from **Caroline Wayman**
chief ombudsman &
chief executive

write to **Financial Ombudsman Service**
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Rt Hon Nicky Morgan MP
Chair of the Treasury Committee
House of Commons
Committee Office
London
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Sent by email

7 February 2019

Dear Nicky

Thank you for your letter following on from my recent appearance before your Committee. As ever, I was grateful for the opportunity to discuss the work of the Financial Ombudsman Service.

Quality

Reaching a fair outcome is at the heart of everything we do. All of our cases require our case handlers to exercise judgement in determining what is fair and reasonable in all the circumstances of a complaint. Case outcomes may change for a number of reasons through the natural process of investigation. For example, if additional evidence or information comes to light at a later stage of our investigation.

Alongside the checks and balances that are an integral part of our casework process, our quality assurance framework provides an additional lens through which we are able to examine whether we've reached a fair outcome. During the evidence session I said I would provide the Committee with a document which sets out our principles and approach to quality assurance – it is attached as annex A to this letter. We approach quality and quality management as an end-to-end activity at the core of all that we do. Our primary focus is on ensuring we reach a fair outcome first time – and this begins with the recruitment and training of our people, our investment in knowledge tools and guidance to help case handlers reach a fair outcome, and having experienced ombudsmen leading our teams and on hand to provide 'in the moment' feedback, guidance and support.

Our quality assurance framework and reporting helps us understand how well we're doing in providing a quality service to our customers, including whether we're reaching fair outcomes. One of our core questions asks whether we 'got to grips with the issues' in a case. In the 12 months January to December 2018, in completing the 'getting to grips' check as part of our QA process on cases across the service, we didn't agree that we had in around 8% of cases. This check does not mean an outcome was necessarily wrong, but means the QA reviewer had some doubt about how well we'd done. It may also include examples where we reached a fair outcome, but may not have handled the case as well as we could have (for example, if we initially overlooked an important issue or piece of evidence, but then subsequently corrected this).

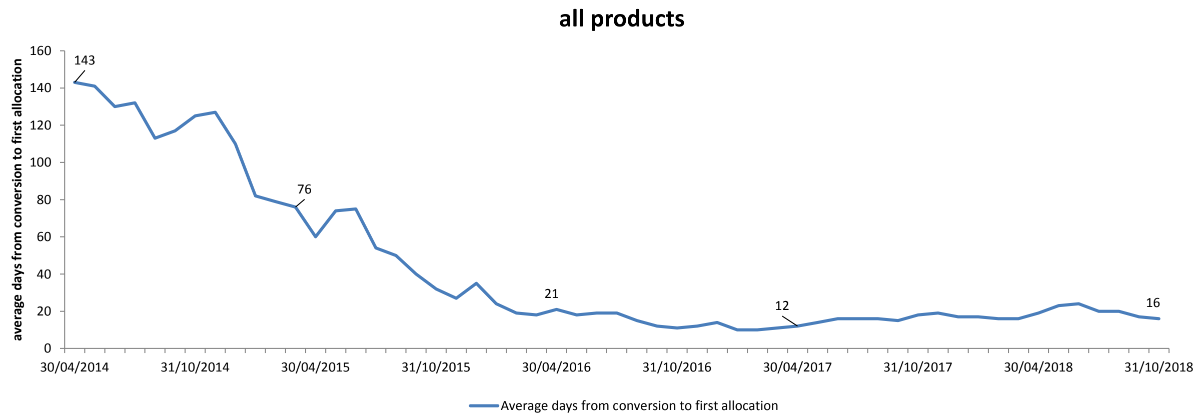
We don't specifically record how many case outcomes have changed following a QA review. But where our QA assessment does identify a potential issue with an outcome we have reached, our approach is to look again at the case to ensure it is handled appropriately. For most cases this will mean asking an ombudsman to take a fresh look at the case in line with our two-stage case handling process.

Case progression

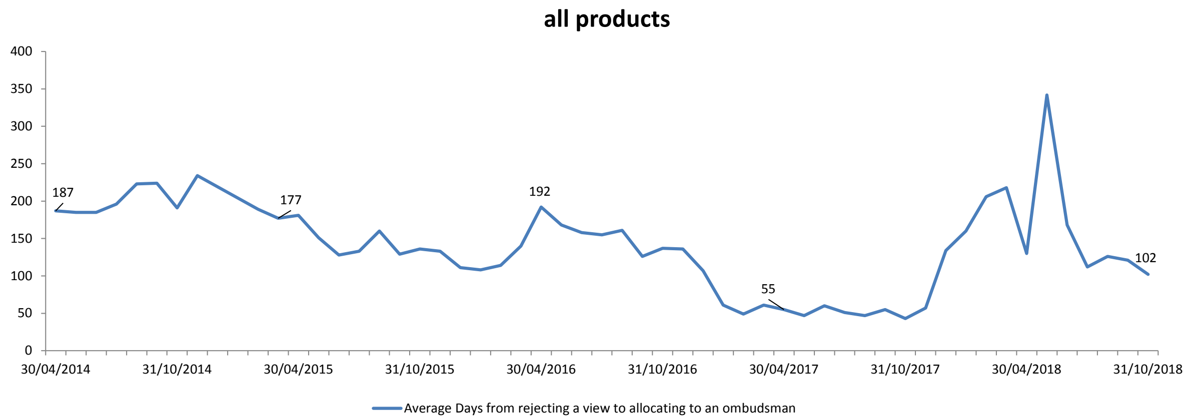
In recent years, the demand on our service has increased significantly. In the last three years alone, excluding PPI, new complaints to the service have increased from around 100,000 a year to closer to 200,000.

While this increasing demand for our service has had an impact on waiting times for consumers, there are other factors that can also affect how quickly we are able to start our investigation. In some instances, the behaviour of a business or CMC, and how it chooses to engage with us or its customers, can have an impact on our ability to progress complaints. In other circumstances, we may decide to deal with a group of similar complaints by issuing a sample of 'lead' decisions, which are representative of the wider group. While all of the cases are effectively progressing behind the lead cases, they would not be allocated to an individual investigator or ombudsman. We've taken this approach recently, for example with fraud complaints and short term lending complaints, a copy of one such case is attached at annex B. We also, as a matter of course, prioritise complaints that require urgent attention, for example, in some cases where we identify that the consumer is vulnerable (more on which below).

Our current wait times, while affected by a number of possible factors, are regularly monitored and are set out in the two graphs below. The first graph below sets out the average time it takes, from when we take on a complaint to when it is allocated to an investigator or adjudicator (the first stage of our process). The current average time is 16 days.



The second graph below shows, over the same period, the average time taken for a complaint to be allocated to an ombudsman if the investigator or adjudicator's view is not accepted (the second stage of our process). This is currently 102 days.



In December, we published our Strategic Plan and Budget consultation, which set out our proposed plans for next financial year, including how we intend to reduce waiting times for consumers. Stakeholders have now provided their responses to this consultation, and our final plans will be published in March.

Additionally, the Committee asked about the service we provide to vulnerable consumers. We recognise that identifying vulnerability in a consumer is so much more than a simple tick box exercise, and is very much dependent on the individual circumstances, so we don't specifically measure waiting times for vulnerable consumers. Case handlers are trained to identify and prioritise complaints that need to be dealt with urgently – including those where there is vulnerability. This may be because of financial hardship, poor health, or bereavement, which can, of course, happen at any time during our handling of a complaint.

And to equip our case handlers to deal sensitively with vulnerable consumers and support them through the complaints process, we provide them with day-to-day support through a dedicated practice group within our casework structure, which provides 'in the moment' help and advice.

Economic crime

We welcome the opportunity to contribute to the Committee's inquiry into economic crime. The inquiry itself reflects the significance of this form of crime and the impact it can have on individual consumers. And this has been reflected in our casework as we have seen an increasing number of complaints about fraud and scams.

In the last financial year (2017/18), we received around 8,500 complaints about fraud and scams – a 17% increase on the previous year. This financial year we have already exceeded 10,000 new cases. This data includes all types of fraud and scams cases including chip and PIN disputes, cash not dispensed from ATMs, ID theft and online transfers.

More specifically, according to our most recent analysis, around a quarter of fraud and scams cases are about authorised push payment fraud (APP) and another quarter are about unauthorised payments. One of the common themes we observe is the speed with which fraud and scams evolve – presenting challenges to both consumers and financial businesses. We are observing increasingly sophisticated frauds and scams, some of which exploit the channels in which consumers have most confidence, making them more difficult to spot. Discussion, debate and the sharing of experience will do much to raise awareness and help equip both consumers and financial businesses to combat economic crime.

On average it can take 38 days for one of these types of cases to be allocated to an investigator, an average of 99 days to be allocated to an ombudsman if the investigator's view is not accepted, and thereafter 78 days to receive a final decision. However, as I have explained, looking at average times doesn't reflect the way in which we are actively managing the progression of cases, for example by using lead decisions. In many cases therefore these figures won't reflect the experience of all consumers that have been waiting, but once an issue has been decided, and accepted by a financial business, cases can then be resolved very quickly.

The Committee has asked whether we feel that there are weaknesses in the regulatory and legal frameworks with regards to economic crime. In terms of fraud and scams we have two observations to make. The first is the importance of a joined up response to the issue, which reflects the overlapping roles and responsibilities of policymakers, enforcement agencies and those who provide consumer information. The second is the difficulty of deciding who should bear the risk in circumstances where neither the financial business nor the consumer has acted wrongly or negligently, but a fraud has been carried out. You will be aware that this issue is being actively considered by relevant stakeholders, including the industry and regulators.

We've also been working with the FCA on the expansion of our jurisdiction to cover the actions of receiving banks as well as the actions of the bank which the consumer's money was transferred from, in instances of authorised push payment fraud (APP). And we've been an observer on the APP Scams Steering Group established by the Payment Systems Regulator (PSR) in February 2018 to develop a voluntary code for the reimbursement of victims of APP scams. The rules that we operate under require case handlers to take into account the relevant law, regulatory rules and guidance, industry codes of practice and what we consider to have been good industry practice at the time, when deciding what is fair and reasonable in all the circumstances of a case. The code is currently being developed, but once implemented it is likely to be a relevant consideration in many APP cases.

With regard to the contingent reimbursement model (CRM), we don't expect that this will result in the need for significantly more investigative work. The code requirements on businesses and the confirmation of payee system are intended to reduce the number of instances of fraud. The CRM – depending on its ultimate form – may also reduce the number of cases that come to us, if the effect is that consumers are reimbursed in full by firms when they would not have been previously. We don't currently know what impact it will have on recipient firm cases or how difficult those cases will be to investigate – as we have not previously had jurisdiction over those cases and much will depend on the final code requirements, which the steering group is still considering.

You've asked about the consistency of the application of the term "grossly negligent" and our experience is that it has been a mixed picture. One thing we've previously flagged to the Committee is that we've been sharing our approach to unauthorised transactions to ensure that banks know that the bar for gross negligence is a significant one, and that a bank should not assume that a customer has been grossly negligent. And as we said in ombudsman news, we will continue to look at what can be fairly described as gross negligence as the kinds of fraud and scams perpetrated evolve. We will take the same approach to ensuring that this is consistently and appropriately applied as in other areas of casework – we carry out bilateral engagement with businesses and engagement with groups of businesses through our industry steering groups. But perhaps most importantly, the rules that the FCA sets for businesses require them to learn from our decisions and implement that approach to their own handling of complaints from consumers.

The Committee asked about cases that we see involving ‘de-risking’ – we understand this to mean cases where banks have closed the accounts of individuals or businesses out of concern that they are likely to expose the bank to a higher degree of regulatory risk than it wants. Although this isn’t a specific category of complaint and would be recorded under current account complaints, of which we see a large number, we estimate that we currently receive anything up to around 60 complaints a week about bank account closures. Some of the things we will look at in typical cases include whether the bank has acted fairly and not made a mistake with regards to the identity of the account holder, whether it has failed to follow its procedures, whether it has given appropriate notice or whether it has discriminated in closing the account.

However, these cases are often particularly complex to handle, because unusually, where Proceeds of Crime Act measures are in place, it can be a criminal offence to reveal this, inadvertently or otherwise. Our casework relies on both sides being able to consider factors relevant to the decision being made and respond, in accordance with the principles of natural justice. But where doing so would be a criminal offence, we have to take the utmost care to ensure this doesn’t happen. So we have a process in instances where we think a business may have concerns about a customer or transaction or think the business has made a “Suspicious Activity Report” to the National Crime Agency.

I hope the Committee finds this additional information helpful. We would be pleased to provide you with anything further that would be relevant to this or any other inquiries. I am also enclosing at annex C a copy of the latest edition of ombudsman news which focuses on the complaints which we see about debt collection – it contains contributions from Citizens Advice, the Credit Service Association and Monzo Bank. It also contains our 2018/19 Q3 complaint statistics I hope this will be of interest to the Committee. I would be happy to meet to discuss further if that would be helpful.

Yours sincerely

Caroline Wayman
chief ombudsman and chief executive

quality assurance – our principles and approach

Financial
Ombudsman
Service

quality assurance – our principles and approach

This document sets out our approach to quality assurance at the Financial Ombudsman Service – what's important to us and how we embed quality in all that we do. It's also a practical guide for all staff who are actively engaged in quality assurance oversight.

Contents

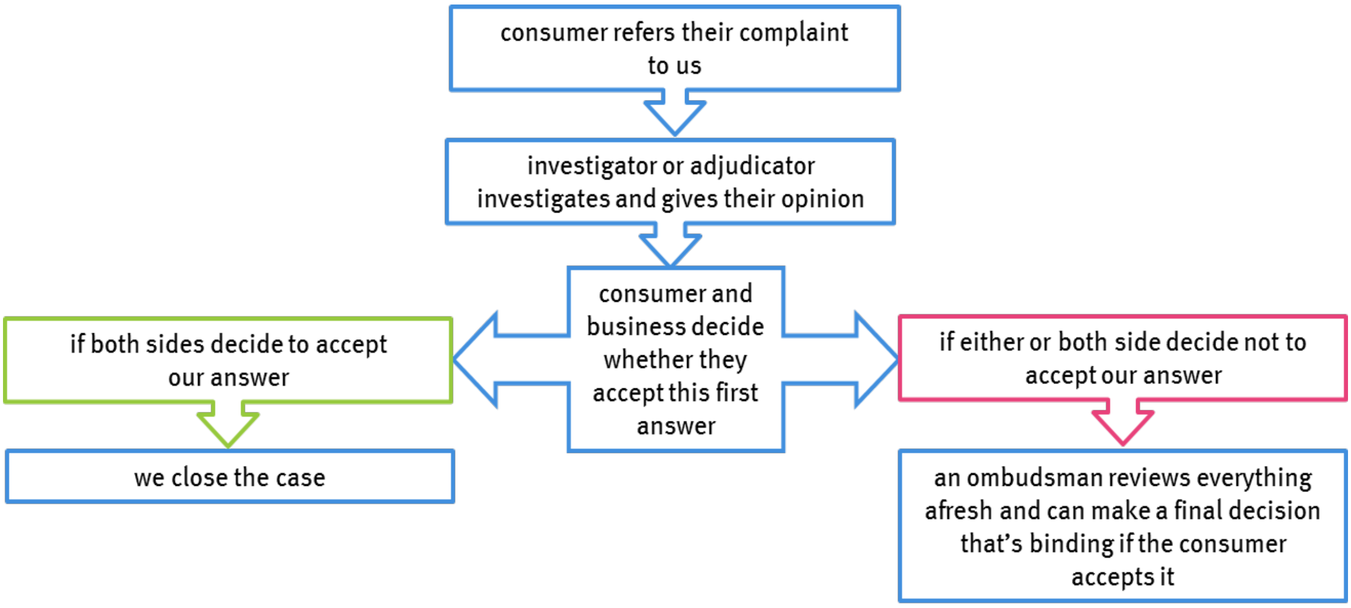
our role and purpose

The Financial Ombudsman Service was set up by Parliament to resolve disputes quickly and with minimum formality. Our rules require us to reach an answer that's fair and reasonable in all the circumstances of a complaint.

The scale of the challenge we face as an organisation is significant. For the financial year 2017/2018 we received just under one and a half million enquiries. We handled 339,967 new complaints and resolved just over 400,000 complaints. We deal with a wide range of financial services – including banking, borrowing, insurance, investments and pensions.

To do our job effectively, we need a highly-skilled and motivated workforce – and the flexibility to adapt in response to a changing mix of complaint types that people are bringing to us. Underpinning all that we do is a core focus on delivering fair answers to our customers – customers of financial businesses, and financial businesses themselves.

our case handling process and quality assurance oversight



At the heart of how we operate is a two stage process.

The majority of our complaints (92% in the last financial year) are dealt with by adjudicators or investigators at our first stage, without the need for an ombudsman to issue a subsequent final decision.

But if the consumer or business is unhappy with the investigator/adjudicator's opinion, they have the right to ask for the complaint to be looked at by an ombudsman.

An ombudsman has the authority to make a final decision, binding on the business if the consumer accepts it. An ombudsman's final decision marks the end of our process.

Quality assurance is therefore built into the heart our case handling model, with the opportunity for any complaint to be reviewed and referred to a more senior colleague. And the process also gives our ombudsmen regular sight of our adjudicators' and investigators' work –helping ensure we're reaching fair and reasonable answers.

We have well-established quality assurance principles and controls, based on a "3 lines of defence" model with assurance activity undertaken in the front line, by quality experts in separate teams, and by governance mechanisms led by an executive director and two non-executive board members. We operate a risk-based approach and wrap around additional support and controls in new and emerging areas.

quality as an integrated activity

Our case handling model puts our ombudsmen at the heart of our casework teams. This means our investigators and adjudicators can access ombudsmen's knowledge and experience of finding fair answers to complaints, to help them reach their own conclusions about individual complaints. And our ombudsmen work together across our professional subject matter practice groups to ensure consistency in their thinking and approach.

Our quality model works in partnership with our commitment to developing our people, helping enable them to provide a high quality service. Rather than being a static metric, we view quality assurance as an opportunity to continually improve what we do and how we do it.

The nature of our work resolving disputes means that, in many cases, we may be dealing with two parties with very different and strongly held views of an issue or problem. We work hard to deliver answers which explain our thinking and feel fair to both parties, even though in some cases it may be inevitable that someone doesn't get the answer they were hoping for. But we want all our customers to feel they were treated fairly and to understand why we decided the case in the way that we did.

For our customers, our overarching aim is to always:

reach a fair answer • as quickly as possible • provide excellent customer service

These factors are all connected. If we treat our customers well and communicate effectively, we are more likely to get to the heart of the issue earlier and identify the relevant information we need, which enables us to make an informed decision more quickly.

reach a fair answer

We work hard to ensure that our process and approach to resolving complaints is consistent across all our areas of work. Because we are ultimately required to make decisions about what is fair in all the circumstances of an individual complaint, our people are often required to make finely balanced judgements about the specific facts involved in a case.

In considering what is fair and reasonable in all the circumstances of the case, we take into account relevant law and regulation, regulators' rules, guidance and standards, codes of practice and (where appropriate) what was good industry practice at the relevant time.

Reaching a fair answer is rarely entirely binary. While sometimes a fair answer is one that agrees with one party's view of a complaint, often it will involve working through a complex set of individual facts and circumstances to establish that fairness may lie somewhere between both parties' views of the issue.

So there may be a range of outcomes that may be fair and reasonable in the individual circumstances of a complaint. We ensure the quality (or reasonableness) of our answers by providing high quality training, access to experts and time to develop into a given role.

We publish the proportion of complaints we've upheld about individual businesses – that is, where we find that a financial business hasn't done all that it should have and that a consumer may have lost out as a result. And we report on the proportion of complaints we've upheld about different products and services on a quarterly basis in *ombudsman news*.

as quickly as possible

We were set up to resolve complaints fairly and quickly, as an alternative to the courts. Financial services play a big part in our lives – and when something goes wrong people understandably want to know both that the situation will be dealt with quickly, and that they've had a fair chance to have their say about what's happened. While this is important in all cases, the need to resolve a problem at pace may be particularly acute when someone is in vulnerable circumstances.

Financial businesses also need to know what we think at the earliest possible stage, so they can take the necessary steps to put things right. And it's important they can learn as soon as possible from complaints – addressing any root causes, and ultimately providing a better service to their customers.

We also understand the importance of providing a service that's efficient and good value. The longer a case is with us, the more it costs in both time and money – both for us and often the parties too. As a not-for-profit organisation operating in the public sector, it is important that we act prudently with the money that funds us.

The capacity to work at appropriate pace is a core part of our case handlers' training. Using technology (for example, decision-making tools) and giving our investigators and adjudicators access to our ombudsmen's knowledge and experience helps our staff deal with complaints of varying complexity as quickly as we can.

provide excellent customer service

A fundamental part of our people's training and development is customer service and communication skills. Actively listening to what people are telling us to get to the heart of problem is crucial. As well as providing a better understanding of the issues and what may have gone wrong (and why), it also enables us to tailor the way we engage with each customer – taking account of the impact the problem is having on the individual parties involved. This is underpinned by our case handlers' close proximity to senior and experienced staff. We also use technology to help give us real time and "in the moment" feedback from our customers.

We provide a service to customers from throughout the UK (and sometimes beyond) who come from very different backgrounds, have a wide-ranging experience of engaging with financial services, and may be dealing with issues that impact their lives far beyond the concerns raised by their specific complaint. Some people are less able or confident than others to bring a complaint to a financial business and then to the ombudsman, and some have particular needs that it's important we recognise and support.

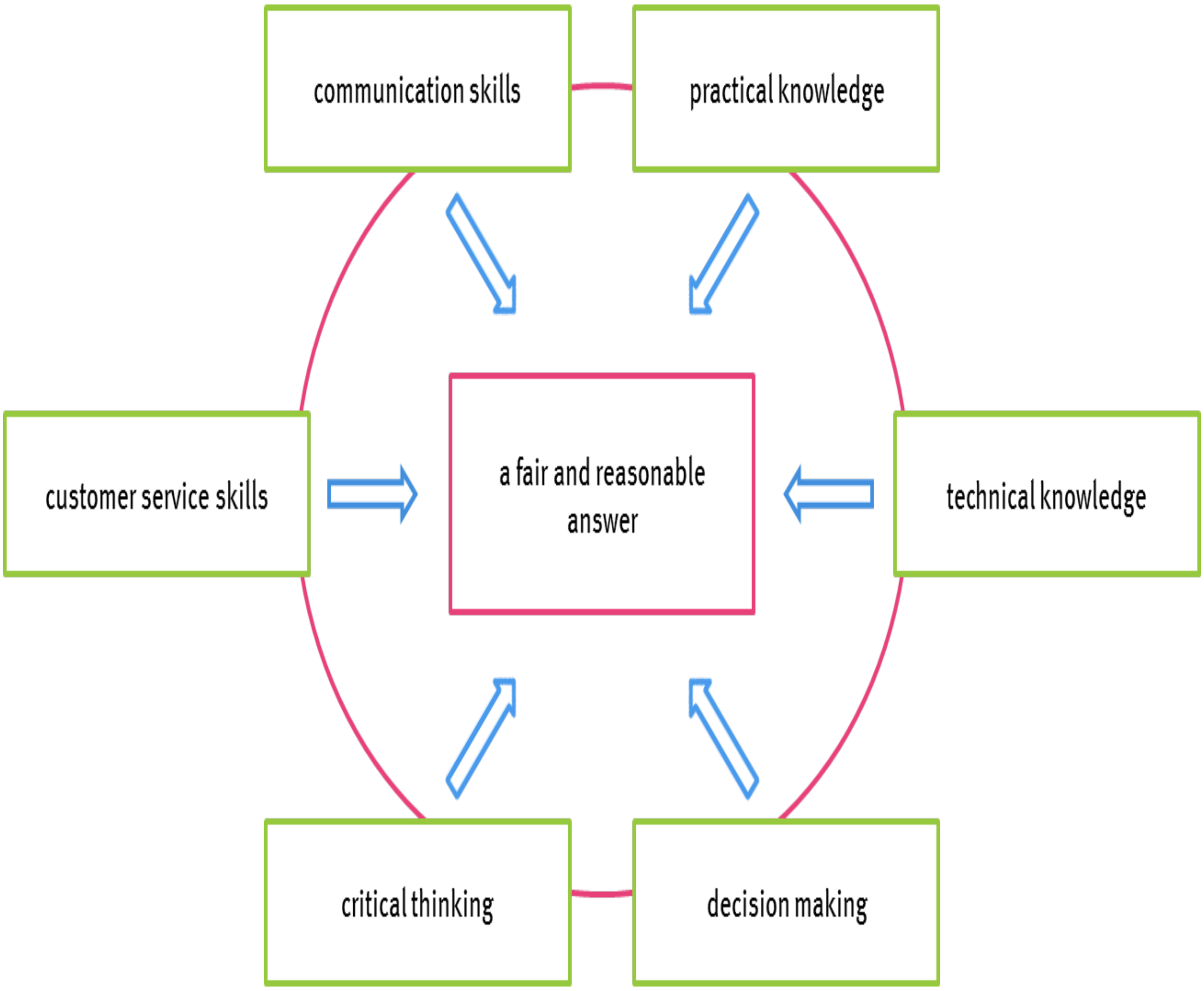
We have a dedicated team tasked with supporting customers in potentially vulnerable or challenging circumstances, who provide training to all of our case handlers. They give specific advice on individual cases and help businesses support *their* customers too. We tailor our service as far as we can to meet the needs of the people who come to us. And we're mindful too of our own legal obligations under relevant legislation that protects individuals' rights – whether that is in relation to data security, discrimination or other important issues.

training and developing our people

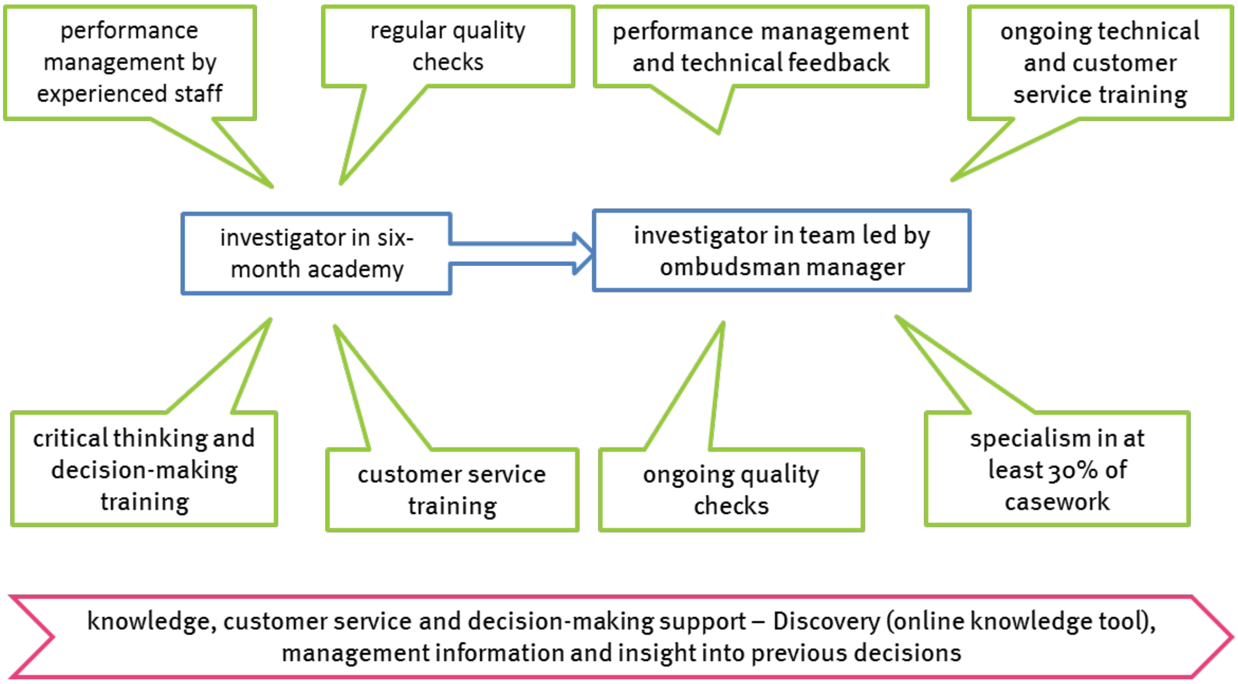
Being an adjudicator or investigator is a challenging role – involving reconciling sometimes conflicting perspectives, knowing the right questions to ask and evaluating lots of often complex information. Reaching and explaining an answer that feels fair requires not just sound judgement, but empathy and excellent communication skills.

This requires a complex set of skills and knowledge – combining core analytical and reasoning capability with effective communication skills, and the ability to understand and empathise with the huge range of circumstances our customers come to us with.

The building blocks for making a great investigator, adjudicator or ombudsman necessarily needs a complex approach to development which support the quality of our work:



To ensure our people gain and develop this wide skillset, we have in place a focused development pathway. For example, for new recruits joining our investigation 'academy', the development pathway focusses on a number of core skills:



As well as having the ability to skilfully get to the heart of a wide-range of complaints, our people may also develop – or bring with them from previous employment – specialist knowledge in a particular area, which we can use to help resolve the most complex or technical disputes as necessary. Our knowledge is managed and kept up to date through our network of professional practice groups. These groups provide oversight of areas relating to specific types of financial service, and also to more thematic areas, such as our jurisdiction and supporting people in vulnerable circumstances.

quality assurance process and governance

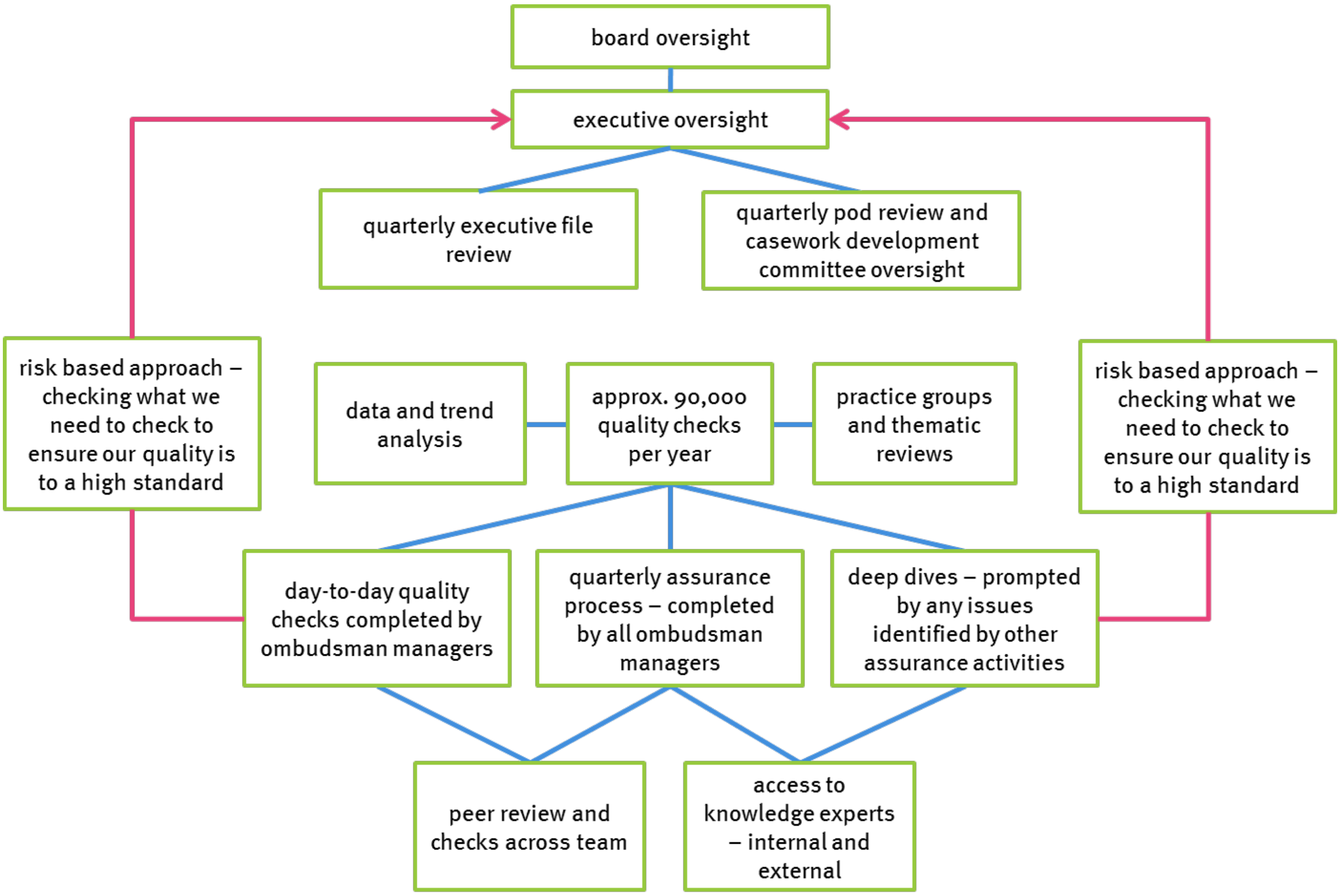
The service currently operates three main casework areas:

- Complaints we've received in large volumes (referred to as "mass claims") (where currently payment protection insurance (PPI), packaged bank accounts and short-term lending cases are handled);
- investigation (where we deal with banking and credit, insurance, pensions and investments cases); and
- managed operations (where our flexible contractor workforce handles a mix of mass claims work and other casework).

Although some of our underlying casework processes are different in each area to reflect the nature of their work, our principles and approach to quality assurance remain the same. We ask the same core questions within a common QA framework across all areas of casework – although we may carry out QA checks at different points and with different frequency in different areas to reflect the nature of our casework process in each area.

We also operate a risk-based approach and carry out additional activity where the potential for error or misunderstanding may be higher – for example, in relation to new recruits or new, emerging areas of casework.

The diagram below describes the various ways in which our assurance activity builds oversight of the quality of our work.



- **Day to day checks** are completed by managers and ombudsmen on the work of adjudicators and investigators, in either their own team or checking the work of others. These include full file reviews or discrete checks on a specific area of casework – for example, a phone call, a letter or a general check on the customer service we provide. All day to day checks are formally recorded and the outcome fed back to the relevant member of staff.

- **Quarterly assurance process** comprise of two end-to-end full file checks completed by every casework manager and ombudsman each quarter in our mass claims and managed operations areas. In our investigations area 25 full file checks completed per month in each pod feed into the process. The outcome of these checks – themes and trends – are collated and shared with all managers and ombudsman and reported to the executive and board.

- **“Check the checker” and deep dives** take a closer look at issues identified through day to day checks and the quarterly process – or where we may want to have a closer look or plan specific further sampling or assurance activity. Our quality specialists in separate teams carry out “check the checker” reviews to ensure our front line quality assurance checks are correctly calibrated, which is supported by our practice groups.

- **Executive file reviews** are carried out each quarter, with a small number of cases reviewed and discussed in-depth by casework and support teams across the service, including the executive team and (on an annual basis) our non-executive board. This provides the opportunity to highlight and discuss some of the key themes, challenges and opportunities in how we deliver our service. While only a small sample of cases, the exercise provides huge value in helping us generate and explore issues and themes – giving us the means to deliver a clear and consistent message about what we think good (and great) looks like and where we aspire to be.

- **Quarterly pod reviews** involve the senior manager of each casework pod reporting each quarter on their quality assurance results. This will include scores from the day to day checks, the quarterly process and deep dives. Where any issues are raised, plans are put in place to address them.

- **Case work development committee** oversee the work of one of our investigations pods tasked with, in part, ensuring the quality of the work we produce in that area.

- **Quality critical friends** are two members of our non-executive board – who, in line with the quarterly assurance cycle, attend a governance meeting each quarter to review quality metrics, measures and planned improvement activity.

how we measure quality in our framework

Whenever we do a casework quality assurance check, the things we measure ourselves against are the same. In each case the checker needs to consider the following things, be it checking how well we've handled a phone call with one of our customers, or looking at a case from beginning to end:

- did we listen and care?
- did we get to grips with the issues and use common sense?
- were we clear and honest in our communications with our customers?

The checker is asked to rate the work they've checked against each parameter and record their view on a five-point scale:

- strongly agree
- agree
- we did ok
- disagree
- strongly disagree

The scores are amalgamated and help us see how particular areas and teams are doing.

We also consider how "proud" of our casework we are. This deliberately aspirational measure forms one of our key corporate measurements (or our "commitments"). We're asking the checkers to weigh up whether or not the service we provided was something that we, as an organisation, should be really proud of – in the sense that we did everything we could to deliver a fair answer, quickly, and in a way that was clearly understandable and sensitive to the needs of our customers.

We also carry out specific focussed quality assurance checks to ensure we are following the correct processes. These include checking we are recording the correct dates for the purpose of measuring our performance against our obligations under the EU *Directive on Alternative Dispute Resolution*, which have applied since 2015 – and checking we have removed any identifying information about a consumer from our published final decisions.

measuring our performance – our commitments

Our commitments are our way of measuring how we're doing as an organisation. We publish them on our intranet and they're discussed through various communications with staff and in our annual report and accounts. We benchmark key areas and report monthly on how we're doing. Our commitments cover:

- our customers
- our reach
- our impact
- our service
- our people

Our casework quality assurance checks used in the quarterly assurance review process feed into our commitments framework which is reported to and overseen by our executive and board. The three areas we check – listened and cared, getting to grips and clear and honest – are amalgamated into one "fairness" score. This score is benchmarked in the commitments framework and updated each quarter. We also track our "proud" measure through this same framework.

Both these measures contribute towards our collective reward scheme, which links part of our employees' pay to the success of the organisation in meeting our commitments.

We also feed the results of additional assurance activity and process checks into a service-wide risk register that is reported to our executive and board.

customer satisfaction

As well as our own internal measure of quality, we collect regular feedback from consumers and businesses about how satisfied they are with how the ombudsman service has dealt with their case. Customer satisfaction levels are also reported within our commitments measures and form part of our collective reward scheme.

In surveying our customers, we ask the same set of questions – whether we listened and cared, got to grips with their case and were clear and honest – that we ask in our own internal quality assurance checks. This provides us with directly comparable measures of what both we and our customers think of the service we have provided.

We also work with the Institute for Customer Service who run an in-depth annual satisfaction survey for a sample group of our customers. The outcomes from that survey are shared with teams across the service as well as the executive and board and action taken as a result.

sampling

We aim to strike the right balance between checking enough of our work to provide assurance about the quality of our service, while ensuring that our activities are focussed on the right things which deliver insight and value.

Our sample sizes for quality assurance activity are calculated according to good industry and statistical practice. For all assurance activity-data fed into our commitments dashboard, we establish sample sizes sufficient to provide a confidence rate of 95% with no more than a 5% margin of error. What this means is that for any given set of issues/cases, we establish a statistically sound sample size that means, were we to replicate the exercise, we would be 95% confident that we'd get the same result (within a 5% margin of tolerance).

For context, for the period October 2017 to October 2018, we carried out more than 8,000 full end-to-end file checks on our work and more than 80,000 focussed checks on specific aspects of how we do our work.

improvement activity and learning from our mistakes

Our quality checking activity is not just for measurement and assurance purposes – but designed to provide meaningful and actionable insight which helps us learn and improve. We use our reporting to identify risks, challenges and opportunities to continuously improve – which drive improvement activities focussed on individuals, teams or pods as appropriate.

Our separate teams of quality specialists help spot common themes and coordinate activity, so that lessons learned are shared across the whole organisation.

Given our role in resolving disputes, we also know the importance of acknowledging and learning from where things have gone wrong. In particular, we know the value of learning from complaints. When complaints are made about the service we provide, this is a further opportunity to learn and get better.

Since we were established, we've had an independent assessor (IA) who accepts service complaints from our customers and, where they think appropriate, makes recommendations on where we need to do things differently to put matters right. The IA reports annually to our executive and board on what they've seen in complaints made about our service. Their report is published alongside our *annual report and accounts*, together with our response.

In recent months and in partnership with the IA we've trialled a new internal complaints process to streamline and speed up the process for our customers. This has proved successful and the approach has been rolled out across all of our casework areas.

final decision	
complaint by:	Miss H
complaint about:	Lender A
complaint reference:	
date of decision:	14 August 2018

complaint

Miss H has complained about a series of payday loans she took out with Lender A. She says she was in financial difficulties at the time and that Lender A should've done more checks before lending.

Miss H says "a proper credit check" would've shown that she couldn't afford to repay the loans because she was on benefits, wasn't working, and had outstanding county court judgments (CCJs) against her. Miss H says that she's needed to keep re-borrowing on the same day as repaying previous loans and has been "trapped in a cycle" as a result.

background

I attach my provisional decision of 16 July 2018, which forms part of this final decision and should be read in conjunction with it. In my provisional decision I explained why I intended to partially uphold Miss H's complaint. I invited both parties to provide any further comments they may have had, by 16 August 2018, before I reached a final decision.

Lender A responded to confirm it agreed with my provisional decision and it had nothing further to add. Miss H's representative also confirmed it agreed with my provisional decision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm pleased to see that Lender A has accepted my provisional decision. And as Miss H's representative hasn't provided any further arguments either, I see no reason to alter the conclusions I reached in my provisional decision of 16 July 2018.

my final decision

For the reasons set out above and in my provisional decision of 16 July 2018, I'm partially upholding Miss H's complaint. Lender A should redress Miss H in the way set out in my provisional decision of 16 July 2018.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss H to accept or reject my decision before 14 September 2018.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss H has complained about a series of payday loans she took out with Lender A. She says she was in financial difficulties at the time and that Lender A should've done more checks before lending. Miss H says "a proper credit check" would've shown that she couldn't afford to repay the loans because she was on benefits, wasn't working, and had outstanding county court judgments (CCJs) against her. Miss H says that she's needed to keep re-borrowing on the same day as repaying previous loans and has been "trapped in a cycle" as a result.

In her complaint, Miss H has indicated that she started borrowing from Lender A in 2010. But based on the lending history information provided by Lender A, it seems that Miss H's first loan was in December 2011. Lender A's records show that the lending then continued until September 2014 without any significant gaps.

Based on Lender A's customer account summary, it looks like Lender A gave Miss H 119 loans over this period. And on 16 occasions, Miss H increased the loan amounts after the initial funds had been provided. These additional advances are commonly known as "top-ups". So, in total, Miss H's complaint involves 135 separate lending decisions made by Lender A.

In its response to this provisional decision, I ask Lender A to confirm that there is no other lending to Miss H other than what I have set out here. I also ask Miss H and her representatives to confirm that they agree with this summary of the lending history – or to provide evidence of other lending.

background

In its response to Miss H's complaint, Lender A did not agree that its checks were inadequate. It says that, when Miss H applied for her loans, it assessed whether she could afford each loan using a range of information, including credit reference agency checks, personal data and any previous repayment history. Lender A says that it "approved Miss H's loans based on such an assessment".

Our adjudicators looked at Miss H's complaint and eventually concluded that some of Miss H's loans shouldn't have been given to her. Lender A agreed with our assessment. But Miss H's CMC disagreed with our adjudicator and asked for an ombudsman to review the case. As a result, the complaint has been referred to me for a decision.

In reaching my decision, I have taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

the legal and regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

Lender A gave Miss H her first 97 loans and 8 top-ups in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—

(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;

(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;

(c) practices and procedures that the applicant proposes to implement in connection with any such business;

(d) evidence of the kind mentioned in subsection (2A)

(2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*

(a) committed any offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under—

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) *[my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the **OFT to involve irresponsible lending** [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Miss H's case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and*

treat borrowers fairly and with forbearance if they experience difficulties

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe “undue difficulty” and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
    - *the borrower’s financial situation at the time the credit is sought;*
    - *the borrower’s credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
    - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower’s financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of “specific irresponsible lending practices” relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender’s treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower’s repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

Section 6.25 focuses specifically on short-term credit products and says that it would be a “deceptive and/or unfair practice” where a lender is:

Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is unsustainable or otherwise harmful.

Section 6.25 then goes on to say:

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner.

The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time.

The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.

Section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an “Assessment of creditworthiness” was set out in section 55B of the Consumer Credit Act.

It’s important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor’s creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

> *(a) an agreement secured on land, or*
>
> *(b) an agreement under which a person takes an article in pawn.".*

By the time of loan 98 and for all of Miss H's subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

regulation by the Financial Conduct Authority (from 1 April 2014)

Lender A gave Miss H loans 98 to 119, plus the final 8 top-ups, after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. Lender A initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a high-cost short-term credit provider. Lender A's interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to providers of consumer credit like Lender A. CONC also replaced the requirements set out in Section 55B CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

> *(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

*[**Note**: paragraph 4.1 of ILG]*

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

*[**Note**: paragraph 4.3 of ILG]*

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

*[**Note**: paragraph 4.2 of ILG]*

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

*[**Note**: paragraph 4.31 of ILG]*

CONC 6.7 sets out a firm's obligations in relation to its post contract business practices. CONC 6.7.21G, CONC 6.7.22G and CONC 6.7.23R contained specific obligations for high-cost short-term credit providers like Lender A.

CONC 6.7.21G says:

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

*[**Note**: paragraph 6.25 of ILG]*

CONC 6.7.22G says:

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

*[**Note**: paragraph 6.25 (box) of ILG]*

Section 6.25 of the ILG is set out on pages four and five of this decision and is concerned with what the OFT referred to as 'deceptive and/or unfair practices'.

CONC 6.7.23R (which applied from 1 July 2014) says:

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

CONC 6.7.17R defines refinancing and says:

(1) In CONC 6.7.18 R to CONC 6.7.23 R "refinance" means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:

(a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;

(b) exercising a contractual power contained in an existing regulated credit agreement; or

(c) other means, for example, granting an indulgence or waiver to the customer.

(2) "Exercise forbearance" means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:

(a) there is no charge in connection with the refinancing; or

(b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.

(3) *The term "refinance" within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.*

<u>*Section 140 of the Consumer Credit Act 1974*</u>

All of Miss H's loans were given to her after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

(1) *The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-*

  (a) *any of the terms of the agreement or of any related agreement;*

  (b) *the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*

  (c) *any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*

(2) *In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*

(3) *For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*

(4) *A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*

(5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) *An order under this section in connection with a credit agreement may do one or more of the following—*

(a) *require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*

(b) *require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*

(c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*

(d) *direct the return to a surety of any property provided by him for the purposes of a security;*

(e) *otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*

(f) *alter the terms of the agreement or of any related agreement;*

(g) *direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

the law

I've also taken account of the Consumer Credit Act (including the provisions I haven't set out above), and other relevant legislation, including the law relating to negligence, misrepresentation and contract; as well as the law relating to causation and remoteness.

other relevant publications and good industry practice

The ILG and CONC set out the regulatory framework that regulated/authorised consumer credit providers have to adhere to. But they represent a minimum standard for firms. And as I've explained, I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

the OFT's Payday Lending Compliance Review Final Report

The OFT published its "Payday Lending Compliance Review Final Report" in March 2013, by which time Lender A had already lent to Miss H on at least 43 separate occasions and would go on to lend at least another 87 times.

The purpose of the review was "…to establish the extent to which payday lenders [were] complying with the Consumer Credit Act, other legislation and [were] meeting the standards set out in the ILG."

The review sought to highlight examples of what the OFT considered poor practice and evidence of non-compliance with the relevant law and failure to meet the minimum standards expected. The analysis was also put together to help the FCA's work on payday lending ahead of it assuming responsibility for regulating the sector from April 2014.

The report began with an overview section setting out the OFT's concerns. Page two of the report says that the OFT:

…is particularly concerned by the evidence of irresponsible lending; too many people are given loans they cannot afford, and when they can't repay are encouraged to extend them, exacerbating their financial difficulties This is causing real misery and hardship for a significant number of payday users

Page three of the report says:

Our evidence paints a concerning picture of the payday lending market. It appears that irresponsible lending is not a problem confined to a few rogue traders, but it has its roots in the way competition works in this market. The evidence suggests that many consumers are in a weak bargaining position, and that firms compete on speed of approval rather than price

It then goes on to say:

Additionally, firms describe and market their product to consumers as one-off short term loans (costing on average £25 per £100 borrowed for 30 days), but in practice around half the revenue comes from loans which last longer and cost a lot more because they are rolled over or refinanced. Lenders do not need to compete hard for this source of revenue because by this time they have a captive market. This, and the misuse of continuous payment authorities to reclaim monies owed, may distort incentives for lenders, encouraging them to make loans to people who cannot afford to repay them first time.

<u>*the Consumer Finance Association Lending Code for Small Cash Advances*</u>

The principal trade association representing the interests of short-term lending businesses operating in the United Kingdom is the Consumer Finance Association ("CFA"). The CFA published its Lending Code for Small Cash Advances ("the code") in July 2012.

I accept that Lender A wasn't a member of the CFA. But as the code was published by the main trade association representing short-term lenders, I consider it to be indicative of the standards of good industry practice expected of lenders such as Lender A at the time.

What's more, most of the relevant parts of this code went on to be included in the 'Good Practice Customer Charter Payday and Short-term Loans' which members of all the relevant trade associations signed up to just four months later, in November 2012. The Finance and Leasing Association (FLA) was a signatory to this charter at its launch. Lender A was a member of the FLA at that time and, according to the FLA website, remains a member today.

Section 1 of the code sets out its purpose. Section 1b says:

Members of the Consumer Finance Association offer small cash loans predominantly from high street outlets or online

Section 1c says:

This type of loan allows customers to borrow a relatively small amount of money, (usually between £50 and £1000) which they repay over a short period (typically one or two months).

The loan is not designed for longer term borrowing, but to improve short term personal cash flow

And Section 1d says:

The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in the Code, and accordingly protects and benefit consumers

Section 3 sets out the general obligations expected of lenders. Amongst other things Section 3 says members shall:

> *b) trade honestly, responsibly and treat customers with respect.*
>
> *l) ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement and the manner in which those agreements are enforced.*

Section 4 of the code sets out a lender's specific lending obligations. Part (a) of this section is concerned with advertising and marketing and amongst other things, it says:

> *iii) members shall ensure all advertising is truthful and not misleading and raise awareness to the short term nature of the loan.*

Part (d) of section 4 is concerned with pre-contractual information. And it, amongst other things, says:

> *v) members shall provide explanations to the customer, to enable them to assess whether the proposed credit agreement is appropriate to their circumstances by explaining…:*

- *that small cash loans are intended to improve short term cash flow, and therefore not suitable for longer term borrowing.*

information on Lender A's website

In addition to the relevant considerations set out above, I also note that in December 2011 (around the time when Miss H first applied for a Lender A loan), the *How Lender A works* area of its website had a section entitled "Short-term credit". And it included the following statement (date stamped 6 December 2011):

*We don't want to keep you in debt. That may sound funny coming from any lender, but Lender A provides **short term loans** for a few days or weeks. We'll only lend you money for up to a month and you are always free to make an early repayment and save money, with no hidden fees. Unlike some lenders, we won't keep rolling your balance endlessly or encourage you to make minimum repayments.*

And, at around the same time, under the heading of "Transparency", Lender A's website said:

Our service has a Representative APR of 4214%, but bear in mind that APR is a measure of annual interest and assumes theoretical compounding. A Lender A loan is only for between one day and a month.

In 2012, Lender A had a section on its website entitled *Lender A & APR: the facts*. This section contained the following information:

It is impossible to borrow money from Lender A for a year

We do not offer long term loans and an annual product simply doesn't exist

Even if we were to launch a year-long loan at the same interest rate we charge now, the APR would be much lower than the current figure, more like 360%, because there would be no artificial compounding involved.

my findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Lender A, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay in a sustainable way?
    - If not, would those checks have shown that Miss H would've been able to do so?
- Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Miss H's indebtedness in a way that was unsustainable or otherwise harmful?
- Did Lender A act unfairly or unreasonably in some other way?

If I determine that Lender A did not act fairly and reasonably in its dealings with Miss H and that she has lost out as a result, I will go on to consider what is fair compensation.

In cases such as these, where there are a large number of loans and top-ups to consider, it can be useful to look for 'blocks' or 'chains' of loans. The two biggest gaps in lending are a 36-day gap between loans 2 and 3 and a 29-day gap between loans 97 and 98. I've thought about the length of these gaps and about the points in this lending relationship at which they occurred. But, in the circumstances of this complaint, I don't think either gap is long enough to represent a clean break in lending. And so I intend to look at all of Miss H's loans as one continuous chain.

Did Lender A, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay in a sustainable way?

Regulations in place throughout the period when Lender A was lending to Miss H required it to carry out a reasonable assessment of whether Miss H could afford to repay her loans in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

The affordability checks should’ve been “borrower-focused” – so Lender A had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss H*. In other words, it wasn’t enough for Lender A to think only about the likelihood that it would get its money back without considering the impact of repayment on Miss H herself.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In the light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income); and

- the *greater* the number and frequency of loans, and the *longer* the period of time during which a customer has been given loans (reflecting the risk that ongoing use of these loans may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should’ve be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I’ve thought about all the relevant factors in this case.

Before I look in more detail at whether the checks that Lender A completed for each of Miss H’s loans were proportionate, I have some overall observations about the evidence that Lender A has provided about its checks.

First of all, Lender A has given me the output of “credit bureau data” it collected about Miss H for loans 1 to 86 (there appears to be no credit bureau data for loan 87 onwards). However, in the cover letter provided with its business file, Lender A has said that this information:

> *“remains in the format that we receive it in from the Credit Bureau and is unfortunately very difficult to interpret as it is analysed by our decision engine which makes an automated decision as to whether to lend or not”*

Considering that this is information that Lender A itself has collected and, it says, used to inform its lending decisions, it’s disappointing that Lender A has been unable to tell me what the data reveals about Miss H’s circumstances when she applied for her loans. This service cannot search through dozens of pages of coded information (that Lender A itself describes as “very difficult to interpret”) looking for evidence to support Lender A’s defence of Miss H’s complaint. If Lender A can't describe what the data it has provided shows about Miss H, then I can't put any weight on it.

Lender A also appears to be relying heavily on the "automated decisions" reached by its "decision engine". For the avoidance of doubt, Lender A is responsible for any lending approved by its own systems. Given that Lender A insists that all of Miss H's loans were responsibly lent, it ought to know – and have explained – not only what data its decision engine analysed, but also how it used and interpreted this information to make a responsible lending decision.

Without this explanation from Lender A, I can't take it as read that these automated decisions were fair. Indeed, based on what Lender A has told me about its lending criteria prior to mid-2014, it seems to me that there's a real risk that its systems may have approved Miss H's loan applications even if the information it gathered as part of its checks showed her to be in a difficult financial situation. Again, I invite Lender A to provide more detail on these points in its response to this provisional decision.

- loans 1 and 2

It's important to note that loans one and two were Miss H's first with Lender A. So there cannot have been any established pattern in Miss H's borrowing needs at this stage. And at £81 (loan 1) and £85 (loan 2), the amounts requested by Miss H were relatively small. Together, these factors would indicate that even a less detailed affordability assessment could be proportionate for these loans.

Based on the information it has given to me, it looks like Lender A has asked Miss H for her income and her employment status. Provided the answers to these questions raised no concern, then I think Lender A could reasonably have satisfied itself that the loan was affordable based on these checks.

Lender A hasn't said that Miss H repaid her loans early, so I've assumed that Miss H generally repaid her loans on the day they fell due under the terms of her loan agreements. On this basis, it looks like loans 1 and 2 both had terms of six days. I think this is important.

Even though Miss H was borrowing roughly *weekly*, Lender A has logged her *annual* income as part of its affordability checks. It's not clear what assumptions, if any, Lender A made about how much of that annual income Miss H was likely to receive in the week before her loan was due to be repaid – and this is central to its assessment of affordability. By my calculations, her average weekly income was likely to be around £240.

This would mean that the loan repayment accounted for nearly 40% – a substantial slice – of what Miss H might typically expect to receive in income between the time she was given the loan and the time at which her repayment fell due.

Miss H's answers to Lender A's questions also revealed that she wasn't in work when she applied for her loan – she gives her employment status as "on benefits". I don't think that Miss H being on benefits, on its own, means that Lender A shouldn't have lent to her. But I do think that Lender A ought to have been on notice Miss H was on a fixed income. And, in these circumstances, I think that Lender A ought to have been particularly mindful that Miss H could ill afford to develop a dependency on payday loans or other high-cost credit.

I say this because I think that there was a greatly reduced prospect of a consumer, in Miss H's position, being able to come into increased funds and use them to completely clear a persistent cycle of borrowing – in the way an employed individual might've been able to. For example, as a result of working overtime or maybe getting a bonus.

So I think Lender A's check on Miss H's income should've raised some concerns. And even if these didn't cause Lender A to decline the application outright, it should've prompted it to ask further questions. But Lender A appears simply to have approved the loan straight away.

Lender A has also provided the data it received when it ran a credit bureau check. But, as I said earlier, without any commentary from Lender A about what this data shows, I can't place any reasonable weight, or reliance, on it.

On balance, I think that, even disregarding its credit bureau check and the concerns I have about Miss H's income, Lender A did just about complete reasonable and proportionate affordability assessments for Miss H's first two loans. And the information that Lender A uncovered placed it in a decent position to assess any further loan applications from Miss H in the near future.

- loan 3 onwards

Miss H requested her third loan some 36 days after she settled her second loan. I've thought carefully, given its early position in the loan chain, about whether such a gap could be said to represent a clean break in the lending relationship – as Miss H received a weekly income, she'd arguably gone five income cycles without having to borrow again. And this taken in isolation might've been enough to say that Lender A didn't need to place as much weight on Miss H's previous loans.

But I'm mindful of the particular circumstances of Miss H's case. And, in my view, given that Lender A knew Miss H was on benefits, and she was seeking a higher amount (£101) than in either of her first two loans, I think Lender A's checks for loan three ought to have built its upon what it already knows about Miss H from her earlier borrowing.

This means that, to remain proportionate, Lender A's affordability checks for loan 3 needed to be more thorough than they'd been for loans one and two. For example, I think it would have been reasonable and proportionate for Lender A to have asked Miss H for information about her normal monthly living costs and regular financial commitments. This would have enabled Lender A to assess whether she had enough disposable income (i.e. the money she had left after all of her committed outgoings and reasonable living expenses had been paid) to meet the repayment. Lender A didn't do this.

In fact, there's nothing to suggest that Lender A did any more checks for loan 3 than it did for loans 1 and 2 – notwithstanding the fact that it ought to have been aware of the factors I've already set out above.

So I don't think Lender A completed reasonable or proportionate checks for Miss H on her third loan. I can't see any signs that Lender A's checks got more thorough at any point after loan 3. And so I've also concluded that Lender A did not complete reasonable or proportionate checks on any of Miss H's loans other than the first two. I'd like to explore this more fully.

The following table summarises the affordability checks evidence that Lender A provided throughout Miss H's chain of 119 loans and 16 top-ups. In compiling this table, I have referred particularly to Lender A's document entitled "affordability evidence", though I can see that some of this information is also captured in Lender A's "customer account summary" document. In the final column, I summarise whether I think Lender A's checks were reasonable and proportionate for the loans in question:

	Income data	Employment status	Other info (as per FRL)	Credit bureau data	Verification data	Expenditure information	**Reasonable and proportionate checks?**
Loans 1-2	Yes	Yes	No	No weight	No	No	**Yes**
Loans 3-86	Yes	Yes	No	No weight	No	No	**No**
Loan 87 onwards	No	No	No	No	No weight	No	**No**

According to its "affordability evidence" document, Lender A continues to have recorded Miss H's income as being £12,000 per year and her employment status as being "on benefits" until loan 86 in January 2014. (Given that this information remained identical throughout over 2 years of borrowing, it's unclear whether Lender A carried forward this information from one loan to the next or whether Miss H continued to re-enter the same answers for each loan application).

And beyond loan 86, the income and employment status data no longer appears to have been captured as part of Lender A's affordability checks – which could indicate that the checks became less thorough from this point. At no point does Lender A appear to have gathered (much less used) the other personal data (such as marital status, dependents, homeowner / car owner status) that it told Miss H formed part of its checks for each loan. I say more about this under the next heading.

Loan 86 is also the last time Lender A appears to have "credit bureau data" logged.

From loan 87 onwards, Lender A has provided information that it has labelled "verification data". This data appears to be the only information that formed part of Lender A's affordability assessment from this point. The data looks different to the credit bureau data – results are no longer numeric values. Instead they show simply as "passed" or "failed" (and there are instances where some of these checks are marked as "failed"). Again, Lender A has provided no narrative about what this information told it about Miss H or how it has used it to check that her loans were affordable, so I have placed no weight on it in reaching my findings in this provisional decision.

From loan 87 onwards, Lender A's affordability data also has a heading entitled "expenditure data". However, there is no information contained under this heading in any of Miss H's loans. I can't say whether Lender A didn't collect this information or whether Miss H didn't provide the information when asked. Either way, it seems that it wasn't part of Lender A's affordability assessment for any of Miss H's loans.

Taking all of this into account, therefore, I don't think that Lender A's checks were reasonable and proportionate beyond loan 2.

would proportionate checks on loans 3 to 119 have indicated to Lender A that Miss H would have been unable to repay her loans in a sustainable manner?

- loans 3 to 7

I've already explained that I think a proportionate check for loan 3 would've involved finding out – for example – about Miss H's normal monthly outgoings and regular financial commitments.

Miss H's representative has compiled its own breakdown of Miss H's income and expenditure. But I don't think that this paints an accurate picture of Miss H's financial situation. It appears to include her *weekly* benefits income alongside items of expenditure which look like they are *monthly* (for example it has included an outgoing of £96 for council tax and £40 for phone and internet). And I think any affordability calculation made on this basis could prove misleading.

By comparing income received over a short period of time with expenditure incurred over a longer period of time, this analysis gives an overly negative impression of Miss H's finances and therefore her ability to repay her loans. The analysis suggests that – before any payday lending is included – Miss H was already living with a weekly shortfall of £81. As a result of the flaws in this analysis, I can't place much weight, if any at all, on it.

As Lender A didn't carry out proportionate checks for these loans and I can't place much weight on the submissions made by Miss H's representative, I can't say for sure what proportionate checks would most likely have shown. So I need to decide whether it is more likely than not that a reasonable and proportionate affordability check would've told Lender A that it was unfair to offer these loans to Miss H.

To help us understand for ourselves what Lender A would more likely than not have discovered if it had completed reasonable and proportionate checks on Miss H's loans, we asked her representative to provide us with a number of bank statements. But the only bank statements from before loan three (February 2012) cover 5 to 14 December 2011. This period is too short to give a full picture of Miss H's position – for example, there are no outgoings at all relating to council tax or phone / internet. It does show a weekly income of around £260 in benefits, which isn't too far off from what I think Lender A was working from with its £12,000 annual income measure.

And the next statements provided are from April 2013 – some 14 months *after* Miss H took loan 3, and by which time she had already taken her 50th loan. These statements are too remote from loan 3 for me to fairly and reasonably draw meaningful conclusions about Miss H's financial position in February 2012.

On balance, Miss H and her representatives haven't provided enough evidence to enable me to recreate the information that Lender A would've seen, if it had done proportionate checks. And so while I have concerns about the proportion of Miss H's weekly income that was going towards repaying these loans as and when they fell due, I don't have enough to make the finding that proportionate checks would more likely than not have shown Lender A these loans were unaffordable.

The same is also true of all of Miss H's loans up until I have further bank statements in April 2013. But I don't think it's necessary for me to recreate the results of individual, proportionate affordability checks in order to conclude that Lender A did something wrong. And so I haven't attempted to do this beyond loan 7.

<u>*Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Miss H's indebtedness in a way that was unsustainable or otherwise harmful?*</u>

In addition to assessing the affordability of each *individual* loan provided to Miss H by Lender A, I also think it's fair and reasonable to look at the *overall pattern* of lending. I'm mindful here of the short-term purpose of this type of credit and of the relevant rules, guidance and good industry practice at the time – as summarised in the earlier part of this decision.

It seems to me that there may come a point at which a responsible lender would reasonably question whether continuing to offer further short-term loans to a customer who appears to be persistently reliant upon them was unsustainable or otherwise harmful.

I've already concluded that, although proportionate affordability checks weren't completed from loan 3 onwards, based on the limited evidence on file, I can't say that proportionate checks would've shown particular loans to be *individually* unaffordable. But that doesn't mean that the pattern of lending overall was sustainable.

I've thought about the first few loans taken by Miss H to try to identify whether and when there are indications that the lending had become (or was becoming unsustainable).

Examples of the kind of indicators that I think are particularly important here include:

- the number of times that Lender A had lent to Miss H in total
- the time period over which it had provided those loans
- the amounts that Lender A was lending to Miss H, including any general trends
- the time between Miss H repaying one loan and Lender A providing the next

As I've already noted, I have no reason to think that Miss H's borrowing prior to loan 3 was unsustainable. She had only taken two loans for relatively modest amounts over a relatively short period of time. And loan three was taken some five weeks after Miss H had paid off her second loan. Because Miss H received her benefits weekly at that time, this represents five 'income cycles' without a loan.

Miss H then manages a further three income cycles without re-borrowing between repaying loan 3 (£100) and being given loan 4. Loan 4 was also for a similar amount to loan 3. Although loan 5 was taken very shortly (just two days) after loan 4 was repaid, it was for £60 – representing a reduction in the amount borrowed of nearly half.

Therefore, in spite of some early warning signs – such as uncovering that Miss H was reliant solely on state benefits and the number of loans continuing to grow in a relatively short period – I can't say that Lender A had enough information to conclude that its lending had more likely than not become unsustainable by loan 5.

Even so, I think Lender A ought to have recognised that the emerging pattern of Miss H's borrowing and the corresponding *risk* of unsustainable lending that had emerged by this point. And when Miss H sought loan 6 (her highest so far at £111) just two days after repaying loan 5, I think that emerging risk was becoming more established.

The factors at play when Miss H applied for loan 7 are mixed. At £68, it was for considerably less than loan 6 (£111), which might have been a sign that Miss H was becoming less reliant on Lender A's loans. On the other hand, these funds were taken just three days after she'd repaid loan 6. So the healthier gaps in borrowing that occurred between loans 2 and 3 and between loans 3 and 4 are no longer evident between loans 4 and 5, 5 and 6 or 6 and 7. This should have been a warning sign to Lender A.

Miss H's application for loan 8 was made the very next day after she had repaid loan 7. This was the fourth time in a row that she'd needed to re-borrow without a substantial gap. And it was the eighth loan she had applied for in less than four months. What's more, at £120, this loan was – again for nearly double the amount of loan 7 (and around 50% more than the amount she'd first borrowed from Lender A three and a half months earlier).

So I think that by loan 8, Lender A ought fairly and reasonably to have regarded what up until that point had been an emerging pattern – of Miss H persistently taking out new loans because she wasn't completely freeing herself from the effect of settling previous ones – as being established. And by this point, I think that Lender A ought fairly and reasonably to have realised that giving Miss H further loans, in these circumstances, would more likely than not unfairly perpetuate what was unsustainable cycle of debt for her.

This taken together with the fact that Lender A knew Miss H was reliant on benefits – which means she had little prospect of increasing her income and breaking out of this persistent and expensive cycle of borrowing – I think it acted unfairly in providing loans 8 to 119 (and associated top-ups) to Miss H.

What's more, I also think that Lender A itself was aware of the unfairness of continuing to lend to borrowers who were proving unable to sustainably repay their loans. That's why it promised on its own website that "*unlike some lenders we won't keep rolling your balance endlessly*" (see page 15).

With this statement, Lender A showed that it knew excessive re-lending for prolonged periods was not fair to borrowers like Miss H – and it made a commitment not to do this itself. So I now find it very hard to see why Lender A went on to lend to Miss H on a total of 135 occasions across 33 months – or why it maintains that this was fair.

So given all of Lender A's obligations, the short-term purpose of this kind of high-cost credit, and what I think is fair and reasonable taking into account the circumstances and everything I've covered in this section, I think that Lender A acted unfairly in providing Miss H with loans 8 to 119 (and all associated top-ups).

Did Miss H lose out as a result of Lender A's shortcomings in relation to loans 8 to 119?

I think that Miss H did suffer adverse consequences as a result of Lender A unfairly giving her loans 8 to 119 (and the associated top-ups). I think this is the case for two key reasons.

Firstly, these loans had the effect of unfairly prolonging Miss H's indebtedness to Lender A by allowing her to take expensive credit – which the rules and guidance made clear was only intended for short-term use – over an extended period of time.

These loans were very expensive. For regular and prolonged access to a significant proportion of her weekly income (an average of £94), Miss H paid many multiples in interest, fees and charges. And I think that the overall cost of these loans unfairly prolonged what was an adverse and precarious financial position for Miss H.

Secondly, the sheer number of loans and top-ups involved (even those successfully repaid by refinancing) is likely to have had implications for Miss H's ability to access mainstream credit. The greater the presence of short-term loans on Miss H's credit file the less likely Miss H was able to rehabilitate her finances and regain access to mainstream credit.

In my view, Lender A giving Miss H such a large number of loans (which it shouldn't have done) over such an extended period of time, unfairly placed her in a position where she was trapped into taking very expensive high-cost loans over an extended period as no-one else would lend to her. I think that, in these circumstances, Miss H had little choice other than to keep turning to Lender A for further loans, because it (as well other similar providers) was the only one prepared to lend to her bearing in mind everything that had gone on previously.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I'm intending to say that Miss H lost out because Lender A unfairly gave her loans 8 to 199, which it ought to have realised were unsustainable and harmful for her. And this means I'm intending to tell Lender A that it needs to put things right.

fair compensation – what I'm intending to say that Lender A needs to do to put things right for Miss H

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Lender A putting Miss H in the position she'd now be in if she hadn't been given the loans I'm upholding.

But when it comes to complaints about irresponsible lending this isn't straightforward. Miss H *was* given the loans in question and she used the funds – albeit in reality what she's effectively done is repaid previous loans with the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss H back in the position she would be in if she hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Lender A to put things right in the following way.

interest and charges on the loans Miss H shouldn't have been given

As I've explained throughout this decision, Lender A continually lending to Miss H left her in a position where she wasn't able to properly settle her debt. This was because Miss H kept having to find additional funds to pay the (increasing) interest and charges on her Lender A loans. And then she had to borrow again from Lender A to either repay others or cover the hole in her finances and she incurred more interest and charges when she did this. So to start with, I think that Lender A should refund the interest and charges Miss H paid on loans 8 to 119.

I'm also mindful that Miss H lost the use of the funds she used to pay the interest and charges, I now think that Lender A needs to refund to her. As Miss H lost the use of these funds, I think that she should be compensated for this. We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So Lender A should pay Miss H 8% per year simple interest on the interest and charges she paid from the date those charges were paid to the date it settles Miss H's complaint.

Miss H's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

But I'm upholding Miss H's complaint about loans 8 to 119 because I think the overall pattern of lending increased Miss H's indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of Lender A having given Miss H so many loans. Firstly it caused her to pay an excessive amount of interest and charges. And I've already explained how Miss H should be compensated for this.

I also explained that the sheer number of loans and top-ups involved is likely to have had implications for Miss H's ability to access mainstream credit. The greater the presence of short-term loans on Miss H's credit file the less likely Miss H was able to rehabilitate her finances and regain access to mainstream credit. And I think my direction in relation to Miss H's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Miss H's credit history and creditworthiness so that a lender can make an informed decision on whether lend to her, I think that the mere presence of this many loans on Miss H's credit file, in itself, constitutes adverse information. And I think that this many short term loans appearing on Miss H's credit file is likely to continue unfairly adversely affecting Miss H going forwards. In these circumstances, I think that it is fair and reasonable for Lender A to remove all reference to loans 8 to 119 from Miss H's credit file, as the number of loans in itself is adverse information.

All of this means that I think it would be fair and reasonable in all the circumstances of Miss H's complaint for Lender A to put things right in the following way:

- refund all the interest, fees and charges for loans 8 to 119 (and the associated top-ups); and

- add interest at 8% per year simple on the above interest and charges from the date they were paid by Miss H to the date of settlement†;

- remove all reference to loans 8 to 119 from Miss H's credit file.

† HM Revenue & Customs requires Lender A to take off tax from this interest. Lender A must give Miss H a certificate showing how much tax it's taken off if she asks for one.

requests for further submissions

Throughout this provisional decision, I've invited the parties involved on both sides of this complaint to submit further evidence, arguments, and/or comments about various aspects of the case. This includes information about what happened at the point Miss H applied for her loans and what has happened since she raised her complaint.

I'd like to remind all parties, firstly, of the value of these further submissions in ensuring that a fair outcome is reached. And secondly, it's important to reiterate that what I receive in response to this provisional decision could alter my findings.

my provisional decision

For the reasons given above, I am intending to uphold Miss H's complaint about Lender A and say it should pay Miss H compensation as set out above.

So unless the comments and evidence I get by 16 August 2018 changes my mind, that's what I'll tell Lender A to do in my final decision.

Jeshen Narayanan
ombudsman

appendix to provisional decision – 1: Miss H's loan history (grey loans currently upheld)

Loan number	Application Date	Date loan closed	Loan Amount (incl any top-ups)	Top Ups Requested
1	24/12/2011	30/12/2011	£81	
2	05/01/2012	11/01/2012	£85	
3	16/02/2012	22/02/2012	£101	
4	15/03/2012	21/03/2012	£100	
5	23/03/2012	28/03/2012	£60	
6	30/03/2012	04/04/2012	£111	
7	07/04/2012	11/04/2012	£68	
8	12/04/2012	20/04/2012	£120	
9	27/04/2012	04/05/2012	£111	
10	10/05/2012	18/05/2012	£102	
11	25/05/2012	30/05/2012	£86	
12	07/06/2012	13/06/2012	£91	
13	17/06/2012	27/06/2012	£80	
14	30/06/2012	11/07/2012	£110	
15	19/07/2012	27/07/2012	£90	
16	17/08/2012	24/08/2012	£50	
17	31/08/2012	07/09/2012	£110	
18	09/09/2012	12/09/2012	£40	
19	14/09/2012	21/09/2012	£85	
20	23/09/2012	26/09/2012	£85	
21	26/09/2012	05/10/2012	£120	
22	08/10/2012	10/10/2012	£30	
23	12/10/2012	19/10/2012	£140	
24	21/10/2012	24/10/2012	£90	
25	25/10/2012	02/11/2012	£150	
26	04/11/2012	07/11/2012	£40	
27	09/11/2012	14/11/2012	£80	
28	18/11/2012	21/11/2012	£80	
29	23/11/2012	28/11/2012	£95	
30	28/11/2012	30/11/2012	£40	
31	02/12/2012	05/12/2012	£70	
32	06/12/2012	12/12/2012	£80	
33	21/12/2012	28/12/2012	£210	
34	29/12/2012	31/12/2012	£40	

35	07/01/2013	09/01/2013	£40	
36	13/01/2013	16/01/2013	£40	
37	18/01/2013	25/01/2013	£120	
38	27/01/2013	30/01/2013	£70	
39	02/02/2013	06/02/2013	£70	
40	10/02/2013	13/02/2013	£40	
41	14/02/2013	22/02/2013	£140	
42	24/02/2013	27/02/2013	£70	
43	28/02/2013	06/03/2013	£125	
44	06/03/2013	08/03/2013	£41	
45	15/03/2013	20/03/2013	£145	
46	20/03/2013	22/03/2013	£90	
47	25/03/2013	27/03/2013	£53	
48	28/03/2013	03/04/2013	£135	
49	03/04/2013	05/04/2013	£70	
50	09/04/2013	10/04/2013	£46	
51	15/04/2013	19/04/2013	£70	
52	06/05/2013	08/05/2013	£100	
53	25/05/2013	29/05/2013	£110	
54	30/05/2013	31/05/2013	£40	
55	02/06/2013	05/06/2013	£70	
56	07/06/2013	12/06/2013	£140	
57	12/06/2013	14/06/2013	£90	
58	15/06/2013	19/06/2013	£100	
59	20/06/2013	26/06/2013	£120	
60	30/06/2013	03/07/2013	£50	
61	05/07/2013	10/07/2013	£140	
62	22/07/2013	24/07/2013	£100	
63	04/08/2013	07/08/2013	£72	
64	19/08/2013	21/08/2013	£40	
65	31/08/2013	04/09/2013	£70	
66	05/09/2013	06/09/2013	£40	
67	08/09/2013	11/09/2013	£60	
68	15/09/2013	18/09/2013	£80	
69	28/09/2013	02/10/2013	£125	
70	03/10/2013	04/10/2013	£50	
71	06/10/2013	09/10/2013	£66	
72	14/10/2013	15/10/2013	£50	
73	25/10/2013	30/10/2013	£50	
74	03/11/2013	06/11/2013	£40	

75	08/11/2013	13/11/2013	£100	
76	17/11/2013	20/11/2013	£60	
77	21/11/2013	27/11/2013	£140	
78	27/11/2013	29/11/2013	£60	
79	01/12/2013	04/12/2013	£70	
80	05/12/2013	11/12/2013	£60	
81	11/12/2013	13/12/2013	£50	
82	15/12/2013	18/12/2013	£70	
83	20/12/2013	24/12/2013	£120	
84	24/12/2013	27/12/2013	£150	
85	13/01/2014	15/01/2014	£90	
86	17/01/2014	24/01/2014	£200	
87	27/01/2014	29/01/2014	£40	
88	30/01/2014	05/02/2014	£150	
89	05/02/2014	07/02/2014	£80	
90	09/02/2014	12/02/2014	£70	
91	16/02/2014	19/02/2014	£110	
92	20/02/2014	21/02/2014	£40	
93	23/02/2014	26/02/2014	£60	
94	27/02/2014	07/03/2014	£172	4
95	08/03/2014	12/03/2014	£120	2
96	12/03/2014	21/03/2014	£220	2
97	21/03/2014	28/03/2014	£200	
98	26/04/2014	30/04/2014	£86	
99	19/05/2014	21/05/2014	£31	
100	23/05/2014	30/05/2014	£187	3
101	31/05/2014	04/06/2014	£70	
102	05/06/2014	13/06/2014	£216	1
103	15/06/2014	18/06/2014	£121	1
104	19/06/2014	25/06/2014	£193	1
105	25/06/2014	27/06/2014	£70	
106	29/06/2014	02/07/2014	£70	
107	03/07/2014	09/07/2014	£130	
108	09/07/2014	11/07/2014	£90	
109	12/07/2014	16/07/2014	£121	1
110	17/07/2014	25/07/2014	£220	
111	26/07/2014	30/07/2014	£77	
112	31/07/2014	08/08/2014	£198	1
113	25/08/2014	27/08/2014	£100	
114	30/08/2014	05/09/2014	£90	

115	07/09/2014	10/09/2014	£80	
116	14/09/2014	17/09/2014	£80	
117	17/09/2014	19/09/2014	£80	
118	22/09/2014	24/09/2014	£97	
119	27/09/2014	--	£200	

ombudsman news

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

Financial Ombudsman Service

dealing with debt

Caroline Wayman
chief ombudsman

This time of year can be bleak. With turkey and twinkling lights a distant memory, it's back to reality. Many people will also be facing debt, exacerbated by the cost of Christmas, higher heating bills, and other expenses that peak in winter.

In 2018, Citizens Advice said people are struggling more with bills such as council tax and energy than with debt relating to financial services. This household debt sits outside the FCA's remit – and ours as the ombudsman. But the two are linked, because in some cases they're one of the reasons people take out loans, credit cards and other regulated debts. And these are things we can help with.

So what are we seeing, and how can we help? We've highlighted in this *ombudsman news* how businesses' lack of empathy or flexibility can create additional problems for people who are struggling, and potentially in vulnerable circumstances. We'll use our powers to ensure this doesn't continue – and in some cases, tell businesses to pay compensation for the upset they've caused. The case studies we've chosen are aimed at helping businesses do things better.

But we're also reassured by good practice we see. These positive signs are backed up in our own recent research: in complaints we reviewed in-depth, we saw a majority of debt collectors following codes of conduct, limiting the impact of unavoidably stressful situations.

in this issue

The consequences of debt can escalate quickly – and where debt collection's concerned, things may be a long way down the line before we're asked to step in. So we'll need to effectively prioritise cases where people urgently need our help. We'll also need to quickly identify what's beyond our remit, and make sure we're signposting to other organisations who can provide support. This will often be free advice agencies or debt charities, which play a central role in helping people resolve their money worries once and for all.

While the prospect of tackling your debt may be overwhelming, constructive conversations – followed up by effective action – are key to turning things round.

In this issue, we've asked people representing a range of perspectives – Citizens Advice, the Credit Services Association and Monzo Bank – for their thoughts on the challenges ahead. What's clear is that debt is a complex problem, and no one organisation gets the whole picture. It's essential we keep talking about what we're each seeing – to help improve fairness for customers in our own regulated sector, financial services, as well as for those outside it.

debt collection – what people asked us to look into

top three issues in complaints resolved between 1 January and 31 December 2018

21% whether they were being asked for the right amount of money

13% customer service issues, including administration errors, being contacted excessively or about debt they believed they'd repaid

13% that the debt they were being chased for wasn't theirs

Caroline

... constructive conversations – followed up by effective action – are key to turning things round ...

debt collection: different sides of the story

The availability of credit, together with the costs of utilities, council tax and mobile phone bills, inevitably lead to some people struggling to keep up. For a small but significant number of people, the situation escalates to a point where they're contacted by a debt collector.

So what can be done to ensure better outcomes for the people involved? We asked Citizens Advice, the Credit Services Association and Monzo Bank to share their views.

Debt collection and what we can learn

Adam Burgess
senior creditor liaison policy officer
Citizens Advice

In 2018 there was a renewed focus on the problem of household debt, with reports on the subject being published by Citizens Advice, the Treasury Select Committee and the National Audit Office, and the formation of the Financial Inclusion Policy Forum.

With these debts being looked at in more detail, it is inevitable that the methods used to collect them are also examined. This leads to comparisons between the practices of 'household' debt collectors (such as local or central government) and commercial creditors.

Money advisers are aware that how debts are collected plays a huge part in how people manage to cope with them. The way organisations chase debt can push people further into debt and turn small amounts of arrears into large, unmanageable debts.

Making these comparisons allows us to consider the progress that the commercial credit industry has made. Over the past decade the sector has made significant improvements in assessing affordability, identifying people in vulnerable circumstances, working with the advice sector and communicating with their customers. There is no doubt that improved regulation from the FCA has played an important part in this. Yet, the industry should be given credit where it is due.

In contrast, the debt collection practices of local and central government, and some essential service providers, have fallen behind considerably. Last year, of the problems Citizens Advice helped people with, household debt issues were almost twice as likely to be related to the way debts were collected than consumer credit debt issues.

As an example, the reliance of local government on bailiffs is a common problem which has knock-on effects. Using bailiffs can quickly increase a debt and make agreeing a sustainable payment plan more difficult. Maintaining payments to a bailiff can mean sacrificing other repayment plans, leaving the client in a debt cycle that is difficult to escape. Adopting some of the standard practices of the commercial sector, such as implementing the standard financial statement, would both help people in need and improve long term recoveries for household debt collectors.

There is a great deal that government and essential service providers could learn from the credit industry about debt collection. However, that does not mean that all commercial collection is problem-free. At Citizens Advice we still see a considerable amount of poor practice from commercial creditors. In the past 12 months, we have also seen a 4.4% rise in the number of issues about collection practices by commercial firms.

With the implementation of 'breathing space' and a statutory debt repayment plan (SDRP) on the horizon, both the commercial and household debt industries should collaborate with regulators and the money advice sector. A good first step would be for breathing space and SDRP to include debts to local and central government, particularly those which can be deducted directly from Universal Credit. This would give protection to those who are struggling short term and mean these debts are more likely to be collected in the longer term.

> *"... both the commercial and household debt industries should collaborate with regulators and the money advice sector"*

how Monzo approaches debt collection

Chris MacLean
financial difficulties analyst
Monzo Bank

At Monzo, we're committed to taking a friendly, empathetic and inclusive approach to collecting on money owed. We start with a single principle, which assumes that any customer who misses a payment or enters into arrears is probably experiencing financial difficulties, and is more likely to be vulnerable.

we speak to all our customers with the same friendly tone

As we see it, customers who find themselves struggling to repay us are still valued customers, and the collections process is just another part of the overall customer service experience at Monzo. That's why we opted to keep collections in-house. It gives us full control of the tone, content and structure of any communication with the customer.

We speak to customers in a friendly, conversational, non-judgemental tone across all stages of the collections journey. Which means we give every

Monzo customer the same, high standard of support – whether they're in debt or not.

we do what's best for each customer's needs

Our primary goal is to encourage customers to engage with us, so we can figure out how to help them get back in good financial shape. We can do the usual things like temporarily freezing fees, giving customers a period of breathing space, or signposting them to charities to get expert help. But we've also built many useful features into the app. Like the ability to create a budget, set limits and controls on spending by category, or block all gambling activity on the account. Without ever needing to get in touch with us. We want to help customers learn to manage their money better, and help them avoid getting into debt again down the road.

We offer flexible and pragmatic solutions, and we also build this flexibility into our tech and the tools we use to help customers. Which means we're able to create bespoke solutions on the fly, offering a tailored experience for each customer's specific circumstances. We don't want rigid rules and processes to get in the way of the best outcome for the customer.

we've built the best possible team for the job

We go out of our way to hire empathetic people so our collections experience is as supportive as it can be. We have former regulators (FCA), debt advisers (CAB), addictions counsellors and healthcare workers (NHS) on our team, as well as people who've been in financial difficulties or vulnerable circumstances themselves. We've even got a member of staff who's midway through an Individual Voluntary Arrangement (an alternative to bankruptcy for people unable to meet their financial obligations). His experiences have helped us improve our messaging strategy for customers who can't afford to repay their debts, or are considering a formal debt solution.

we're creating an industry-leading collections experience

We're just getting started, but our goal is to create a collections experience that sets the bar for the industry. We'd love to have an informative, collaborative process, where our customers can weigh up their options and choose the solution that suits them best.

Eventually, we'd like to bring the full collections journey into the Monzo app. This would allow customers to select the best option for them, direct from the app. Of course, we'll still be on hand to help at the click of a button. But by making the Monzo collections experience automated and self-driven, we can help reduce the stress and anxiety people feel when in financial difficulty and in need of assistance. And if we can do that, hopefully we can help even more people to get back on their feet financially.

"Our primary goal is to encourage customers to engage with us, so we can figure out how to help them get back in good financial shape"

raising the standard of debt collection

Peter Wallwork
chief executive
Credit Services Association

Ask a politician, journalist or average person on the street about debt collection and they are bound to have an opinion. Not many, however, would understand the sheer scale and professionalism of the modern-day debt collection agency or debt purchaser, or be able to quote their contribution to the UK economy.

The 300 members of the Credit Services Association (CSA) hold something in the region of 50 million accounts, totalling almost £60 billion of debt. More importantly, perhaps, they return around £4 billion of that debt to the UK economy every year.

All members of the CSA adhere to a strict Code of Practice, recognised by regulators, government, and our members' clients – usually large banks or credit card companies. They want to know that their customers' treatment is the same when in credit, as it is when they fall into debt, especially when that debt is outsourced or acquired by a third party.

Debt collection agencies today have sophisticated customer services teams, and well-established processes for ensuring any complaints are quickly and successfully managed. Involvement from CSA member organisations can be the positive catalyst to resolving complaints where debts have often accrued due to a breakdown in the relationship with the creditor.

For our members, getting people to talk and communicate has always been their core business. They try to find a mutually beneficial resolution for a customer where a creditor has failed to make that contact in the first place. Managing the repayment of an outstanding balance that could affect a credit rating, and putting money back into the economy is to everyone's benefit. And if the customer is unable to pay or it transpires they shouldn't have to pay for another reason, finding a solution is key. We know that when small debts are not resolved, they tend to escalate into bigger financial problems over time.

However, of all the issues around personal finances, anything labelled as 'debt' is still often considered taboo, even when it is easily resolvable. We still see people encouraging customers to ignore debt collection agencies in a bid to make the problem go away. Such guidance usually comes from unsolicited sources on online forums and unfortunately their advice doesn't help and can result in things escalating in a way that is of detriment to the customer.

CSA members are not afraid of complaints; genuine issues will always be heard, disputes will be taken seriously and members will do their best to find a resolution. Our message is a simple one: if you are in debt, and are struggling, then speak to the debt collection agency or debt purchaser concerned and invariably they will find a way forward, or direct you to one of the debt advice bodies that can act on your behalf.

If you have a genuine complaint, then similarly speak directly to the agency and, if that agency is one of our members, then if you need to, you can also raise it with us if you feel you do not receive a fair outcome. We are working hard to educate consumers and stakeholders to explain our role as the trade body for the industry, and why working with our members to address debts is so important and beneficial to financial wellbeing.

"... genuine issues will always be heard, disputes will be taken seriously and members will do their best to find a resolution"

third quarter statistics 2018/2019

a snapshot of complaints in the third quarter of 2018/2019

Each quarter we publish updates about the financial products and services people have contacted us about. We include the number of enquiries and new complaints we've received, the number of complaints referred for an ombudsman's final decision, and the proportion of complaints we've resolved in consumers' favour.

In this issue, we show the new complaints we received during October, November and December 2018 – and for comparison, the complaints we received last quarter, as well as those received during the same period last year, and during the whole of 2017/2018.

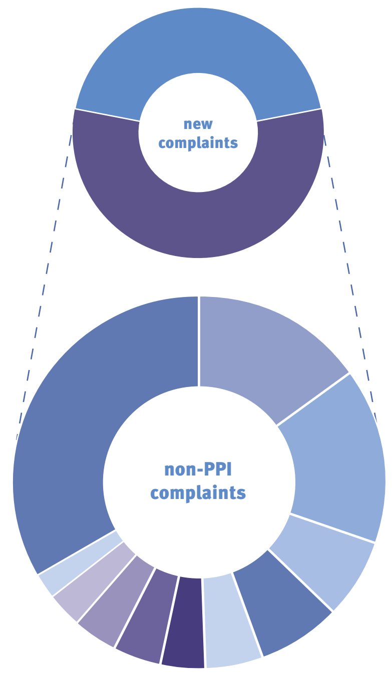
In the third quarter of 2018/2019:

- We received 161,195 enquiries and 92,903 new complaints – with 9,324 complaints passed to an ombudsman for a final decision. On average, we upheld 33% of the complaints we resolved.
- PPI continued to be the most complained-about financial product, with 40,855 new complaints. PPI complaints made up nearly 44% of all complaints we received.
- The number of complaints about payday loans has almost halved since last quarter, dropping from 14,578 to 7,728. But, for the year to date, we have received almost twice as many complaints about payday loans as we did in the whole of 2017/2018.

the financial products that consumers complained about most to the ombudsman in the third quarter of 2018/2019

- payment protection insurance (PPI) 44%
- complaints about other products 53%

- current accounts 15%
- payday loans 15%
- credit card accounts 7%
- car and motorcycle insurance 7%
- house mortgages 5%
- packaged bank accounts 4%
- hire purchase 4%
- buildings insurance 4%
- overdrafts and loans 3%
- instalment loans 2%
- other products 33%



	... in Q3 October 2018 – December 2018				... in Q2 July 2018 – September 2018				... so far this year April 2018 – December 2018				... in the whole of 2017/2018 April 2017 – March 2018			
	enquiries received	new cases	ombudsman	% of cases upheld	enquiries received	new cases	ombudsman	% of cases upheld	enquiries received	new cases	ombudsman	% of cases upheld	enquiries received	new cases	ombudsman	% of cases upheld
payment protection insurance	55,760	40,855	2,755	29%	61,636	43,326	3,787	26%	201,737	138,233	11,502	30%	283,623	186,417	13,605	36%
current accounts	10,453	7,728	592	56%	11,569	7,731	604	60%	33,677	22,464	1,814	52%	32,622	20,217	2,731	26%
payday loans	13,287	7,653	486	54%	23,714	14,578	487	49%	53,227	32,774	1,544	53%	25,263	17,256	2,080	61%
credit card accounts	4,972	3,692	400	35%	5,112	3,136	400	37%	14,985	9,856	1,159	35%	16,753	10,563	1,627	28%
car and motorcycle insurance	5,819	3,569	611	30%	6,430	2,982	632	30%	18,643	9,866	1,770	30%	25,411	11,887	1,982	28%
house mortgages	3,389	2,654	467	27%	3,845	2,540	453	24%	11,103	7,673	1,320	26%	13,438	8,888	2,103	23%
packaged bank accounts	3,911	2,337	169	13%	4,428	2,982	264	14%	14,738	8,811	654	12%	22,223	11,674	907	11%
hire purchase	2,981	2,313	253	43%	3,136	2,211	246	44%	9,281	6557	806	43%	8,983	5,805	1,172	35%

third quarter statistics
continued

	... in Q3 October 2018 – December 2018				... in Q2 July 2018 – September 2018				... so far this year April 2018 – December 2018				... in the whole of 2017/2018 April 2017 – March 2018			
	enquiries received	new cases	ombudsman referral	% of cases upheld	enquiries received	new cases	ombudsman referral	% of cases upheld	enquiries received	new cases	ombudsman referral	% of cases upheld	enquiries received	new cases	ombudsman referral	% of cases upheld
buildings insurance	2,314	1,980	309	35%	2,238	1,503	330	32%	7,016	5,148	969	35%	7,503	4,726	1,144	34%
overdrafts and loans	2,368	1,739	256	26%	2,640	1,570	261	24%	7,810	5,065	818	25%	11,020	6,909	1,101	28%
instalment loans	1,392	1,295	83	67%	2643	1878	50	53%	4,762	3,583	201	61%	1,554	1,122	393	58%
“point of sale” loans	1,347	1,087	213	52%	1,292	841	165	52%	4,267	3,039	472	50%	5,383	3,613	352	33%
travel insurance	1,310	1,048	153	34%	1,357	797	135	31%	3,954	2,652	433	34%	5,120	3,165	671	36%
self-invested personal pensions (SIPPs)	1,029	1,047	212	59%	777	826	223	62%	3,186	2,802	573	60%	3,215	2,051	591	52%
home emergency cover	819	646	172	40%	846	568	174	42%	2,910	2,103	485	44%	3,448	1,999	415	46%
hiring / leasing / renting	844	644	70	50%	871	526	52	46%	2,496	1,586	189	45%	2,611	1,587	248	31%
contents insurance	720	529	92	27%	666	376	98	27%	2,049	1,372	316	26%	2,757	1,743	414	27%
catalogue shopping	764	521	51	43%	843	525	78	45%	2,678	1,737	197	45%	3,992	2,191	225	45%
term assurance	462	508	88	17%	593	439	90	11%	1,976	1,593	268	16%	3,015	1,977	344	14%
personal pensions	904	490	98	22%	955	336	100	33%	2,580	1,230	277	28%	3,118	1,468	397	28%
debit and cash cards	635	475	64	34%	781	510	55	33%	2,182	1,438	171	34%	2,979	1,844	332	26%
deposit and savings accounts	607	474	67	34%	605	422	60	32%	1,947	1,357	204	31%	2,713	1,706	310	29%
whole-of-life policies	557	466	57	14%	634	366	90	15%	1,760	1,214	216	16%	2,130	1,304	280	16%
investment ISAs	440	457	64	45%	487	337	81	40%	1,460	1,194	218	44%	1,540	1,059	262	35%
pet and livestock insurance	559	421	56	28%	577	353	69	32%	1,763	1,191	171	30%	2,507	1,544	310	27%
electronic money	1,057	410	38	31%	948	333	40	26%	3,005	1,092	118	28%	3,742	1,155	163	32%
home credit	372	365	20	33%	515	358	28	39%	1,384	1,128	71	38%	1,223	808	102	34%
private medical and dental insurance	357	354	80	22%	388	248	70	18%	1,234	969	220	20%	1,620	1,115	269	24%
inter-bank transfers	572	346	44	31%	566	293	37	32%	1,770	981	114	30%	2,150	1,222	183	27%
mobile phone insurance	474	325	39	37%	488	251	39	26%	1,430	791	116	32%	1829	977	110	39%
debt collecting	854	322	34	32%	828	271	33	32%	2,482	850	97	33%	3,213	998	177	29%
roadside assistance	484	319	29	34%	490	180	33	42%	1,408	712	107	37%	1,220	712	120	36%
mortgage endowments	348	293	57	16%	405	228	53	19%	1,347	818	159	19%	2,213	1,078	218	14%
warranties	461	282	37	39%	408	182	38	59%	1,384	703	121	50%	1,884	919	178	44%
income protection	274	271	57	20%	308	210	55	24%	985	758	164	23%	1,300	865	195	20%
portfolio management	236	269	69	41%	260	203	59	44%	800	659	204	42%	1,112	815	364	37%
share dealings	299	261	52	41%	368	225	51	40%	1,066	745	158	43%	1,449	763	209	32%
critical illness insurance	288	252	51	15%	293	215	55	15%	948	719	174	15%	1,278	861	197	19%
occupational pension transfers and opt outs	190	244	92	44%	194	181	74	50%	677	614	218	43%	817	553	240	30%
specialist insurance	309	229	45	31%	299	196	42	49%	1,011	645	123	44%	1,581	1,076	158	33%
credit reference agency	397	228	40	57%	472	225	44	71%	1,406	757	104	58%	2,242	1,060	96	32%
commercial vehicle insurance	218	205	35	32%	192	151	28	36%	795	569	98	38%	1,002	523	113	32%
legal expenses insurance	225	204	56	29%	191	164	53	25%	714	560	168	27%	952	660	239	30%

third quarter statistics
continued

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guarantor loans	220	177	20	20%	164	99	8	28%	512	349	40	27%	368	210	48	22%
annuities	147	170	32	15%	166	151	33	16%	537	478	94	16%	940	744	188	16%
cash ISA - Individual Savings Account	167	149	27	33%	212	178	36	31%	644	489	83	30%	718	484	89	29%
direct debits and standing orders	249	143	12	32%	254	105	17	33%	781	386	46	32%	1,079	501	79	31%
cheques and drafts	213	138	14	42%	183	122	19	39%	598	389	50	42%	740	447	85	35%
building warranties	124	129	22	20%	113	87	26	34%	372	306	71	29%	471	290	106	32%
secured loans	164	127	51	20%	186	160	40	17%	648	487	128	21%	1,174	781	187	25%
store cards	170	125	11	35%	247	132	9	45%	636	382	37	38%	889	508	67	37%
merchant acquiring	171	117	24	25%	177	132	20	32%	628	395	57	31%	889	510	67	31%
personal accident insurance	122	117	11	13%	116	77	13	20%	405	293	43	16%	630	410	76	23%
conditional sale	113	116	35	44%	124	110	32	49%	540	494	103	46%	731	533	151	38%
money remittance	118	104	11	44%	101	48	12	37%	374	209	32	38%	610	305	50	29%
unit-linked investment bonds	64	90	29	38%	64	54	29	36%	244	249	93	38%	388	306	117	31%
investment trusts	90	78	11	26%	64	47	8	43%	236	161	26	35%	364	199	48	38%
card protection insurance	97	73	3	22%	110	59	6	21%	372	211	13	21%	751	347	24	26%
income drawdowns	45	67	15	48%	37	37	13	58%	173	173	36	50%	202	169	54	36%
commercial property insurance	72	66	15	49%	66	53	19	42%	261	213	55	43%	422	269	113	30%
endowment savings plans	62	63	22	19%	79	53	10	39%	223	172	51	31%	380	263	80	25%
business protection insurance	73	54	22	26%	-	-	-	-	224	152	41	26%	314	189	53	25%
FSAVC – free standing additional voluntary contributions	47	53	17	19%	40	54	18	22%	166	170	55	19%	170	116	33	27%
unit trusts	49	51	8	23%	-	-	-	-	145	120	34	34%	175	121	38	34%
guaranteed asset protection (“gap” insurance)	75	49	11	44%	107	47	15	36%	297	168	36	34%	421	209	36	24%
spread betting	60	48	16	16%	-	-	-	-	200	130	60	14%	289	179	89	22%
caravan insurance	74	47	12	32%	74	41	8	19%	222	122	24	28%	213	119	32	28%
“with-profits” bonds	48	44	11	10%	53	52	19	29%	163	144	50	19%	266	188	75	23%
derivatives	29	31	14	25%	-	-	-	-	136	134	57	17%	290	183	94	19%
credit broking	-	-	-	-	-	-	-	-	231	127	16	29%	403	202	49	25%
logbook loans	-	-	-	-	-	-	-	-	193	109	32	34%	178	113	32	37%
OEICs (open-ended investment companies)	-	-	-	-	-	-	-	-	95	106	26	47%	153	110	45	18%
foreign currency	-	-	-	-	-	-	-	-	216	98	18	24%	308	132	20	19%
capital protected structured products	-	-	-	-	-	-	-	-	75	95	36	53%	169	137	59	29%
savings certificates/bonds	-	-	-	-	-	-	-	-	124	88	25	26%	180	99	17	23%
debt adjusting	-	-	-	-	-	-	-	-	196	88	12	35%	315	135	26	28%
premium bonds	-	-	-	-	-	-	-	-	138	87	13	22%	206	98	15	21%
state earnings-related pension (SERPs)	-	-	-	-	-	-	-	-	118	85	13	9%	148	92	16	8%

third quarter statistics
continued

	... in Q3 October 2018 – December 2018				... in Q2 July 2018 – September 2018				... so far this year April 2018 – December 2018				... in the whole of 2017/2018 April 2017 – March 2018			
	enquiries received	new cases	ombudsman referral	% of cases upheld	enquiries received	new cases	ombudsman referral	% of cases upheld	enquiries received	new cases	ombudsman referral	% of cases upheld	enquiries received	new cases	ombudsman referral	% of cases upheld
debt counselling	-	-	-	-	-	-	-	-	123	68	16	19%	205	88	15	21%
banker's reference	-	-	-	-	-	-	-	-	118	68	8	33%	109	47	5	37%
PEP - personal equity plans	-	-	-	-	-	-	-	-	69	63	22	55%	112	92	33	23%
safe custody	-	-	-	-	-	-	-	-	61	52	13	45%	132	98	21	45%
pawnbroking	-	-	-	-	-	-	-	-	97	49	10	39%	93	55	12	49%
executorships/trusteeships	-	-	-	-	-	-	-	-	-	-	-	-	97	56	14	40%
interest rate hedge	-	-	-	-	-	-	-	-	-	-	-	-	53	40	41	21%
children's savings plans	-	-	-	-	-	-	-	-	-	-	-	-	66	33	10	20%
non-structured periodically guaranteed fund	-	-	-	-	-	-	-	-	-	-	-	-	31	30	11	24%
other products and services	33,274	670	135	29%	33,794	675	177	32%	79,589	708	133	32%	72,276	855	173	30%
sub total	**127,921**	**92,233**	**9,189**	**33%**	**149,025**	**97,671**	**10,226**	**31%**	**447,624**	**296,767**	**30,957**	**33%**	**540,591**	**339,112**	**39,847**	**35%**
total	**161,195**	**92,903**	**9,324**	**33%**	**182,819**	**98,346**	**10,403**	**31%**	**527,213**	**297,475**	**31,090**	**33%**	**612,867**	**339,967**	**40,020**	**34%**

case studies:
debt collection

Debt collection is when a creditor engages an external company to recover monies that are past due.

We can look into complaints about collection activity for credit and consumer agreements – such as mortgages, credit cards overdrafts and personal or business loans.

Although debt collectors deal with unregulated debts as well, we can't look at complaints about debts relating to household utilities, council tax, or fines.

Between January and December 2018, we dealt with around 3,300 enquiries about debt collection, and took on over 1,000 new complaints for investigation.

The people involved told us that businesses collecting debt had:

- Made excessive contact with them – whether by phone, letters or both – about a debt;
- Demanded repayment of a debt that didn't belong to them at all;
- Demanded too much money, or tried to collect debt that had already been paid in full or was being managed by a debt management company;
- Added excessive fees to debts; and
- Chased them for unenforceable or statute-barred debts.

Often debt collectors will take on whole books of debt from lenders, rather than individual customers. Large amounts of information transferring between lenders and collectors can lead to administration errors. This may be especially true with older accounts, where lenders haven't kept in touch with customers and information may be out of date.

We generally find that it's fair that the people involved repay what they owe in a manageable way – and expect lenders and collectors to be flexible in helping customers with reasonable and affordable repayments. In some cases, given the particular circumstances of the situation in hand, we might decide it's not fair or reasonable for the debt collector to continue to collect the debt.

Our case studies include examples of complaints about lenders who've taken action to recover debts themselves – where many of the same themes apply.

"... we dealt with around 3,300 enquiries about debt collection, and took on over 1,000 new complaints for investigation"

147/1 "I've kept up my repayments for my loan, but I'm still being told I owe more"

Thea contacted us about her loan repayments, which were being collected through a debt collection agency.

Thea said her debt had transferred from one debt collection agency to another, and after that she'd noticed that the balance was too high. She'd complained to the new agency – but they had disagreed that they were asking for too much, and insisted that she had to pay the increased balance.

Unhappy, Thea asked us to get the balance put right.

putting things right

We looked at all the paperwork Thea sent us about her loan. We saw that, after Thea had had some payment problems with the original loan company, her debt had been passed to a debt collection agency. They had set her up on a monthly repayment plan, which she'd managed to keep up with. Then the debt had been bought by another business, who'd instructed debt collectors. And they'd asked Thea to pay over £1,000 more than she was saying she thought she owed.

We told the new agency to send us details of the loan debt and the repayments Thea had made. We also contacted the original collection agency to get their own transaction records, so we could get a complete picture of what had happened.

Having reviewed all these records carefully, we established that the new debt collector hadn't taken any payments into account relating to the time before the debt had been sold on. Instead, they'd started with the original loan amount. This was why they were now asking Thea to pay over £1,000 more than they should have asked for.

We pointed out the debt collector's mistake, and discussed the impact it had had on Thea. They agreed to clear the overcharge and to bring the balance and repayments down to the correct amount. They also offered Thea £100 compensation for the trouble and upset they'd caused.

147/2 "I've already repaid my loan – why should I have to pay more now?"

Ali complained to us after receiving a letter from a debt collector threatening legal action. She told us she thought she'd cleared her loan with the original lender years ago, so was surprised and concerned to hear things weren't settled.

Ali explained that the original lender had gone into liquidation, and she hadn't been able to contact them. She told us she'd had problems with the lender for a number of years too, and wanted to complain about both companies. She asked for our help to sort things out.

how we helped

We asked Ali what she'd done after receiving the debt collector's letter. She explained she'd contacted the agency to question the balance – and they'd asked her for evidence of the payments she had made. From the records, it seemed Ali had only been able to provide evidence for one of the payments. When the debt collector had checked with the lender's records, they hadn't found records of any payments at all – and they had insisted on full payment.

We explained to Ali that as the lender had gone into liquidation, we couldn't deal with any complaint against them. However, we called the collection agency to discuss the payments.

We pointed out there was clear evidence that Ali had made a payment to the lender using her debit card – but it wasn't clear where this payment had gone. Because Ali didn't appear to have had any other accounts with the lender, we suggested the collection agency should honour this payment.

Ali had told us she had also made further cash payments – but she didn't have any evidence of them. We explained that, because of this, we didn't agree the agency should have to reduce the balance further. However, as an apology to Ali, the agency offered a 20% reduction of the remaining balance, if Ali was happy to pay the account off in full. Ali confirmed she was in a position to do this.

"We pointed out there was clear evidence that Ali had made a payment to the lender using her debit card"

147/3 "Can a bank sell my loan – even after I tell them I can't afford the repayments?"

Jermaine got in touch with us about problems he was having with a loan he'd originally taken out with his bank. He said that, having not heard anything about the loan for several years, he'd received a letter from a debt collection agency asking for more money.

Jermaine told us that after receiving the letter, he'd challenged both the bank and the collection agency, as he'd heard nothing from either company since his last payment.

But neither had agreed to write off the debt. Jermaine said he felt he'd been treated unfairly and asked us to step in.

putting things right

Jermaine told us he'd had to stop work due to an injury shortly after taking out the loan, and had struggled to afford his repayments. He said that the bank had initially put him on a reduced payment plan, but had sold the loan on to a third party, who then appointed a debt collection agency when he hadn't kept up with it.

Jermaine said he'd heard that because his last payment had been made six years previously, his loans should be written off and he shouldn't be pursued for the money any more.

We explained to Jermaine that the enforceability of the debt was something a court would need to decide – rather than our service. However, we spoke to his bank and the collection agency to try to unpick what was happening with his debt.

Both businesses provided records showing the transaction history of Jermaine's loan. The collection agency confirmed they were now solely responsible for the collection of the loan – which was why they had contacted Jermaine. Having reviewed his account as part of our investigation, they confirmed that, due to the age of the debt, they wouldn't be taking any further collection action – and would arrange for the debt to be written off.

We told Jermaine about the debt collection agency's decision. But he was still unhappy with his bank for selling on his debt – and he was concerned that what had happened would have affected his credit rating.

From the evidence we received, we could see that the bank had only sold the debt on after Jermaine had stopped paying what he had owed – and after they'd given him the chance to reduce his payments. It didn't seem Jermaine had communicated with the bank about the fact he was having trouble or why.

We explained to Jermaine that, given the length of time since he'd last made a payment, it was likely that any such information would have been removed from his credit file by now. Having looked into Jermaine's records, both the debt collection agency and the bank confirmed there were now no entries on Jermaine's credit file relating to the loan.

So, while we were sorry about the difficult situation Jermaine had been in since his injury, we decided the bank hadn't done anything wrong in selling on his debt – and that he hadn't been treated unfairly.

147/4 "We asked our bank for help with our debts but they took us to court instead."

Jo and Ethan told us they hadn't been treated fairly by their mortgage provider, a bank, after their son's illness caused them to fall behind with their mortgage payments.

They said that, although they'd told the bank their circumstances had changed, it had taken them to court over their debts. Now the court had said the bank could repossess the house – and Jo and Ethan wanted us to step in.

how we helped

Before we started looking into the detail of the complaint, we spoke to the bank about Jo and Ethan's situation. They agreed to put their legal action on hold while we investigated exactly what had happened.

We explained to Jo and Ethan that we couldn't review – or overturn – the court's decision to let the bank repossess their house. However, the court hadn't looked into their concerns about how they'd been treated by their bank – relating both to the mortgage payment protection insurance (MPPI) claim and also when they'd asked for help with their financial difficulties. So we were able to look into these issues.

We asked Jo and Ethan to talk us through what had happened. They told us their son had fallen ill around five years after they'd bought their house with a mortgage. They explained they'd both taken time off work to care for him – and had asked the bank for help when they'd realised they couldn't afford the repayments.

Ethan told us the bank had advised him to claim on the MPPI policy they'd bought with the mortgage. He'd tried this, but he'd been told he couldn't claim because he was self-employed. Ethan said he'd tried to continue making payments towards the mortgage when he could, but he had quickly fallen into several thousand pounds of arrears.

We asked the bank for their views on what had happened with Jo and Ethan's MPPI policy. They said they'd looked into the circumstances and decided to pay Jo and Ethan several thousand pounds in redress, as they'd concluded the policy was mis-sold.

We were also concerned about the standard of the bank's communication and customer service. We could see that Ethan and Jo had kept the bank informed of their circumstances, asked for help, and tried to make affordable payments where possible. They'd written to the bank, asking to meet them to sort out a new payment plan.

However, despite all this effort, the bank hadn't responded. In fact, the records showed it had taken them three years to refer Jo and Ethan to their specialist vulnerable customer team.

By that point, they had been unable to keep up with their payments and the bank had already started court proceedings.

We told the bank they'd seriously failed Jo and Ethan – overlooking their circumstances and letting the situation escalate, rather than stepping in earlier to provide help at an earlier stage.

In our view, if the bank had stepped in earlier, many of the legal issues might have been avoided. Combined with the mis-sold MPPI, the bank's poor customer service had caused substantial problems, stress and upset for Jo and Ethan, during what was already a distressing time due to their son's illness.

We recognised that financial compensation couldn't make up for everything Jo and Ethan had been through. But to recognise the impact of the bank's poor service, we told them to pay Jo and Ethan compensation from **from our extreme band**.

"if the bank had stepped in earlier, many of the legal issues might have been avoided"

147/5 “My credit card company told me I was in persistent debt – but didn’t help me fix it.”

Chris asked us for help when his credit card provider wrote to him and told him his account was in persistent debt. He said the provider had given him a choice of how he could clear his debt – but he felt they hadn’t explained the options properly, and he’d been pressured into making a decision he wasn’t sure was the right one.

Chris wanted our help in making the provider treat him fairly, and to get on top of his debt.

how we helped

Chris told us he’d usually made the minimum monthly payment on his credit card. From his statements, we could see his outstanding balance had been several thousand pounds for a number of years. And for the previous 18 months, he’d been paying more in interest and charges than he had actually paid toward his debt each month.

The card provider defended their position. They said they’d offered Chris a choice – in line with the **FCA’s rules for persistent debt customers** – either to increase his monthly repayment, or to suspend his account and repay his debt at the same rate he was currently paying. And Chris had chosen the second option.

Chris said he’d now read up on the FCA rules, and wasn’t happy with what the provider had said. In his view, they should have looked further ahead – and told him what would happen if he continued to be in persistent debt for 36 months or more. He said that if he’d known the longer-term view, he might have made different choices.

We explained to Chris that he was right about the FCA rules referring to different things after 36 months, as opposed to 18. However, looking at his particular circumstances, we thought the card provider had done the right thing by focusing on what was happening currently to try to stop things deteriorating further. At the point the provider contacted him, his debt hadn’t been anywhere near the point where the 36-month rules applied. And they might not have ever been relevant if the issues with his debt could be resolved.

While we didn’t uphold Chris’s complaint, it was clear he was upset about what had happened – and concerned about what would happen next. We talked him through why we’d reached the decision we had about the card provider’s actions – including their responsibility to ensure accurate information was recorded on his credit file. And we made sure he had the details of organisations who could give him free help with his debt from then on.

147/6 "I've repaid my debt – so why is my bank still chasing me?"

Lauren came to us about problems she'd been having with her bank. She said she'd contacted a free debt charity for help with her debts, and was relieved to have managed to set up payment plans with her creditors. However, she was having trouble with her bank – who she said were still contacting her about an overdraft debt that she thought she'd paid off.

Lauren said she'd complained to the bank, but they'd just told her they'd followed the normal collections procedure. Unhappy with this response – and upset at the text reminders she believed she was wrongly getting from the bank – Lauren asked us to get involved.

putting things right

Lauren told us she had been struggling with her finances after her dad, who she'd been caring for, had died. When we looked at the bank's records, we saw that she'd contacted them for help shortly after this – and they'd given her the details of the debt charity. The bank had also frozen Lauren's overdraft until she could clear what she owed.

Lauren told us that the debt charity had told her the bank had said she'd paid off her overdraft. However, she was still receiving text messages about it – even after her debt adviser had contacted the bank to confirm that she didn't owe anything more.

The bank said it couldn't find any call records for Lauren's account – so they didn't have any evidence about these conversations.

However, the debt charity sent us their own call recordings, in which we heard the bank saying that Lauren's debts were clear.

When the bank heard these calls, they accepted there had been administration errors on Lauren's account. In actual fact, there was around £100 left to pay back. But in view of their mistakes, they said they would clear the balance.

Lauren had tried to address her financial difficulties honestly and proactively – and of all of her creditors, only her bank had caused difficulties. We told the bank to pay compensation in our **moderate band** for the upset caused by its poor customer service. We also told the bank to confirm in writing that Lauren had nothing left to pay.

147/7 "I don't agree my debt should have been passed to a debt collector – and now they're phoning me when I told them not to"

Denny told us about a dispute over a doorstep loan. He said he'd been making regular payments for several months, when the lender had decided to sell the debt to a third party debt collector – which was now contacting him by phone, when he'd told them to write.

Denny wasn't happy that his debt had been sold, as well as with the fact the debt collector was now contacting him. He thought the lender had acted illegally by giving his details to a new company. Because of all this, he was refusing to speak to the debt collector – and thought he should get compensation for the treatment he'd received.

putting things right

We asked Denny for copies of his loan paperwork. The credit agreement clearly said – in line with what's normal for this type of agreement – that the lender could share Denny's information for debt collecting purposes, and to sell or transfer Denny's account.

So we didn't think they'd acted unfairly in selling his debt.

Denny told us that he'd blocked the debt collector's number from his phone, because he'd told them they should only contact him by letter. He said he'd written to the debt agency to explain his concerns, and had asked them to pass his account back to the doorstep lender.

We asked the debt collection agency for their call records. They provided these, pointing out they'd only contacted Denny once a day, at most. He hadn't answered any of the calls – and they didn't think they'd acted unreasonably in keeping on trying.

We pointed out that Denny had specifically asked to be contacted by letter only – and whether he was answering calls wasn't relevant, as they shouldn't have phoned him at all. As the calls had continued after Denny had made his request, the agency had breached the FCA's debt collection guidelines.

We explained to Denny that the debt would remain with the agency. However, we agreed they'd acted unfairly – and told them to pay compensation in our **moderate band** for the upset they'd caused by the unwanted calls. We encouraged Denny to work constructively with the agency to clear his remaining balance.

"... we didn't think they'd acted unfairly in selling his debt"

147/8 "I was put on a repayment plan, and now it's affecting my chances of getting a mortgage."

Aaron asked us to resolve a dispute he was having with his credit card company.

He said he'd asked the company for help with his debts and they'd put him on a reduced payment plan for 12 months. A couple of years later, he'd been turned down for a mortgage – and he believed this was down to the notes the credit card company had put on his credit file.

Aaron said if he'd known about the impact that the repayment plan would have on his credit history, he wouldn't have agreed to it in the first place. So he wanted us to make the card company amend his credit file.

how we helped

We asked the credit card company for their records about Aaron's account. From these, we could see he'd been in regular contact with the company before his repayment plan had started – to discuss his financial circumstances and how he was struggling to pay what he owed.

The file notes also showed that, on more than one occasion, the card company had explained to Aaron that his agreement to a repayment plan had prevented them from having to issue a default notice against him. The company had also explained they would still be recording any late or reduced payments – and that they had a responsibility to report the status of his account to credit reference agencies.

Aaron said he'd gone back to the card company a few months later when his financial position had improved – to ask if he could now make overpayments on his account. The card company had said he could, but that his repayment plan would end early.

We considered everything that had happened. In our view, if the credit card company hadn't offered to reduce Aaron's repayments, it was likely he'd have incurred a default.

We explained to Aaron that this would have had a more severe impact on his credit file than the recording of his repayment plan.

Based on what we'd seen, we concluded that the credit card company had clearly communicated Aaron's options – and had taken the action they should have as soon as they knew about his circumstances, including freezing interest and charges on his account.

We were sorry about the trouble Aaron was having with his mortgage, but the credit card company wasn't at fault. So we didn't uphold his complaint.

"In our view, if the credit card company hadn't offered to reduce Aaron's repayments, it was likely he'd have incurred a default"

147/9 “We asked for some time to sort out my friend’s loan and overdraft debt – but the bank won’t stop chasing him for the money”

Saira contacted us on behalf of her friend Toby, who wanted to complain about his bank.

She said Toby had been struggling with his finances for several months, and had ended up in a hospital, receiving treatment for severe depression and anxiety. Saira told us that Toby had phoned his bank about the overdraft and loan he had with them, including asking for some time to sort out his finances.

However, Toby had continued to receive calls, texts and letters threatening him with court action if he didn’t pay his debts. In Saira’s view, this had made Toby’s mental health worse – to the point he’d told her he was having suicidal thoughts. She asked us to step in and make the bank treat him fairly.

how we helped

We contacted the bank’s vulnerable customer team to discuss Toby’s situation – including the approach to collections that Saira had concerns about.

The bank confirmed they’d put a payment break on Toby’s account after he’d called them. But they said they hadn’t known the full picture of Toby’s situation until we got involved. So they didn’t think they’d done anything wrong in continuing to contact him.

Looking at the bank’s records, we could see Toby had mentioned the impact that being contacted so frequently about his debt was having on his mental health. He’d specifically asked for a break from the communications to help him recover. And he’d told the bank he was working with a free debt charity, who’d be in touch with them once the payment break was over.

The bank had offered Toby a payment break, as well as telling him they’d frozen the interest and charges on his account. However, there was no evidence they’d done anything to respond to his concerns about their communication with him – or to support him in any other way with the problems he’d shared with them.

We told the bank that, from what we’d seen and heard, it seemed Toby was focused on resolving his debts – and had done the right thing in asking his bank for help. However, the bank had let him down. And their failings had caused significant additional problems for Toby, when he was already having trouble.

We told the bank to pay compensation from our **substantial range**. The bank also apologised to Toby and said they would write off his debt in full.

“… we could see Toby had mentioned the impact that being contacted so frequently about his debt was having …”

147/10 "I'm receiving debt collection letters – but the debt doesn't belong to me"

Wei complained to us that a debt collection company had been chasing him for money relating to a bank overdraft.

Wei told us he'd previously had an account with the bank in question – but he'd closed it several years ago. He said he was sure the debt wasn't his, and was upset the bank seemed to have shared his personal details with debt collectors without permission.

Wei said he'd asked the bank to remove the debt from his name and stop the debt collectors contacting him. He'd also asked for compensation for the trouble they'd caused.

However, the bank was insisting the debt belonged to Wei – and now he wanted us to step in.

how we helped

We asked the bank for all its records relating to Wei's account. From these, we could see that Wei had complained to the bank about the same debt before. And he'd brought a complaint to the ombudsman at that time.

During Wei's previous complaint, he'd mentioned a different debt collection agency than the one he was saying was involved now. Back then, his bank account had still been open – and Wei hadn't disputed that the debt belonged to him. And to resolve the complaint, the bank had agreed to allow Wei to pay off his overdraft debt in small monthly payments.

We asked the bank what had happened to the debt since then. The bank confirmed that Wei had failed to keep up his reduced payments – and the debt had been passed to one third party debt collector, and then another. The bank showed us copies of the letters they'd sent to Wei's address – and in our view, these clearly explained what was happening, both during the time Wei's bank account was open and during each of his complaints.

Given everything we'd seen, we concluded the debt belonged to Wei. We explained to him that the bank hadn't done anything wrong, and encouraged him to work with the debt collectors to repay what he owed.

"... we could see that Wei had complained to the bank about the same debt before ..."

Q? &A

complaints about claims management companies

On 1 April 2019, our service will take on responsibility for resolving complaints about claims management companies (CMCs) – as the regulation of these complaints transfers to the Financial Conduct Authority (FCA). In this extended q&a, we answer some questions about what's changing.

why are things changing?

The **independent review of the claims management regulation**, published in 2016, made recommendations about improving the way the sector is regulated. Parliament accepted these recommendations, and made a number of changes to CMC regulation through the Financial Claims and Guidance Act 2018.

As part of these changes, from 1 April 2019, regulation of CMCs and their activities will be carried out by the FCA – transferring from the Claims Management Regulator, which is part of the Ministry of Justice. So we'll take on responsibility for complaints about CMCs. Currently, people who feel they've been treated unfairly by a CMC can take their complaint to the Legal Ombudsman.

so will you just be able to look at complaints involving financial services – like mis-sold payment protection insurance (PPI) claims?

Just like the Legal Ombudsman, we'll be able to look at complaints about CMCs working in a range of sectors. So we'll be able to help with complaints about CMCs dealing in financial services, personal and criminal injury, housing disrepair, specified benefit and employment.

But we're expecting that most of our work will involve CMC activity in financial services – reflecting the Legal Ombudsman's experience. In 2017/2018, financial services made up 86% of the Legal Ombudsman's work, of which the largest proportion involved PPI.

Q? &A

what will happen to complaints that the Legal Ombudsman hasn't resolved by 1 April?

Complaints already with the Legal Ombudsman on 1 April 2019 will transfer to us. We'll also be able to take on complaints about events that happened before 1 April, but weren't raised with the Legal Ombudsman before that date - as long as the person bringing the complaint would have been able to do so under the Legal Ombudsman scheme rules.

For complaints already with the Legal Ombudsman, we'll consider what's happened in line with the Legal Ombudsman scheme rules, which are on its website.

If a complaint is about events that happened on or after 1 April, it can be brought directly to us. We'll handle the complaint in line with our rules, which are published as part of the FCA's Handbook – in the section **Dispute Resolution: complaints**.

We won't be able to deal with complaints that have already been concluded by the Legal Ombudsman.

will your remit be the same as the Legal Ombudsman's?

We'll be able to deal with complaints against CMCs about events that happened on or after 1 April 2019, if the client or the CMC is in England, Scotland or Wales. This widens the current scope of ombudsman schemes in the CMC sector. We might also be able to help with other complaints if the CMC has joined our voluntary jurisdiction.

And where we uphold a complaint, there will be a higher maximum financial limit for our awards than the Legal Ombudsman's.

It's been proposed that from 1 April 2019 our limit will be increasing, with the details to be finalised before the start of the new financial year.

In addition, in some circumstances, it's possible we'd consider a complaint that the Legal Ombudsman might have dismissed. That's because the Legal Ombudsman has broader discretion to dismiss complaints without further investigation.

Q?&A

what does all this mean for a CMC that's about to give a customer its final response about a complaint?

As for financial businesses, a CMC's final response is its last word on their customer's concerns. Among other things, it tells the customer where they can take their complaint if they're still unhappy.

For both us and the Legal Ombudsman, there's a six-month time limit to make a referral. So depending on when the customer complains, a final response written before 1 April may give details for the Legal Ombudsman or us – or possibly both. From 1 April 2019, a final response will only need to give our details.

From 1 April, final responses will need to follow the FCA's rules – which include sending our leaflet with final response letters. These can be ordered on **our website**.

where can I find out more?

We gave more detail about how we plan to run our CMC operations, as well as how we've been preparing, in our strategic plans and budget consultation in December.

We'll share the feedback we've received and our final plans as part of our wider strategic plans, which we'll publish at the end of March.

In the meantime, the **FCA's website** has all the key information and resources CMCs need to help them get ready for the change in regulation.

CMCs can also contact our technical advice desk on 020 7964 1400 or at **technical.advice@financial-ombudsman.org.uk**. The team will be able to answer any general questions – and will also be able to give informal help with resolving specific complaints that haven't yet been referred to us.

Financial Ombudsman Service

On 11 February, we and the Legal Ombudsman will be talking to CMCs face to face about the transfer of complaints at a joint event in Birmingham. Find out more at **www.legalombudsman.org.uk/raising-standards/#professional-learning-courses**.

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