

ombudsman news

essential reading for financial firms and consumer advisers



funding matters



Walter Merricks
chief ombudsman

It has seemed to me at times that some members of the industry spend more time discussing how the ombudsman service is funded than they do thinking about the fundamental causes of the complaints we have to deal with.

It wasn't easy – back in 2000 – getting agreement on how firms would share out the cost of our scheme. I remember being sorely tempted to lock a group of industry representatives in a room and not let them out until they'd reached a consensus.

So I can see why some might think that in embarking on a review of our funding we've taken leave of our senses – and that we'll simply be unleashing a bout of special pleading, madcap ideas and general disarray. But the time has come for a review, and it's important to lay out the facts and figures on which people can judge the issue. Hence the numerous tables and options in the discussion paper that we and the FSA published in May. There's a link to it from the news page of our website (www.financial-ombudsman.org.uk).

The 2% of financial firms that dominate the retail market and produce 93% of the complaints referred to us will inevitably be called on to pay a significant proportion of our budget. And case fees do serve the purpose of allocating the costs proportionately among the companies producing large numbers of complaints.❖

settling financial disputes,
without taking sides

issue 54

July 2006

in this issue

pre-'A Day'
mortgage endowment
complaints **3**

ombudsman focus
Tony Boorman on
keeping in touch with
smaller firms **9**

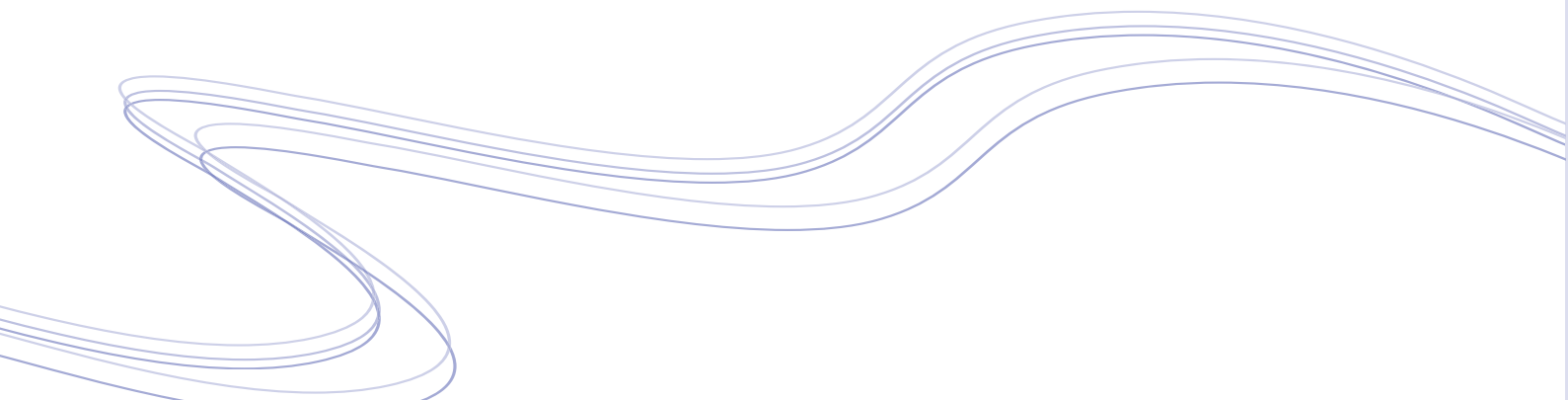
annual insurance
policies –
cancellation rates **12**

ask ombudsman
news **16**

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Not surprisingly, it has been the financial advisers and intermediaries who have been most keen to see a modification in the impact of case fees. So I am pleased to see the beginnings of a consensus emerging.

The Association of Independent Financial Advisers and the Association of Mortgage Intermediaries appear likely to back the option that would mean the end of case fees for 98% of firms (option H in our paper). Under this option – which seems to be gathering support – firms would not pay case fees unless their customers referred more than ten complaints to us in a year.

Whether this is an option you support – or you have a different view – please let us know by responding to our discussion paper. We need to hear from you as soon as possible – no later than the end of this month. If a clear consensus emerges, then we and the FSA will have more chance of reaching a decision before the next financial year. If there is substantial disagreement, it might take longer to decide on the way ahead.



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chief ombudsman



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pre-‘A Day’ mortgage endowment complaints

This is an extract from the briefing note on pre-‘A Day’ mortgage endowment complaints published earlier this year on our website – together with some relevant case studies.

There is nothing new in the approach set out in the briefing note – the principles became well-established many years ago. However, we hope the note will prove useful in drawing together the available information on our approach to handling these complaints.

A pre-‘A Day’ sale is one that took place before 29 April 1988 (‘A Day’) – the day the provision of investment advice became regulated under the *Financial Services Act 1986*. When considering pre-‘A Day’ complaints, we ignore the post-‘A Day’ regulatory requirements and instead take into account the general legal principles that applied at the time.

Until ‘A Day’ there was no regulatory requirement for firms to give advice – nor were they required to volunteer advice. After ‘A Day’, advice about investments had a specific regulatory meaning. Before ‘A Day’, it had a more general meaning – effectively, giving an opinion about what the customer should do.

Many firms say they did not give advice at all before ‘A Day’. They say they merely provided relevant information about endowment and repayment mortgages, allowing the customer to make an informed choice about which type of mortgage to take.

Or they say they acted as an ‘introducer’ – referring people who asked about an endowment mortgage to a product provider. Many consumers, on the other hand, say they went to their bank or building society for a mortgage, and the branch manager or mortgage adviser told them an endowment mortgage would be the best thing for them to have. Often they say they were told that the policy would not only repay the mortgage, but also provide a tax-free lump sum – perhaps enough to buy a car, pay for a holiday or help with retirement planning.❖❖❖

... we reach our
decisions on the
balance of
probabilities

did the firm give advice?

We therefore have to decide, *in each case*, whether the firm limited its dealings to providing facts and figures about the mortgage and how it operated – or whether it went further and gave a recommendation about the appropriate course of action to take.

We reach our decisions on the balance of probabilities. We do not assume that advice was given. We look at the circumstances at the time and decide what is most likely to have happened.

Factors we consider include:

- the consumer's recollection of events and what led them to take out the policy
- the firm's account of events
- the consumer's financial awareness
- any pre-existing advisory relationship
- whether a mailshot (postal promotion) from a firm recommended existing customers to change from a repayment to an endowment mortgage
- promotional material advertising the provision of advice
- whether the firm received commission and/or submitted the application form.

We believe these are useful indicators in helping us determine whether advice was given. But we consider each case individually. For example, we may think it unlikely that a particular customer went to their lender and requested a policy – or that

a financially naive borrower would enter into an investment contract without receiving advice to do so.

On the other hand, we do not assume that if a firm received commission or submitted the application form, it *necessarily* gave advice – or that if it advertised that it could give advice, it did so in every case.

if the firm gave advice...

If a firm gave advice, it had a duty to exercise reasonable care and skill, according to the standards of the time. If it recommended a policy that was clearly inappropriate for the customer's circumstances, we would almost certainly conclude that it had failed to exercise reasonable care and skill.

Sometimes a policy might be inappropriate because it should have been clear from the customer's circumstances that they were unlikely to be able to afford the premiums over the full term. Or it may be inappropriate because it was clear that the customer needed a mortgage only as a short-term expediency and had no need for a long-term savings commitment.

But in most of the complaints we receive, the main issue is whether the policy represents a degree of risk that the customer was unaware of, and would have been unwilling to take.

if the firm did *not* give advice...

Of course, if we find that the firm did *not* give advice, we will not uphold a complaint that it failed to advise with reasonable skill and care. But we may still uphold a complaint if the firm misrepresented the position to the customer.

An active misrepresentation would be where the firm made an untrue and misleading statement about the features of an endowment contract, which induced the consumer to take out a contract when they would not otherwise have done so.

However, it is also possible to misrepresent something by silence, or by only partially disclosing the material facts – for instance, by telling only the good news and hiding the bad (such as when a firm sends out a mailshot about endowments, extolling the benefits but omitting to mention that there is a potential downside).

The following case studies illustrate some of the wide range of complaints we deal with involving pre-‘A Day’ mortgage endowment complaints.

... if a firm gave advice, it had a duty to exercise reasonable care and skill

case studies

pre-‘A Day’ mortgage endowment complaints

■ 54/1

pre-‘A Day’ mortgage endowment policy – whether firm provided advice

Mr and Mrs T complained to firm B after they received a letter telling them their endowment policy was likely to produce less, when it matured, than they needed to pay off their mortgage.

When firm B rejected the complaint, saying it had not advised the couple to have an endowment mortgage, Mr and Mrs T referred their complaint to us.

complaint upheld

Mr and Mrs T had taken out their £19,000 mortgage with firm A in 1986. To cover the mortgage they took an endowment policy with firm B. Firm B told us it had not advised the couple to take an endowment mortgage. However, it said that the commission on the sale had been split evenly between firm A and an estate agent, so it thought that one or both of them must have been responsible for the advice given to Mr and Mrs T.

When we contacted firm A, it denied giving the couple any advice but said it believed the estate agent had advised them. We discovered that the firm of estate agents is no longer trading, so it couldn’t comment.

Mr and Mrs T told us that when they took out the policy they had no savings or investments, only a current account into which Mr T’s wages were paid. He had been aged 40 at the time of the sale and had been working temporarily in a warehouse, earning about £11,000 per year. ❖❖❖

Mrs T was six years younger and – at the time of the sale – had not been in paid employment but was at home looking after their three young children.

The couple told us they bought their first home through their local estate agent. They had decided to arrange the mortgage with firm A because one of its representatives was based in the estate agent’s office. The couple told us that firm A’s representative had subsequently introduced them to Mr Y, a representative of firm B. Mr Y had later visited them at home to discuss their mortgage.

Mr and Mrs T said they had never heard of endowment mortgages before meeting Mr Y. He had told them it was the best option because it would not only repay the mortgage but also give them a tax-free lump sum. The couple said he had never told them of any risk that the policy might not produce enough, when it matured, to repay their mortgage.

Mr and Mrs T had a very clear recollection of his visit to their home. They were certain they had never heard of a mortgage endowment before their meeting with him, and that he had said this was their best option.

Mr and Mrs T were financially unsophisticated. We thought they were unlikely to have taken out an investment contract unless they had been advised to do so – they had no experience of such matters.

We thought the estate agent had probably received commission from firm B because it referred the couple to firm A. And we thought firm A had probably received commission because it – in turn – had referred the couple to firm B’s representative, Mr Y.

It was possible that firm A, or the estate agent, had advised Mr and Mrs T to take out an endowment mortgage before Mr Y became involved, but we did not think this was likely in this case. Mr and Mrs T were sure they had not been advised to buy an endowment mortgage before they met Mr Y.

At the time of the sale there had been no regulatory requirement for firm B to give advice. But if it did so, it had a legal duty to act with reasonable care and skill. In this case, we were satisfied that it was more likely than not that Mr Y, acting on behalf of firm B, had given advice.

Taking into account Mr and Mrs T’s financial circumstances and testimony, we thought it unlikely that they knowingly accepted a risk with the repayment of their mortgage. We found that in failing to make Mr and Mrs T aware of the risk associated with an endowment policy, firm B had failed to advise with due care and skill. We therefore upheld the complaint.

.....

■ **54/2**
pre-‘A Day’ mortgage endowment policy – whether firm’s mailshot constituted advice

Mr and Mrs G complained to the firm after receiving a letter telling them that their endowment policy might not produce enough, when it matured, to repay their mortgage.

Until 1987 the couple had a repayment mortgage but they converted it to an endowment mortgage. They said they had done this after receiving the firm’s mailshot encouraging them to change. The mailshot had stated that an endowment policy would give them a cash lump sum, as well as paying off the mortgage. The couple said the firm had not

told them of any risk of a shortfall when the policy matured. The firm rejected the complaint. It said there was no evidence that the couple had been given inappropriate advice.

Its mailshot had simply provided information and invited Mr and Mrs G to seek advice – there had been no meeting or interview with an adviser.

Mr and Mrs G referred their complaint to us. They told us that in 1987 they had a £25,000 repayment mortgage with the firm. They had both been self-employed – working as cleaners – and had a small child. The couple had no savings and were paying premiums of 50 pence and £1 per week into two small insurance policies.

They had not kept a copy of the mailshot but we were able to obtain a copy from the firm. This stated:

‘Although your current repayment mortgage was originally the most cost-effective way of paying for your home, now you can have the following extra benefits for approximately the same monthly outlay:

- *The probability of a handsome tax-free lump sum on maturity, in addition to having your mortgage completely repaid.*
- *Greater security for your family, as your mortgage will be repaid in the event of your death.*

Changing to an endowment mortgage is easy...’

The mailshot enclosed some further information about endowment mortgages and invited Mr and Mrs G to request a personal quotation. It finished with the statement:

‘After all, you have nothing to lose – but you could gain a great deal.’

After contacting the firm to ask about converting their repayment mortgage to an endowment mortgage, they received a second letter from the firm which said:

‘...the majority of our recent mortgage customers have opted for this method and frankly the reasons aren’t hard to find.

A personal quotation is enclosed which... shows you the advantages of the scheme.

I do urge you to think seriously about this new method.’

complaint upheld

The first letter had been addressed to Mr and Mrs G personally from their existing mortgage lender, and was signed by a senior member of staff. We thought it reasonable of the couple to have considered the letter to be a recommendation.

We thought it perfectly possible that this first letter had left Mr and Mrs G quite unaware of any disadvantages in converting their mortgage to an endowment basis. The second letter reinforced the firm’s recommendation of an endowment mortgage, again without any mention of the downside.

The documents enclosed with the second letter contained some warnings about bonuses. However, we didn’t think these warnings were sufficient to have alerted the couple to the possibility of the policy failing to meet its target amount.

We concluded that the letters the firm sent Mr and Mrs G amounted to advice, so we went on to consider whether the firm had advised with due care and skill. We upheld the complaint.

■ **54/3**
pre-‘A Day’ mortgage endowment policy – whether it was likely that the consumers had understood the risks

Mr and Mrs J complained to the firm after they received a letter telling them that – when it matured – their endowment policy might leave them with less than they needed to pay off their mortgage. The couple said they would never have taken out the endowment policy if they had known of this risk.

After the firm rejected the complaint, Mr and Mrs J came to us. The couple had taken out a £40,000 endowment mortgage with the firm in 1987. At the time, Mr J was 32 years old and worked as an insolvency practitioner. His annual income was £22,000. Mrs J was the same age and was employed as a school teacher, earning £7,000 a year. The couple already had an endowment mortgage and were looking to move house and increase their mortgage.

Mr and Mrs J told us that the firm had advised them to have an endowment mortgage because the policy would repay their mortgage in full and leave them with a cash surplus. They said the firm had never mentioned any risk that the policy might not produce enough, when it matured, to repay their mortgage.

The firm did not dispute that it had given the couple advice. However it insisted that it made the risks clear.

complaint rejected

Mr and Mrs J had a reasonable joint income, some previous experience of mortgage endowments and relatively stable jobs with reasonable prospects. It seemed to us that, in exchange for the possibility of receiving an additional lump sum when the policy matured, they might have decided they were in a position to take a risk with the repayment of their mortgage.

We also thought it possible that Mr J’s occupation and training might have given him a greater understanding of the effect of investment returns than the average person would have had.

And we thought that if the couple had read the firm’s literature (and the detail of their testimony suggested they had done so), they were likely to have understood the warnings it contained. These warnings included the following:

‘If current rates of bonus were reduced during the term of the policy to such an extent that the total maturity value would be insufficient to repay the outstanding loan, you would be required to pay the balance from your own resources.’

We felt it was more likely than not that Mr and Mrs J had understood the risk that the policy might not produce enough to repay their mortgage. We rejected their complaint.

more than just small talk –

keeping in touch with smaller firms

Half of all the cases we dealt with during the past year related to just twelve of the UK's largest financial services groups. Meanwhile, fewer than one in ten of all the firms we cover had more than two complaints referred to us. So while we have regular and consistent contact with the largest firms – we have very little direct contact with most of the firms in our jurisdiction – the smaller firms.

We spoke to the principal ombudsman, Tony Boorman, about some of the particular challenges this presents.



Tony Boorman principal ombudsman

does the ombudsman service communicate differently with smaller firms than with those we deal with constantly?

Yes – there's bound to be a difference simply because smaller firms are bringing fewer cases to us. A lot of our focus naturally goes on dealing with those who provide the largest chunk of our workload – and that's the small number of the largest financial services groups in the UK.

The smaller firms form a very important constituency, but it's also a very diverse one, so there can be different challenges in communicating with them. We've been trying to better understand the needs of different groups of smaller firms and how our service operates in relation to those needs.

Large firms understand our process and procedures – they use them a lot. If your firm has hundreds of complaints with us each year, you'll know how we work and the approach we adopt towards different sorts of cases.

And we'll also probably understand a lot about your firm, your procedures and practices over the years, and the products you have been involved with.

But none of that's going to be possible if your firm is involved in only one or two complaints each year.

what exactly do you mean by 'small' firms?

We don't actually have a measure of the size of the firms we deal with. By 'small' firms, I'm thinking of those that have just one or two complaints referred to us a year, or at most one or two a month. They're 'small' in the sense of being only occasional users of our service.

But an occasional user could have thousands of employees across the country, or could be a single adviser working from home. That's why I said they're a really diverse constituency.

We try to make our service meet the needs of individual consumers and I hope we can take the same approach with firms. The real question, then, is whether we explain our approach in the most appropriate manner for these firms – and whether the ways in which we work take sufficient account of their individual needs.

For example, small firms often need to involve and rely on their professional indemnity insurer. Typically – larger firms won't need to do that. This can mean many smaller firms feel they're not actually dealing with the complaint themselves. We have to be aware of that.

so tell us how you're addressing the needs of smaller firms?

I'll give you a couple of quick examples. Take the consumer contact division – they're our 'front-line' staff dealing with initial enquiries from consumers about their complaints. Here we're able to provide guidance early in the process. We identify firms that don't seem to have used our service much before and give them additional information about how we work.

And we're trying to improve the way we keep small firms in touch with progress on their cases. Often, after our initial enquiries, we might not need to talk to a firm about its case for several weeks. During that time we may perhaps be trying to get information from the consumer that we need for our investigation. Most small firms are keen to be kept up to the minute about exactly what stage their case has reached.

Of course, the adjudicator handling the case can always answer any queries on this. But we're looking to see if we can give firms a greater amount of this kind of routine information. Obviously though, we don't want to be showering busy people with unnecessary paperwork. It's a fine balance.

but can these firms find out about the ombudsman service before a complaint is made about them?

Absolutely. We want all the firms in our jurisdiction to be aware of our procedures – not just those who have complaints brought against them. Our website sets out our approach to a wide range of complaint issues which are relevant to smaller firms. And we're expanding the 'frequently-asked-questions' at the moment. There'll soon be a large section dedicated to the specific concerns of smaller firms. As well as that – firms can contact our technical advice desk directly at any stage with any questions they may have. (*See page 2 for contact details.*)

We also take part in a number of activities such as industry conferences, seminars and events. This is an important way of communicating with firms and helping them understand what we do.

do you ever talk direct to individual firms?

Oh definitely – yes. It's always really helpful to hear their views. And, of course, as well as helping us understand their concerns – it's a chance for us to correct any misunderstandings. Sometimes we talk to a group

of small firms together. Mainly, though, we meet people from individual firms when we hold workshops and take part in roadshows.

There are a lot of these events throughout the year – and they take our staff all over the country. I went to Harrogate recently to hold an open question and answer session at the *Financial Adviser Expo 2006*. It was a good event. Really useful. In fact, if you consider how few complaints we receive from small firms, we actually spend a considerable amount of time talking to them – ensuring they're comfortable dealing with us.

what sorts of issues normally get raised at these events?

Something that clearly concerns smaller firms – it's also something that's regularly mentioned in the trade press – is the way we're funded. At the moment, each firm pays an annual levy. The amount depends on the firm's size. Each firm also pays an individual case fee if we handle a complaint about the firm and that case becomes 'chargeable' under our rules. But we don't charge a firm for the first two complaints referred to us each year – so in fact only a very small number of firms ever pay case fees at all.

We're reviewing our funding arrangements at the moment – I know Walter Merricks talks about this elsewhere in this issue of *ombudsman news*. What we're doing is consulting with the industry on a range of possible options. That includes the viability of increasing the number of cases for which no case fee is charged. We hope people will take a look at our funding consultation paper on our website – and respond before the end of July. That way we can take on board as many views as possible.

what other worries do firms have?

We often hear the same concerns. In fact some of them seem to have grown into urban myths. They bear little resemblance to the actual facts.

One is the idea some firms seem to have that if they haven't got any documentation, it automatically means they'll lose their case. Now obviously – when records are available they're very useful. But this may not always be possible – for a number of reasons. So we'll look – from the evidence currently available – at what's most likely to have happened. We look at things like what advice was given and whether it was appropriate for that particular customer's circumstances at that time.

Something else firms sometimes raise is the question of whether our adjudicators have this or that specific qualification. We have a lot of well-qualified people working for us – and a great deal of industry experience. But the real point here is usually overlooked.

Regardless of their individual qualifications – the really key quality we need in all our adjudicators and ombudsmen is something that can't simply be demonstrated by the letters they have after their names. It's the ability to stand back and listen to all sides of the story – to weigh up the arguments and arrive at decisions fairly and impartially.

A really big concern of smaller firms – particularly IFAs – is the fear that more often than not we'll decide in favour of consumers. We hear that a lot – but actually, the statistics simply don't support it. In terms of formal outcomes, in around two out of every three cases we find that the firm's response to the consumer's complaint was basically correct.

Of course, just because we don't formally uphold a complaint, it doesn't mean the consumer wasn't justified in feeling genuinely let down and disappointed by the firm. Many of the complaints we see could have been avoided in the first place if the firm had just made

a better job of explaining its actions to the customer – explaining why its treatment was fair.

any more myths?

Well one that we often hear is the idea that it's in our interests to drum up complaints. Actually the opposite is true. We put a lot of effort into what we call 'complaints prevention'. We look at ways we can share our knowledge and experience with firms – to try to prevent complaints arising in the first place. One way we do that is by taking part in industry conferences, seminars *etc.*

Then there are activities such as publishing case studies and other feedback in *ombudsman news*. And our external liaison team is dedicated to encouraging firms to resolve their disputes themselves directly with the consumer.

Another point worth making here, I think, is that we filter out complaints that clearly have no merit – or that can be sorted at the earliest stage. That means fewer than one in every six initial complaints raised with us will turn into a case that we investigate. The first two of those cases are free so, as I said earlier, most small firms will never need to pay case fees. And that's definitely *not* a myth. ❖

annual insurance policies – cancellation rates

Most insurance policies contain a clause giving either party the right to cancel – provided they give sufficient notice. The consumer will generally receive a pro-rata refund of premiums paid, less a cancellation charge. This charge will often be greater if the policy is cancelled during its first year than if it is cancelled later, because insurers want to cover the cost of setting up the policy.

In the complaints referred to us involving cancellation of annual policies, consumers generally accept that the firm may wish to make some charge to cover the costs incurred in cancelling a policy. But they often query the firm's approach if it fails to offer them any refund at all – or if it offers substantially less than a pro rata calculation of their premiums.

In assessing such disputes we are guided by the *Unfair Terms in Consumer Contract Regulations 1999* (UTCCR) and by the statements on unfair contract terms made by the Financial Services Authority (FSA) in its publication *'Challenging unfair terms in consumer contracts'* (available on the FSA website – www.fsa.gov.uk).

The UTCCR state that *'a contract term that has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer'*.

Schedule 2 of the UTCCR sets out an indicative and non-exhaustive list of terms which may be regarded as unfair, including Term (d):

'Permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract.'

In some policies the cancellation clause states that if the firm decides to cancel a policy at any point during the period of insurance, it will refund some of the premiums already paid – on a pro rata basis. However, if the policyholder cancels, then the firm retains all the premiums already paid, or refunds a smaller proportion than if it had itself cancelled the policy.

The FSA statement specifically refers to terms that charge policyholders a disproportionately large sum if they do not fulfil their obligations under a contract, or if they cancel it. We share the view that giving consumers the right to cancel – and then penalising them financially for exercising that right – is likely to be unenforceable in law, as well as unfair and unreasonable.



... it is important for the firm to have fair reasons for its approach.

In cases referred to us, if a customer has cancelled a policy and received a significantly smaller refund of premiums than could be expected as a pro rata settlement, we will ask the firm to explain how its approach complies with the requirements under the regulations.

It is not usually unreasonable for the firm to recover any additional administrative costs it incurs. Nor is it usually unreasonable for its charge to reflect the costs it necessarily incurred in setting up the policy – and that will not now be spread over the assumed lifetime of the insurance.

Similarly, the provision that premiums for an annual contract are not refundable if a claim has been paid does not appear to be unfair.

We recognise that there may also be seasonal or other features of the policy which could justify different approaches to refunds. And we recognise the more fundamental point that under some policies, both the risk and the insurer's potential liability may be higher at the outset of the policy than at the end – so the premium calculation will reflect this.

But in any event, it is important for the firm to have fair reasons for its approach to premium refunds – and for it to explain its approach clearly to the customer.

In some circumstances, regulatory rules require 'cooling-off' periods for contracts. We would expect firms to make particular provision for these periods, as it is important that cancellation rights are not restricted by unfair charging practices. For example, the *Insurance Conduct of Business* rules require insurers to allow a cooling-off period of 30 days for pure protection contracts. If a customer decides to cancel the contract during this period, insurers are not entitled to charge anything.

Complaints about refunds under payment protection policies – and under other policies that are not renewable – require us to consider some additional factors. We hope to comment further on this in a future edition of *ombudsman news*.

case studies insurance policies – cancellation rates

■ 54/4 cancellation of motor insurance by policyholder – whether firm correct in refusing any refund of premiums

Mr A took out the firm’s standard motor policy in February 2005 and paid the annual premium in full. Five months later, he decided to sell his car as he no longer needed it. However, when he returned his policy to the firm, it refused his request for a refund of some of the premium.

The firm said that if it cancelled a policy, then it would normally make a pro rata refund of the amount the customer had paid. However, when a customer cancelled the policy it did not refund any premiums if the cancellation was made four or more months after the start of the policy. When the firm rejected Mr A’s complaint about this, he came to us – saying he thought the firm was ‘grossly unfair’.

complaint upheld

We asked the firm for a copy of the policy conditions. These included the following:

‘cancellation by us

... If you return your certificate....to us we will refund the part of your premium which applies to the period of insurance you have left. If we cancel this insurance because you have not paid the full premium, we will work out the refund using the rates shown below. We will not give you a refund if anyone has claimed in the current insurance period.

cancellation by you

If you have not made any claims in the current period of insurance, and you are not going to make a claim, we will work out a charge for the time you have been covered using our short-period rates shown below. We will refund any amount we owe you.

Period of time you have had the cover	Refund of up to
<i>one month</i>	<i>70%</i>
<i>two months</i>	<i>60%</i>
<i>three months</i>	<i>50%</i>
<i>four months</i>	<i>40%</i>
<i>more than four months</i>	<i>0%</i>

Any refund made to you for any reason above will only be provided if your annual premium per vehicle exceeds £150.’

We asked the firm to explain why it had made these particular conditions. It said its main concerns had been to discourage customers from cancelling their policies and to recover the costs it incurred if they did so.

We then asked the firm how its costs could be so large as to justify its making no refund at all to customers cancelling more than four months after taking out a policy. The firm was unable to do this.

We concluded that the policy condition was unfair and contrary to the UTCCR. So we told the firm it should make a pro rata refund, after deducting a reasonable administration fee.

.....

... we asked the firm to explain why it had made these particular conditions.

■ 54/5

cancellation of house insurance by policyholder – whether firm correct to charge an administration fee

Mr Y insured his house with the firm in June 2005. When he married in December that year, he sold the house and cancelled his policy. In accordance with the cancellation condition in the policy document, the firm made a pro rata refund of his premiums, less a sum of £50 to cover its administration costs.

Mr Y thought it unfair of the firm to levy an administration fee, since he considered that administrative costs should already have been built in to the amount he had paid for his insurance.

complaint rejected

We agreed with Mr Y that the firm had allowed for administration costs when it calculated the price of its policy. However, since the policy had only – in the event – lasted for six months, the firm would not have recouped all of these costs; it had only received half the annual premium. And we were satisfied that it had also incurred additional and unexpected costs in cancelling the policy. We therefore rejected the complaint.

to print, or not to print ..?*an independent financial adviser writes ...*

Q It's good to see from my latest copy of *ombudsman news* that you've started giving the environmental credentials of the paper you print on. But it occurs to me that it would be even more environmentally-friendly not to print hard copies at all – and just have an online version.

A This is something we keep under constant review. However, by no means all our readers have easy or regular access to the internet. In particular, many in the consumer advice sector tell us that it's not always practical – or possible – for them to access a web version. They far prefer the print versions of our publications, which they can circulate to colleagues and volunteers, and then retain for future reference.

Within the financial services industry itself, a number of training and compliance staff tell us they find the online version very useful for quick reference – but much prefer the print version for more detailed reading – and to circulate within their firms.

This preference seems to reflect general feedback from our readers. Many say they use the web archive of back copies for specific research purposes, but find it especially helpful to have a hard copy version. They say they find it easier on the eyes than staring at a screen for long. And many of them tell us they like to browse through the latest issue when they are on the way home by train or bus, or when away they are from their desk during their lunch break.

ombudsman news gives general information on the position at the date of publication. It is not a definitive statement of the law, our approach or our procedure. The illustrative case studies are based broadly on real-life cases, but are not precedents. Individual cases are decided on their own facts.

consumer credit complaints*the manager of a consumer advice centre emails ...*

Q Could you let us know how the ombudsman fits into the government's new plans for consumer credit? Who can answer any general questions at this stage about the proposed new complaints arrangements?

A Following an extensive review of the 30-year-old consumer credit law by the Department of Trade and Industry, new legislation – the *Consumer Credit Act 2006* – was passed in March 2006. This updates the framework under which consumer credit activities are carried out and regulated in the UK.

The new legislation includes requirements on businesses with consumer credit licences (issued by the Office of Fair Trading) to have formal complaints-handling procedures. And for the first time these businesses will also be covered on a statutory basis by the Financial Ombudsman Service.

Businesses with consumer credit licences who are also regulated by the Financial Services Authority (FSA) – such as banks and building societies – already come under the ombudsman service for most of their consumer credit activities.

We will start to handle consumer credit complaints about businesses with consumer credit licences from 6 April 2007. We are already working with trade bodies in the consumer credit sector and taking part in key conferences and exhibitions. Later in the year, we will also be hosting special workshops and events around the country for businesses with consumer credit licences.

As part of the consultation document we published in June 2006 (available at www.financial-ombudsman.org.uk in the publications section – under 'technical notes') we included answers to some anticipated queries. This might be a good starting point for any questions you may have. You can also contact our technical advice desk with any questions on 020 7964 1400. This is a free service for firms and consumer advisers.