' concerned – so financial businesses can keep a tally of the number of new cases by totalling the case-conversion letters, using the date of the letter rather than the date of receipt.

The case-conversion letter:

- tells the financial business that a complaint has become a chargeable case;
- asks for the relevant papers; *and*
- requires the financial business to point out (within 21 days) if the letter should have been addressed to another business.

If a financial business thinks the new case should be recorded against *another* 'legal entity', the financial business should say so when it receives the case-conversion letter – not later. And financial businesses in a larger group should always use the correct letterhead when responding to consumers.

the proportion of complaints upheld

This data is based on cases where there has been a decision, or a settlement, on the merits of a particular complaint. It excludes cases that were out of jurisdiction or withdrawn. Our case-closure letter says if we have recorded the case as 'change' or 'no change'. The case-closure letter is generated as part of our case-closure process, after the ultimate decision has been issued. The data is based on resolved cases closed during the relevant six-month period.

In the vast majority of cases, the case-closure letter will have the same date as the date the case was closed. Where cases have been settled by an ombudsman's final decision (around 10% of all the cases we resolve), the date of closure is the date of the final decision.

Financial businesses can keep a tally of the percentage by totalling the 'change' and 'no change' case-closure letters. The published percentage will be equivalent to 'change' letters as a percentage of the total of 'change' and 'no change' letters.

In deciding whether the outcome is 'change' or 'no change', we compare:

- the final outcome for the consumer when the resolved case was closed; *with*
- the outcome for the consumer according to the last response from the financial business *before* our case-conversion letter.

If the final outcome for the consumer was better (whether by a large *or* small amount), we treat that as 'change'. This includes where the financial business made an improved offer or agreed an improved settlement *after* our case-conversion letter. Businesses should not wait to see if a consumer refers a complaint to the ombudsman service before making a proper offer.

If (after checking how we classify 'change') a financial business disagrees with the outcome that the case-closure letter says we have recorded in a particular case, the business should write back to the adjudicator straight away. If the financial business and the adjudicator are unable to agree, the issue will be escalated and a manager will check the recorded outcome.

showing the complaints by product groups

As well as showing *total* figures for each 'legal entity' covered in the complaints data, we agreed – following consultation – to break the figures down across the five product groups that the FSA uses for publishing complaints data. But we do not show the uphold rate for any product group where a particular business has *fewer than* (the statistically meaningful) 30 closed cases. To be consistent with similar data that the FSA publishes, the five product groups we show are:

- banking
- home finance (including mortgages)
- general insurance and pure protection
- decumulation, life and pensions
- investments.

There is a table in the 'complaints data' section of our website that shows how the various product codes we use 'map' to the five product groups used by the FSA.

putting the complaints data into context

During 2008 we brought together a group of representatives from industry trade bodies, consumer groups and the FSA – to see whether they could agree how market-share could be measured and published as a way of providing a wider context to the complaints data we publish.

ombudsman focus: more complaints data

This group of trade and consumer stakeholders subsequently acknowledged that it was not practicable for the ombudsman service to 'contextualise' complaints data against market share in a fair and meaningful way – either *across* different financial sectors or even *within* sectors. The report from this group, summarising its findings about 'contextualising' our complaints data, is available in the 'complaints data' section of our website. This does not, of course, prevent trade associations or individual financial businesses providing information themselves, to try to put data from our complaints tables into context.

checking the data

Our internal auditors, KPMG, have checked the systems we use for recording complaints data. They also check the data before we publish it on our website. We give advance warning, to each of the businesses concerned, of the data we will be publishing about them. This is on the understanding that they keep this information confidential until the data is published on our website. We do not provide businesses with background data or lists of individual case-reference numbers. This would not be practicable, given the large number of cases involved.

accessing the data

The tables of complaints data for named businesses can be accessed through the 'complaints data' page in the publications section of our website – where there is a range of other information about the complaints we deal with (including *quarterly* product-related complaints data published in *Ombudsman news*).

The complaints data showing named businesses comprises two tables – one for new cases received *and* one for resolved cases. These tables list (in sortable columns):

- the name of the financial business ('legal entity')
- the name of any larger group to which it belongs
- the total number of cases for the financial business
- a breakdown according to the FSA's five product groups.

On the chart showing new cases received, the explanatory notes point out that larger businesses are likely to have more cases than smaller businesses. However, the industry and consumer working group, set up to explore this issue, was unable to come up with a workable way of comparing complaints data directly to market share.

On the chart showing resolved cases, the explanatory notes also point out:

- There is a time lag between receiving a new case and resolving it. So the cases resolved during the period are not all the same as the new cases received during the period.
- The time lag varies from case to case. So the figures for the outcome of cases in a *single* period may not, on their own, be significant – but the trend over several periods could be.
- Cases that have taken a longer time to resolve may not necessarily represent the most recent performance of a financial business's in-house complaints handling.
- Some cases may relate to things done by a *predecessor* financial business, taken over by the financial business against which the case was brought.

The chart for resolved cases also shows – for comparison purposes – the *average* uphold rate for *all* resolved cases in the relevant period (relating to all businesses, including those below the 30-cases threshold) – both in total *and* broken down according to the FSA's five product groups.

The FSA's complaints data

Separately, the Financial Services Authority (FSA) publishes data showing the total number of all complaints received by the firms it regulates. This is data which firms are required to report to the FSA every six months. The data we publish shows only those complaints that consumers refer to the ombudsman service if they are still unhappy after they have first complained to a firm.

In January 2010 the FSA also confirmed that it would be requiring *individual* firms to publish their *own* complaints statistics by 31 August 2010 – with the FSA then publishing its first consolidated set of data about *named* firms in the autumn of 2010.

In issue 85 of *Ombudsman news* we confirmed that we will be reviewing our own arrangements for publishing complaints data in 2011. By that time, stakeholders will be better placed to see the whole picture – from both our data and the FSA's – and to comment accordingly.

Mortgage underfunding

Our technical advice desk has recently seen a rise in the number of calls about our approach to mortgage underfunding – where a lender has calculated mortgage payments incorrectly.

This is not a new area for us. Each year we deal with a large number of disputes involving situations where this has happened. In these cases, the consumer usually complains that they had been paying the amount quoted by the lender but were then shocked to find that the outstanding mortgage balance was more than they had originally been told.

Our approach to compensation in these cases is not new. Almost ten years ago, in issue 3 of *Ombudsman news*, we set out how we deal with cases involving mortgage underfunding. Our long-standing approach also forms the basis of the information about mortgage underfunding that we have published as part of the *online technical resource* on our website.

Given the recent interest in how we deal with mortgage underfunding complaints, we have summarised that technical note for this issue of *Ombudsman news*.

overview

Mortgage-underfunding problems can arise where a mortgage lender tells a consumer to make monthly repayments that are too low. This can happen for a number of reasons, most commonly where the lender:

- quotes an interest-only payment in error;
- from the start, calculates the repayment over a longer term than the consumer wants – for example, the consumer asks for a 15-year mortgage, but the lender sets it up over 25 years;
- lengthens the mortgage term in error, or without the consumer's knowledge (known as 'term extension') – for example, the consumer asks for a new loan to be set up over the *remaining* term of the old loan, but the lender sets it up over a *new* 25-year term;
- makes a typing error in the monthly repayment figure quoted to the consumer; *or*
- forgets to include part of the borrowing when calculating the monthly repayment.

our approach

To decide what redress is appropriate, one of the issues we will consider is whether the lender is *entirely* to blame. This will involve our deciding whether the consumer should have *known* that they were not paying enough.

This largely depends on what information the consumer was given by the lender. But we also look at the consumer's individual experience and financial knowledge.

We take into account a range of considerations including:

- what the lender's mortgage offer said the monthly repayments would be;
- whether that offer tallied with any mortgage illustrations given previously to the consumer;
- the information provided in any annual statements sent to the borrower (for example – whether the balance was shown as going down, what the mortgage term was shown as, and whether the payments were described as '*interest-only*');
- information contained in letters about interest-rate changes;
- whether the consumer queried the requested payment, but was given a misleading reassurance by the lender; *and*
- the extent to which the consumer should have been reasonably capable of inferring, from the overall information they were given, that they were not paying enough.

In cases where the monthly repayment was too low because an error by the lender incorrectly extended the term of the mortgage, we will generally decide that the lender is *entirely* to blame.

Where the term of the mortgage was extended as a result of a misunderstanding between the lender and the consumer, we will decide if the lender is entirely to blame by considering whether:

- the layout and wording of the mortgage application-form helped the consumer to understand what options were available, and made clear what terms were required for the further mortgage advance;
- the consumer made it clear to the lender and/or an intermediary what arrangements they wanted in relation to the term of the mortgage; *and*
- any general policy that the lender had, linking the terms of the original loan and the further advance, was made clear to the consumer at the time they applied for the further advance.

Mortgage underfunding

redress if the lender is *entirely* to blame

A typical case where we would be likely to decide that the lender is *entirely to blame* is where:

- the mortgage offer itself quoted an incorrect lower monthly repayment;
- the consumer paid that amount in good faith, believing it to be correct; *and*
- the consumer raised the matter with the lender as soon as the discrepancy became obvious.

In cases like this, our usual approach is to tell the lender to write-off the capital shortfall that has built up, to the date the mistake was sorted out. We will *not* usually deduct from the shortfall the notional past 'savings' that the borrower made as a result of making lower payments.

The idea of compensating the consumer in this type of case is to make up for the opportunity they have lost to make the higher repayments. By the time the problem is recognised, the consumer will normally have spent (as part of their normal expenditure) the 'savings' they had been making each month but did not know about.

We will generally assume that the consumer *would* have made the correct (higher) repayments, if they had been asked to do so.

Exceptionally we might deduct notional past 'savings' (without interest) from the capital shortfall:

- to the extent the lender can show that the consumer has kept the past 'savings' as identifiable and 'readily-realisable' assets; *and*
- unless the consumer can show that it would be unreasonable to do so in the particular circumstances.

Where appropriate, we will also award compensation for past distress and inconvenience – but only so far as it exceeds any notional past 'savings' we have disregarded. We will not usually award compensation for the *future* inconvenience of having to make increased payments.

Sometimes, unknown to the consumer, the underfunding has lengthened the mortgage term. Occasionally, this is counterbalanced by capital payments made by the consumer (perhaps from an inheritance or a redundancy payment) or by any regular overpayments they made.

The consumer will have made these payments with the intention of shortening the original mortgage term. So we would not generally allow the amount the consumer paid in this way to reduce the normal calculation of compensation. Instead, we would be likely to 'strip out' the effect of the capital repayment

or overpayments when calculating loss, by 'modelling' the mortgage account to ignore any extra payments made.

exceptional cases

Exceptionally we may modify this approach where we consider it reasonable in the circumstances of the particular case.
For example:

- if the consumer is near or beyond retirement and cannot afford the future increased payments, then even if the whole shortfall to date is written-off, we might award some compensation in relation to the *future* additional payments – or require part of the loan to be interest-free;
- if the consumer would not have taken out the mortgage *at all* if they had been told the correct repayment figure, we might compensate them on the basis of putting them in the position they would have been in, if they had not been misled;
- if the consumer ran up arrears by failing to pay all of the (incorrect) lower repayments – so showing that they would not have made the correct higher payments anyway – then we are likely to reduce compensation accordingly. It is likely that we would reduce compensation to an award for distress and inconvenience only – and this is likely to be no more than £250. In reducing compensation, we will consider evidence as to whether the arrears were increasing, staying the same or decreasing – and whether they were for the whole or part of the relevant period.

There is more information about our approach to compensation for distress and inconvenience in the *online technical resource* on our website.

redress if the lender is *not* entirely to blame

Typical cases where the consumer would have to accept part of the blame, and where we would reduce the compensation proportionately, are where:

- the mortgage offer quoted an *incorrect* monthly repayment; the consumer initially paid that amount in good faith, believing it to be correct; but they later discovered the discrepancy and kept quiet;
- the mortgage offer quoted a *correct* monthly repayment; but the lender collected the wrong amount by direct debit; and the consumer kept quiet about the discrepancy in circumstances where they must have realised something was wrong;

Mortgage underfunding

- the lender provided, and discussed with the consumer, a mortgage illustration that quoted the *correct* monthly repayment; the subsequent mortgage offer quoted an *incorrect* monthly repayment; and the discrepancy was such that the consumer must have realised something was wrong;
- the lender mistakenly set up a repayment mortgage as an interest-only mortgage; but we are satisfied that the consumer must have known, from the documents sent to them, that this is what had happened.

Once the consumer discovers the problem but keeps quiet, it would not be fair to disregard any notional past 'savings' which subsequently built up.

examples

The following examples are based on a case where:

- The loan was intended to be a £50,000 repayment mortgage over a 25-year term.
- The monthly repayments paid the interest only, because of a mistake by the lender.
- The mistake was discovered after 5 years, with 20 years of the term left.
- At that stage, the mortgage debt was £4,000 higher than it should have been.
- Notional past 'savings' were £3,500.
- We consider that £250-worth of inconvenience was caused to the consumer.

Usually we would *not* deduct any of the notional past savings from the capital shortfall.

- We would require the lender to write-off the whole capital shortfall of £4,000.
- We would not award anything for inconvenience, because the disregarded notional past 'savings' of £3,500 exceed the £250 we would otherwise have awarded.

Exceptionally, if the lender showed that £1,000 of the past 'savings' formed an identifiable and 'readily-realisable' part of the consumer's current assets:

- We would deduct £1,000 of the notional past 'savings' from the capital shortfall.
- We would require the lender to write-off the remaining £3,000 of the capital shortfall.
- We would not award anything for inconvenience, because the disregarded notional past 'savings' of £2,500 exceed the £250 we would otherwise have awarded.

Exceptionally, if the lender showed that *all* the past 'savings' formed an identifiable and 'readily-realisable' part of the borrower's current assets:

- We would deduct all of the £3,500 notional past 'savings' from the capital shortfall.
- We would require the lender to write off the remaining £500 of the capital shortfall.
- We would also award £250 for inconvenience.

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. What's your approach to assessing the market value of a vehicle that's been written-off, as a result of theft or damage?

A. In this situation, most motor policies require the insurer to compensate the policyholder for the vehicle's market value, immediately before it was stolen or damaged. Disputes are often referred to us where the policyholder thinks their vehicle was worth more than the insurer has offered.

We normally consider the 'market value' to be the retail price which the policyholder would have had to pay, if buying a comparable vehicle from a reputable dealer immediately before the date of the damage or theft.

This may be a lower price than the one at which the vehicle is advertised – as the dealer may have built in a margin for negotiation. It is also likely to be higher than the price payable in a private sale or at an auction – and higher than the 'trade value' – which is the price a dealer would pay before adding a mark-up.

Assessing the value of a used vehicle is not an exact science – although we strive to be as consistent as reasonably possible. We take into account all relevant evidence, paying most attention to valuations given in motor-trade guides, such as Parker, Glass and CAP. These are based on extensive nationwide research.

Evidence from an independent engineer can be helpful, particularly where the vehicle is not a standard one (for example where it has been heavily modified). Evidence from an insurer's engineer may also be helpful – but we will need to assess the independence of the report.

To back up their view that their insurer has underestimated the value of a vehicle, consumers sometimes send us copies of advertisements for similar vehicles. We do not generally find such advertisements particularly persuasive. A vehicle may often be sold for less than the advertised price. And small differences in mileage, year of registration, model type *etc* can significantly affect the value.

There is more information about our approach to the motor insurance disputes we see most often in our *online technical resource* in the publications section of our website.

Q. Can you tell me more about the training events you arrange for consumer advisers?

A. We regularly run special one-day training events around the UK, aimed at advice workers who deal with front-line enquiries from consumers facing problems with financial services. These events, which are free of charge, provide the opportunity to learn more about the role of the ombudsman service, how we work, and our approach to different types of financial disputes.

We are very keen to welcome the widest range of people from consumer and voluntary groups to our events. Those attending typically include staff from Citizens Advice Bureaux, trading standards, debt support agencies, local council departments, charities and consumer support agencies.

So far this year we have run more than a dozen of these events in different areas of the UK. Information about events coming up over the next few months, together with details of how to book, can be found in the 'news and events' section of our website.

designed, edited and produced by the communications team, Financial Ombudsman Service ref: 625