Rt Hon Nicky Morgan MP  
Chair of the Treasury Committee  
House of Commons  
Committee Office  
London  
SW1A 0AA

Sent by email

18 March 2019

Dear Nicky,

Thank you for your letter of 4 March with regards to the Equality Act and financial services. I have responded to each of the questions below — if you have any further questions during the course of your inquiry I would be happy to provide additional information to assist the Committee with its work. These are issues that we have regularly engaged with in a number of different contexts, and we recently submitted evidence to the Women and Equalities Committee outlining some of the ways the Equality Act has featured in our casework.

1. What powers does the FOS have to instruct financial services providers to make reasonable adjustments for customers?

The Financial Ombudsman Service has been given the power under the Financial Services and Markets Act 2000 to look at individual complaints about financial businesses, and decide what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of a case.

When deciding what is fair and reasonable in all the circumstances of a complaint, the ombudsman takes into account the relevant law, regulators' rules and guidance, industry codes of practice and what they consider to be good industry practice. Where it is relevant...
to the circumstances of a complaint, the Equality Act will be considered when deciding what is fair and reasonable.

This is not the same as making a formal judgment on whether or not a business has breached the Equality Act in the way that a court would. In accordance with the legislation and rules, the ombudsman would be making a decision on what is fair and reasonable in all the circumstances of a complaint. It is not for the ombudsman to make a formal finding that the Act is engaged or has been breached – findings on matters of law are reserved for the courts.

This is analogous to other areas of our casework where we take the law into account without making a formal judgment as to whether or not it has been breached, such as the unfair relationship test added to the Consumer Credit Act in 2008. This gives the courts power to determine whether a relationship between a debtor and creditor was unfair to the debtor and gives it wide-ranging powers in the event it does find that to be the case. It would be for the court to decide if the relationship was fair or not, but we would consider the evidence and see if it suggests the court would be likely to come to that conclusion.

If the ombudsman decides that the treatment of the consumer has not been fair, then the legislation gives the ombudsman service the power to make an award against the business for what the ombudsman considers fair compensation, including for financial losses and distress and inconvenience. And the ombudsman also has the power to make a direction requiring the business to take such steps in relation to the complaint as the ombudsman considers just and appropriate. In cases where it is relevant, this can include directing a business to make reasonable adjustments for a consumer.

2. Does the FOS take forward complaints on behalf of individual members of the public where an individual’s provider is not providing a reasonable adjustment and may be in breach of the Equality Act?

The Financial Ombudsman Service is required to be independent and impartial in the consideration of complaints, and our role is to look at individual complaints brought to the service by consumers. If a consumer feels that they have not been treated fairly and part of that was about a reasonable adjustment not being provided, we would absolutely take that forward and look into the complaint to decide what is fair and reasonable. We could then require a financial services provider to put things right including directing them to make reasonable adjustments.

If we had concerns following on from individual cases then we would be likely to contact the Financial Conduct Authority or the Equality and Human Rights Commission. But we do not take cases to court on a consumer’s behalf if they are looking to get a formal ruling from a court that the Equality Act has been breached.
In order to make sure that the service is accessible to consumers with a range of different requirements we are supported by our accessibility team who provide practical tools to assist with our day-to-day interactions with customers who may need some extra support.

3. **Would the FOS describe itself as the primary body that customers should make a complaint to, if their financial services provider is not providing reasonable adjustments, as required by law?**

We would always encourage anyone who does not feel they have been treated fairly by a financial business to make a complaint to the business, and if they do not feel that the business has responded adequately to that complaint to bring their case to the Financial Ombudsman Service, as we have the power to put things right. Businesses are required by FCA rules to learn from the approach that the ombudsman service takes to complaint handling when responding to complaints. This means that our decision on an individual complaint may prompt the business to change its processes and systems.

I have set out the powers that the ombudsman service has been given by the legislation, including in cases where reasonable adjustments haven’t been made. Other bodies such as the EHRC have different powers which are more specifically related to the Equality Act. We are in contact with the EHRC as well as charities and advice bodies to ensure that we are able to discuss matters that are relevant to this area. We would not discourage consumers from contacting other bodies if the consumers feel it is important to do so in the circumstances.

4. **Can you give examples of cases where the FOS has instructed a financial services provider to make a reasonable adjustment for a customer?**

As annexes to this letter, I have included some examples where the ombudsman has upheld the complaint and asked the business to put things right for the consumer by making reasonable adjustments, including one where the business has made changes to its processes. I have also included a decision on a complaint brought by a transgender woman who complained that her bank had discriminated against her.

We have also previously discussed our work considering the Equality Act in other aspects of casework. For instance, in 2012 an Order was made under section 197 of the Act to apply an age exception for ‘insurance and other financial services’. This exception allows businesses to treat consumers differently based on their age. However, a business may only rely on this exemption if a risk assessment is carried out, and the risk assessment is based on relevant information from a source on which it is reasonable to rely. Following new rules on lending which came into force in 2014, many mortgage providers tightened
their lending criteria, and we began to see more complaints involving consumers who were concerned they were being refused a mortgage because of their age. In many of these complaints, we were not satisfied that the business had adequately met the criteria to apply the age exemption. In 2015 we published an insight paper which shared examples of the complaints we see and explained our approach to dealing with them, which is also included below as an annex.

5. In the FOI response quoted above, it states the FCA has not given the FOS any “specific powers”. Can you set out which specific powers might be of use to the FOS to assist it in compelling financial service providers to comply with the Equality Act?

The above has set out how the existing rules require the ombudsman service to consider the Equality Act when making decisions. As the FOI response said in response to a question about the powers we have been given, those powers themselves are not specific to the Equality Act but we are satisfied that the existing rules and legislation allow us to compel financial businesses to put things right in individual cases where the Equality Act is a consideration. As an ombudsman scheme we haven’t identified a further power required to look into cases of this type. The regulatory framework established by Parliament does not place responsibility for wider supervision of the financial services market beyond individual complaints with the ombudsman, but we are able to use the insight and experience that we get from dealing with individual complaints from consumers about financial services to contribute to the work of other bodies.

Yours sincerely

[Signature]

Caroline Wayman
chief ombudsman and chief executive
Annex A – Example decision

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complaint

Mr R complains that National Westminster Bank hasn’t treated him fairly in regards to his request to make adjustments in the way it communicated with him.

background

Mr R is visually impaired and says he is registered blind. He asked NatWest to make adjustments to the written information it gave him. He asked that the bank should use the following format:

- Arial font.
- Font size 36.
- Bold text.
- Portrait orientation.
- Page numbering page 1 of 60, page 2 of 60 etc. positioned at the foot of the document.

But NatWest sent Mr R two bank statements that were formatted incorrectly.

In April 2018, following our involvement, NatWest agreed to resend the statements in the correct format and to pay Mr R £50 compensation. Mr R accepted that to resolve his complaint. But in July 2018 Mr R still hadn’t received the statements. When he raised this with NatWest, it told him that it would take a further six weeks to get the statements. Mr R also says he was treated unfairly when he raised a complaint – and in particular that NatWest’s response wasn’t on headed paper or numbered correctly.

I issued a provisional decision, proposing to uphold this complaint. The reasons I gave for that were as follows:

I must take into account the relevant law in deciding what I consider is fair and reasonable in the individual circumstances of the complaint. In this case that is the Equality Act 2010 (the Act). It imposes a duty on NatWest to make reasonable adjustments for customers with disabilities.

I am satisfied that because Mr R is registered as blind he has as disability as defined under the Act.

The Act says where because of a provision or practice a person is at a disadvantage in relation to people who aren’t disabled, reasonable steps should be taken to avoid that disadvantage. It goes on to say that where that “relates to the provision of information, the steps which it is reasonable for [NatWest] to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.”

It is therefore reasonable for NatWest to comply with Mr R’s requests for adjustments to its written communication. The nature of disabilities is that the adjustments that are required are going to vary from person to person. That does not make a request from someone to adjust communication in a unique way unreasonable – and it does not alter NatWest’s duty to provide information in a format that is accessible to a particular individual.

Taking all of that into account, I think that Mr R made a reasonable request for NatWest to adjust the way it communicated with him. I consider that NatWest should have complied with that request in all communication. But it has not always done so.
NatWest made the initial mistake of issuing two statements in the wrong format. It didn't put that right as it had agreed. It then said it would take six weeks to issue new statements. The rationale for this timescale is not clear. In any event, this was agreed in April 2018. As far as I can see, the request was not actually made until 31 July 2018. And then the request was for statements in landscape orientation, rather than portrait as Mr R requested.

Further, I asked NatWest for where it recorded Mr R’s wishes. It has provided a screen shot which shows the font and font size that Mr R wants. It does not, however, record that he needs documents in portrait or Mr R’s request for page numbering. This is important for Mr R.

I asked NatWest for its comments. It said, “I can confirm that the statements for January were issued in the correct font, size and style. The only issue outstanding is that they were provided in landscape and Mr R prefers portrait. I have made him aware from the outset that obtaining statements in this format is very difficult because they are having to be manually produced and it is challenging to fit the necessary information on the page when it is in portrait."

I believe we have made reasonable adjustments for Mr R and while I appreciate that the continued delays are frustrating, I don’t think it has ever been in doubt that Mr R has access to the information in a format he can understand although it is not in the format he prefers."

It is disappointing that at this stage NatWest has still failed to grasp the issues here. The fact that it is “difficult” and “challenging” for NatWest to comply with Mr R’s request is irrelevant. I don’t see how it can consider that it has made reasonable adjustments – it clearly hadn’t fully complied with Mr R’s request. And I don’t see how NatWest can say that Mr R has access to the information. Mr R needs communication in portrait because of his visual impairment. So this is not merely a preference and it’s not clear he did have access to the information in a way that is readily accessible to him.

Mr R has said that NatWest didn’t respond to him on headed paper or with correctly numbered pages. There is no specific requirement for NatWest to respond on headed paper. But I can see Mr R’s point. It is an example of NatWest treating him differently because of his disability and not making the adjustments he’d asked for. I can see how Mr R got the impression that was because NatWest wasn’t dealing with him fairly – particularly as he has provided evidence that it has written to him before on headed paper with pages numbered in the correct way.

Mr R also says that he was upset in a phone call with NatWest. I’ve looked at what Mr R has said, NatWest’s recollection of that phone call and other communication from NatWest. Having done so I am persuaded by what Mr R has said. He has been consistent in what he has said. And NatWest has consistently failed to understand its obligations and address Mr R’s concerns in a fair and sensitive way.

Looking at everything that has happened I don’t consider that NatWest has treated Mr R fairly.

To put things right I said:

Mr R has been caused many months of inconvenience because of what happened and in having to pursue this matter to this extent. He has also had the upset and stress of dealing
with this matter, being treated unfairly because of his disability and the failure of NatWest to take his concerns seriously. I think it's important to note that Mr R was not being difficult or unreasonable — he merely wanted to receive his bank statements in a format that was accessible to him as he was entitled to.

In all of the circumstances, I consider it would be fair for NatWest to pay Mr R £500 to reflect the trouble and upset Mr R has experienced as a result of this matter, in addition to any amounts already paid.

NatWest should also make sure that all of its systems are correctly updated to reflect all or Mr R's requests for adjustment to communication.

From the information available to me it's not clear if Mr R has received the statements in question for the two accounts. If Mr R tells me he hasn't, NatWest should produce the statements in the format Mr R wants. I intend to say they should be sent to Mr R within 28 days from acceptance of my decision — if he chooses to do so.

NatWest should also apologise to Mr R.

Mr R accepted my provisional decision. He said that he doesn't have an accessible copy of the statement for his Select account from 11 January to 8 February 2018.

NatWest responded to say it had nothing further to add and it agreed with my provisional findings.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, and as both sides have accepted what I said in my provisional decision, I see no reason to reach a different outcome in my final decision.

my final decision

My final decision is that I uphold this complaint, for the reasons set out in my provisional decision. National Westminster Bank Plc should:

- Pay Mr R £500 for trouble and upset.
- Update its systems to correctly record the adjustments Mr R requires.
- Send Mr R the statements for his Select account for the period 11 January to 8 February 2018 in the correct format within 28 days of Mr R accepting my final decision.
- Apologise to Mr R in writing

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 January 2018.
Annex B – Example decision

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complaint

Mr C complains that the font size used for the address on statements sent to him by Nationwide Building Society is too small.

background

Mr C said he needed his account statements in a larger size font so that he could read them. Nationwide sent his statements in a normal size but provided a copy in large font. In May 2017 Nationwide changed the font size on the address section of the original statement. It said this was to make sure it didn’t breach Royal Mail’s rules.

Mr C complained about this to Nationwide and then to this service. He said the smaller font size meant he couldn’t read the address information. So he didn’t know that the mail was for him when it arrived, and this was distressing.

Our investigator said that to treat Mr C fairly, Nationwide should send his statements with the address in the larger size font. He didn’t think it was fair for Mr C to get statements which were causing him distress.

Nationwide said it would stick a label over the window on the envelope, in a font size he can read – this means he can see the post is for him. And Nationwide said that because the change to the original statement was distressing for Mr C, it would remove the original statement from the envelope, so that he only receives the large print version.

Nationwide also paid Mr C compensation of £204 (£200 for the distress caused to him and £4 towards his telephone costs).

Mr C is unhappy with the arrangements. He still wants to receive the original statement, in the format that it used to be in before the changes made in May 2017.

my findings

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

Under the Equality Act 2010, Nationwide has to make reasonable adjustments, to remove barriers that prevent a customer accessing its products and services, or puts them at a substantial disadvantage compared to other customers.

The issue of not being able to read the address meant Mr C couldn’t read his monthly statements without experiencing distress. I think this would put him at a substantial disadvantage. I need to decide whether Nationwide has overcome this by sticking an address label in a large enough font for him to read over the envelope window. Nationwide says this is enough. And it says Mr C is the only customer who needs the original statement removing and his mail address in a font suitable for him to read. It says the costs of making this change just for one customer wouldn’t be reasonable.

Mr C wasn’t happy with the change made in May 2017. He says his address can easily fit into the envelope window in large size 16 font. He doesn’t think it’s fair for him to get a letter addressed in a font he can’t read, just to accommodate people with longer addresses. Sticking a label on the front of the envelope might be fine for most people, but it isn’t for
Mr C. He has a number of conditions and this upsets him in a way that wouldn’t happen for someone without these conditions.

I don’t think it’s asking too much for Nationwide to go back to the arrangements it used before May. I appreciate that it will have to make an arrangement for his statements to be prepared separately. But taking into account Mr C’s circumstances, I think his request is reasonable. Otherwise there will be a barrier that stops him reading his statements without experiencing distress.

my final decision

My final decision is that I uphold the complaint and direct Nationwide Building Society to send Mr C’s statements to him with the address in size 16 font, in the same way as it did before May 2017.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 27 December 2017.
Annex C – example decision

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complaint

Mrs M complains that Nationwide Building Society refuses to give her a debit card that will enable her to use both cash machines payment terminals and this is causing her considerable difficulty accessing her money.

background

Mrs M is partially-sighted and this prevents her from using a standard cash machine or using the “chip and PIN” payment terminals in shops. Instead Nationwide provided her with a “chip and signature” card which allowed her to make purchases in shops by signing a sales slip, rather than entering her PIN. She could also use this card to obtain “cashback.”

Mrs M’s brother-in-law had been able to make cash withdrawals when she needed them, because he was a joint account holder and had been issued with a “chip and PIN” card. But Mrs M had experienced difficulty getting cash since her brother-in-law died and his debit card was returned to the society.

Mrs M wanted Nationwide to provide her with two debit cards. One that allowed her to sign for any purchases she made in shops. And another which offered the “chip and PIN” facility so that she could withdraw money from a different bank’s cash machine, located close to her home and offering the “talking” facility.

Nationwide originally said it was unable to give Mrs M both types of card because it was concerned she would have to give the “chip and PIN” card (and the associated PIN) to someone else to use. This would compromise the security of her account and contravene the account terms and conditions. However, the society said latterly that it is simply unable to produce two different cards on the one account.

I issued a provisional decision in July 2013 in which I explained why I was minded to uphold this complaint in part. I concluded, in summary, that:

- I was unable to formally determine whether or not Nationwide had breached the Equality Act 2010, as Mrs M had alleged. And I was unable to instruct the society to alter its systems or processes generally. But I was able to consider what was fair and reasonable given the individual circumstances of Mrs M’s complaint.

- It was no longer in dispute that Mrs M would personally be able to use both types of debit card. And it was also apparent she needed both types of card.

- I could not insist that Nationwide provide two cards to Mrs M, particularly given that its systems would seemingly be unable to accommodate this demand. But, in this particular case, the provision of two cards did not strike me as being an unreasonable request. And all that was stopping Mrs M from having two cards was the society’s internal processes.

- Nationwide had said that Mrs M could apply for a second account and elect to have a “chip and signature” card on one account and a “chip and PIN” card on the other. But that would require her to monitor each account and transfer money between them to ensure they each had sufficient money at any one time to meet her anticipated spending. I thought that seemed somewhat onerous. And I could not ignore that Nationwide had given no guarantees Mrs M’s application for a second account would be successful.
I was not persuaded Nationwide had made sufficient efforts to find a solution that fitted Mrs M's particular needs and allowed her to access her money in much the same way as any other person normally would. I considered Mrs M should receive compensation for the distress and inconvenience she had been caused as a result. When considering what amount of compensation was warranted I took into consideration the possibility that Mrs M would have to move her banking away from Nationwide to another bank or building society that offered the flexibility she requires. I was minded to award £500 compensation.

Since my provisional decision was issued Nationwide has amended its systems so that it can now produce a single debit card which can be used in the way that Mrs M wants. She will be able to sign for purchases made in shops and also withdraw cash at a cash machine.

Mrs M is pleased that Nationwide is now able to provide her with the service she requires and, as a result, does not now intend on moving to another bank or building society.

**my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

My provisional recommendation was that Nationwide should pay £500 compensation to Mrs M. But that award took into account the relative inconvenience she was likely to suffer having to move to another bank or building society in order to get a debit card with the functionality she needed. That will not now be necessary so it is appropriate to reduce the compensation accordingly.

With the above in mind, I have already spoken with both parties and explained that I now consider an award of £250 to be fair and reasonable given the inconvenience Mrs M has suffered to date.

**my final decision**

My final decision is that I instruct Nationwide Building Society to pay £250 compensation to Mrs M.
complaint

Ms M and Ms S complain about several issues relating to their relationship with Lloyds Bank Plc. These include how Lloyds handled Ms S’s attempts to change her name on her accounts as part of her transition to living as a woman; problems arising from a change of address; Lloyds’ decision to close Ms S’s accounts with it; their application for a joint mortgage account and a survey carried out as part of the mortgage application process. Ms S also complains that Lloyds has discriminated against her as a transgender woman. Ms S has dealt with this complaint on behalf of both of them throughout.

background

Ms M and Ms S have a joint mortgage with Lloyds. They also had a joint bank account, until Lloyds removed Ms S from it. Ms S also had other accounts with Lloyds, both personal and business. Ms S is a transgender woman and has changed her name and salutation from her former male name.

Ms S says that Lloyds put a block on her accounts. She says she went into a branch and the manager said he could unblock them but didn’t do so. This meant that she had a card payment for petrol declined and lost the chance to buy an expensive watch at a substantial discount. It took a few days for her to be given access to her accounts.

Ms S says that around the same time Lloyds questioned the property they were buying, and withdrew the mortgage it had offered. Ms M went into their local branch to try and sort things out, but was so upset with the situation and the way she was spoken to that she collapsed and has been suffering from stress and depression ever since.

Lloyds says that later that day Ms S left a message on the branch’s answer phone which led it to call the police. Ms S says that the police called round to their house late at night, just after they’d moved in. Ever since, she says, she’s been the victim of police harassment as a direct result of what Lloyds did.

Lloyds then wrote to Ms S saying that it would close all her own accounts, and remove her from the joint account she held with Ms M. It also told Ms S that she was banned from all Lloyds branches. She managed to transfer her personal accounts to another bank but had difficulty transferring her business accounts.

Ms S says that Lloyds failed to update the address held on her business and credit card accounts after they moved. This meant that the new bank couldn’t transfer the business account because the details didn’t match. As a result she couldn’t access her business funds. She says this contributed to the failure of her business.

Ms S says that by this point she and Ms M were very stressed and being made ill by what was going on. Ms M also decided to close her accounts with Lloyds but it didn’t transfer the former joint account properly, leading to charges.

They say that all of this has had a serious impact on both Ms M and Ms S’ health and has led to disagreements between them. Ms S is self-employed and has lost income as a result.

Ms S was then too ill to work so applied for benefits. The benefits agency couldn’t tie up her old and new identities and this led to her being refused benefits for a time, but eventually it agreed to support the mortgage payments. Ms S says the benefits agency sent a form to
Lloyds to get details of the mortgage, but Lloyds returned it because it contained Ms S’s new name – which didn’t match the name on the mortgage.

Lloyds said it couldn’t change the name on the mortgage from Ms S’s old name to her new one unless the property title at the Land Registry is also changed. The mortgage must match the title, it said. And it said that it also requires an original – or certified copy – of her change of name deed before it can process her request. Ms S says she sent it her original deed. Lloyds says it has no record of having received it – Ms S says Lloyds has lost it and she doesn’t have another.

Ms S spoke to Lloyds several times to try and get this issue resolved, and complains about the poor customer service she received. In the meantime, the mortgage fell into arrears and Lloyds started collections activity. But Lloyds has refused to change the mortgage to her new name and title – it keeps using her previous (male) name and addressing her as “Dear Sir”, which causes considerable distress. She has also been called “sir” on the phone.

Ms S says that without the original deed she can’t ask other agencies to recognise her change of name and gender. Lloyds says that until it sees it, it can’t formally change her name on the mortgage and has to continue to write to her as “Mr S”. But it apologises for a member of staff calling her “sir” on the phone. It’s done the same with her credit card account.

Ms M and Ms S also complain about the survey used in the mortgage application. Ms S says the surveyor didn’t carry it out properly and missed several important issues with the house they bought. And she says she wasn’t given a copy of the valuation report despite repeatedly asking for it. Ms S says the surveyor offered compensation. But what it’s offered is not enough, and Lloyds is responsible for what the surveyor did.

Ms S says that Lloyds is responsible for the loss of her business, the breakdown of her relationship with Ms M and has made her health problems much worse due to the stress it’s caused. She believes its refusal to change her name and salutation on her mortgage account is discriminatory and transphobic. Ms M and Ms S would like Lloyds to compensate them for the all the trouble and upset they believe it’s caused. Ms S says that at one point Lloyds told her it would write off all her debts because of these issues, and she wants it to honour that.

I issued a provisional decision, in which I set out in detail my thoughts on this case for the parties to comment on. I’ll deal with my provisional findings, and the parties’ responses to them, below.

my findings

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

As I noted in my provisional decision, this is a complex complaint with a number of issues involved. The relationship between Lloyds on the one hand, and Ms M and Ms S on the other, has broken down badly. I’ll deal with the various issues below, and then set out what I think Lloyds needs to do to put matters right.
**Communicating with Ms S**

I think a really important part of this complaint is the way that Lloyds has addressed Ms S. This has been, to my mind, perhaps the most distressing thing for her of all the things that have happened, and so I’ll deal with that first.

Ms S is a transgender woman, and has the protected characteristic of gender reassignment. I noted that the Equality Act 2010 applies to the provision of services to persons with protected characteristics. A service provider shouldn’t discriminate, directly or indirectly, against those with the protected characteristic, nor should it engage in what the Act defines as harassment.

Ms S considers Lloyds’ refusal to use her new name and title to be discriminatory and transphobic, and a breach of the Equality Act 2010.

In deciding this complaint, I’ve taken into account the Equality Act and other relevant law. I’ve also taken into account regulator’s rules and guidance and what I consider to be good industry practice, as our rules require me to do. I include in that the guidance given to service providers by the Government Equalities Office (GEO) *Providing Services for Transgender Customers: A Guide*¹ and the Equality and Human Rights Commission’s *Services, Public Functions and Associations: Statutory Code of Practice*.²

But my role is to decide what’s fair and reasonable in all the circumstances. It’s important to note that while the law and guidance are relevant considerations I take into account in deciding what’s fair and reasonable, it’s not for me to make a formal finding that the Act is engaged or has been breached. Findings on matters of law are matters for the courts.

I said in my provisional decision that:

- I didn’t think it was necessary for Lloyds to insist on the mortgage account and the property title matching – and to refuse to change the names on the mortgage account until the title had been changed first. And I didn’t think it was fair for Lloyds to insist on a change of name deed before it would change the account. I also noted that the GEO guidance says – as is the legal position – that there’s no formal requirement for a person to undergo any particular procedure to change their name. This is relevant guidance for me to take into account in deciding if Lloyds has acted fairly.
- A statutory declaration or a change of name deed are options, but they aren’t essential. Ms S has every right to use whatever name and pronoun she chooses – and to expect those she interacts with to respect her choices.
- Ms S did in fact have a change of name deed. She said she’d sent it to Lloyds and Lloyds had lost it. I’m satisfied that it did. Ms S has provided proof of a letter being delivered to Lloyds that Lloyds has no record of receiving. Given the important of this document to Ms S, and her very clear recollection, I don’t think it’s likely that she’s mistaken about sending it to Lloyds when she said she did. I think Lloyds received the change of name deed – and lost it. In reply to my provisional decision, Lloyds accepted that and agreed to pay for the cost of a replacement.

¹ Available at https://www.gov.uk/government/publications/providing-services-for-transgender-customers-a-guide
• If Lloyds is unhappy about Ms S identifying herself by use of a name that doesn’t match
the one used when the account was taken out, that’s a matter of customer identification
– and a name is only one way of identifying her. Ms S’s date of birth, address and
account numbers haven’t changed and any of those could be used to identify her when
she contacts Lloyds. And the requirement to identify her before speaking to her wouldn’t
apply when Lloyds was writing to her, for example.

Lloyds has responded to say that it isn’t its policy to require the title and mortgage account to
match, and not change the mortgage account until the title is changed. It thinks that there
was human error and an internal misunderstanding of its process here. It doesn’t know how
Ms M and Ms S, and then the Financial Ombudsman Service, were told otherwise. In
response to my provisional decision, it said it’s now changed all Ms S’s accounts with the
bank to reflect her new name. And it will ensure it addresses Ms S how she’d like to be
addressed in future.

Lloyds also said that it does require official documentation to change the name on a
mortgage account – so that it can be satisfied the new name and old name are the same
person and comply with its fraud and money laundering obligations. But it accepts that
shouldn’t have prevented it addressing her correctly when it spoke to her. It apologises for
this.

I’m pleased to hear Lloyds has now changed Ms S’s name in its systems. But it comes far
too late. Whether the problem was human error or the application of the bank’s policy
doesn’t, in my view, make a difference to the impact it had on Ms S.

I note what Lloyds says about requiring formal documentation to record the change of name
– notwithstanding what the statutory guidance says. However, I don’t need to make a formal
finding about whether it’s right about that. Because the fact is that Lloyds did have Ms S’s
original formal change of name deed, and lost it. Even when our investigator sent it a
certified copy, it continued to write to Ms S using her old name for several more months. In
my view, it should have changed the name formally recorded on the mortgage account much
sooner than it did.

Even without the change of name deed, Lloyds could still have adjusted how it spoke to
Ms S. But I can see that it continued to address her as “Mr” and “sir” over the phone as well
as in writing, and describe her that way in its internal notes, long after she asked it to change
her name and explained how much the refusal to do so was upsetting her. I’m not persuaded
that this was necessary or appropriate, and it caused Ms S considerable and lasting distress.
I’m satisfied that Lloyds didn’t treat her fairly and reasonably in losing her change of name
deed, refusing to record her change of name and continuing to address her, in person and in
writing, by her old name and gender-specific pronoun.

the watch purchase

I said in my provisional decision that I didn’t think it likely that Lloyds blocked all Ms S’s
accounts. Rather, I thought that the watch purchase had flagged up as an unusual
transaction and subject to a security check which couldn’t complete. Lloyds only keeps
records of security checks for a year, which explains why it doesn’t have any records of this
any longer. I agree that such checks can be frustrating, but there’s good reason for them.
I still think that’s what’s most likely to have happened.
Ms S says she tried several times to call Lloyds but couldn’t get through. Eventually she was offered compensation by a manager. She says that shows that Lloyds must have done something wrong. But because of the passage of time, there isn’t much evidence of what happened here. I still think it was most likely to be a security check, which Ms S found frustrating, but I don’t have evidence that Lloyds has done something wrong.

the mortgage application

The property Ms M and Ms S wanted to buy was unusual. It was a new-build, and the developer had gone out of business so Ms M and Ms S were buying it from the developer’s bank. The property hadn’t quite been completed. Lloyds had some concerns about whether the new build guarantee would be effective – in the end it seems it was.

The property had been built on land purchased a few years before. The previous owner had included restrictions on the title at the time of the sale – including requiring consent before it was re-sold, and an overage agreement in the event of further development of part of the land. Restrictions on the title like this affect a lender’s security, because they impact on the re-sale value.

In this case the restrictions only came to light during the conveyancing process and were the subject of discussion between Ms M and Ms S’s solicitors and the bank. Lloyds did briefly withdraw the mortgage offer when it was concerned that its security would sit behind the former landowner’s restrictions. But it agreed to reinstate the offer following reassurances from Ms M and Ms S’s solicitor.

I said in my provisional decision that:

- I think Lloyds acted reasonably here. New information had come to light which meant that the security it thought it was getting for the loan might not be as effective as it thought. It wanted to explore that and then concluded that the risk was more than it could accept, so it withdrew the mortgage offer. But the solicitors were able to reassure it, and it agreed to think again, reinstating the offer.
- It’s fair for a lender to want to ensure it has good security for a large loan. It’s part of the conditions of a mortgage offer that the property is good security. Lloyds acted reasonably in withdrawing the offer when it appeared the security wasn’t acceptable – and acted fairly in reinstating it when reassured.
- Even if Lloyds could have realised this was an issue earlier in the process, I don’t think it would have made a difference if it had done – the same process would still have been gone through. It’s something that would only come to light once an offer had been issued and solicitors started investigating title.
- However, buying a property and applying for a mortgage is a stressful experience at the best of times, all the more so where a mortgage offer is withdrawn just before completion. So I understand why Ms M and Ms S were very concerned and upset about what was happening and the risk they might lose their property. Coming so soon after the issue with the watch purchase, it would have shaken their confidence in the bank – even if, in fact, the bank didn’t do anything wrong here either.

Neither party made any further submissions about this issue, and I haven’t changed my mind about what I said.
the account closure

Lloyds closed Ms S’s accounts following the incident with the phone call to the branch.

I said in my provisional decision that Lloyds’ terms and conditions allow it to close bank accounts with notice. It’s explained that it closed Ms S’s accounts, and removed her from the joint account with Ms M, because of what happened with the branch. It decided that it didn’t want to have a customer relationship with Ms S any more. It gave her 60 days’ notice of the decision to close her accounts. Lloyds’ terms and conditions allow it to close accounts – and indeed to do so without notice if it considers a customer has behaved in an unacceptable way. So in closing Ms S’s accounts, it acted within the terms and conditions. It only closed her personal bank accounts – not the mortgage or credit card. In all the circumstances, I didn’t think this was unfair or unlawful.

In reply, Ms S accepted that Lloyds could close her sole accounts. But she says it was illegal for it to remove her from the joint account with Ms M without Ms M’s permission – because it can’t make changes to an account without the agreement of the account holder.

I don’t agree about that. I think it’s entitled under the terms and conditions to remove a joint account holder, with the account moving forward in the sole name of the remaining account holder. That’s what Lloyds did. It didn’t need Ms M’s consent to do that. And, for the same reasons as for Ms S’s sole accounts, I don’t think it was unfair in all the circumstances.

conclusion

I said in my provisional decision:

- I can see that Ms M and Ms S have not had an easy time over the last few years, and I’m very sorry to hear about the difficulties they’ve had. I don’t think that all of those problems are Lloyds’ fault. The delays in the mortgage application were very stressful – but Lloyds was taking reasonable action to make sure it didn’t lend where it wouldn’t have good security. Security checks on individual transactions are a necessary inconvenience. And I’ve explained why I think Lloyds could fairly close the accounts in light of the terms and conditions. I’m not persuaded that Lloyds did anything wrong in those respects.
- However, the ongoing problem of the way that it’s communicated with Ms S has impacted on all other aspects of their relationship with the bank. The very real and lasting distress this has caused has affected Ms S’s health – and has resulted, in my view, in her understandably holding Lloyds responsible for much else that has gone wrong. I don’t think she’s right about that, but I do think that Lloyds has made an already difficult time substantially worse.
- Taking into account what Ms S has said, and the medical evidence I’ve seen, I think an award of substantial compensation is merited here.
- I haven’t seen any evidence that Lloyds agreed to write off some or all of Ms M and Ms S’s debts, as Ms S has suggested. In any case, I don’t think that would be the right outcome here – there’s no dispute that they borrowed, used and owe the money. The right outcome is that Lloyds compensate them for the very real distress caused. In the circumstances, I think £1,000 compensation is fair. I also think that Lloyds should bear the costs of replacing the change of name deed it lost. And, subject to what it might say in response to this provisional decision, I think it should change the name on her accounts.
Lloyds agreed to pay the compensation I set out. Ms S said she didn’t think it was enough. She said she’d had legal advice that it should be at least £10,000. Lloyds had broken the law on many occasions. And the £1,000 didn’t cover Ms M’s losses due to her ill health, or the time Ms S had to take off work to get access to her money after her accounts were blocked.

I’ve thought carefully again about what’s the right level of compensation in this case. I’m sorry Ms M has been unwell and unable to work for periods of time. I do understand she and Ms S feel that this is related to what’s happened with Lloyds. But I said above that – communication with Ms S apart – I don’t think Lloyds has done anything wrong and so I don’t think it would be fair to ask it to compensate Ms M for her illness.

I explained at the start of my findings that while I take into account the law, it’s not my role to determine whether or not Lloyds has acted unlawfully. So I’m not awarding compensation on the basis of a breach of the Equality Act in the same way a court would. What I’m deciding is what is fair and reasonable in all the circumstances. I’ve explained why I don’t think Lloyds acted fairly in how it refused to change Ms S’s details on its systems and in the way it communicated with her over an extended period. I’ve taken into account all of that and the impact it had on Ms S, including the distress she felt and the impact on her health. I’ve borne in mind the guidelines for awards of compensation the Financial Ombudsman Service has made available on its website – and borne in mind that they are merely guidelines, not a tariff of awards. Taking everything into account, I think a substantial award of compensation is merited, and I think £1,000 is fair in all the circumstances.

my final decision

For the reasons I’ve given, my final decision is that I uphold this complaint and direct Lloyds Bank PLC to:

- To the extent it hasn’t already done so, change the name by which it refers to Ms S on all accounts she still holds with the bank and address her in future by her preferred name, title and pronouns;
- Provided Ms S gives Lloyds evidence of the costs within three months of the date she and Ms M accept this final decision, pay Ms S the costs of replacing the lost change of name deed;
- Pay Ms M and Ms S £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M and Ms S to accept or reject my decision before 13 August 2018.
Annex E – insight paper

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just a number?
age, complaints and the ombudsman

Financial Ombudsman Service insight briefing
1 introduction

People will take out different financial products across the course of their lives, depending on their circumstances and needs. So the law on equality allows financial businesses to decide what products they offer to people in different age groups – in other words, to “discriminate” on the basis of age – as long as they've met particular requirements (see box 1).¹

This can mean people get a better deal, like discounts from insurers who are only offering cover to certain age groups. It can also mean that consumers are excluded from products they'd like to take out.

This law came into force three years ago. But discussions and debates are ongoing – from how well the needs of people approaching or already in retirement are being met, to whether or not individual banks are lending responsibly. Some commentators have suggested that new financial products are needed for older people,² others that the whole concept of retirement has changed.³

The Financial Ombudsman Service has a unique perspective to bring to these discussions. We hear from consumers who feel they haven't been treated fairly because of their age – but we also hear from financial businesses about how they've made their decisions. And while we have to take into account the relevant law, our role is to decide what's fair in the individual circumstances of each case.⁴

As a service, we don't receive a large number of complaints from people who feel that they've been unfairly discriminated against because of their age. This might be because we only see problems where consumers and businesses haven't been able to resolve things directly – many issues will of course be sorted out without ever coming to us.

But given the widespread interest in fair treatment for all ages, and that it’s the third anniversary of the law coming into effect, now is a good moment to share our insight in this area. This paper explores what we've seen and considers what lessons there could be for both industry and consumers.

The paper examines some of the age-related complaints we have received about mortgages, motor insurance and travel insurance in the last three years. Clearly, as complaints about fair

¹ This was introduced as part of the Equality Act 2010, and the provisions for financial services became law on 1 October 2012.
² Council of Mortgage Lenders, “CML chairman on retirement borrowing: we could do better even if we can't do perfect”, blog post, 29 September 2015.
⁴ The Financial Ombudsman Service is governed by rules set out in the Financial Conduct Authority Handbook. Rule DISP 3.6.4 states that the ombudsman will take into account relevant, law, regulation and codes of practice.
treatment on the basis of age are often one part of a wider problem, it's possible that there are other age-related issues we haven't discussed here. There's more information about the cases we have reviewed in the annex.

The ombudsman deals with complaints from people across the country and in a range of different situations – and, excluding payment protection insurance (PPI) complaints, around one in three of the people who use our service are aged over 65. So it's perhaps not surprising that many of the complaints we have reviewed were brought by older people – although we've seen examples of age-related complaints from younger people as well.

The following chapters set out some of the themes we’ve seen in the cases we reviewed:

- we’ve come across differing levels of understanding about what the law means – amongst both consumers and financial service providers;
- we’ve seen examples of untested or stereotypical assumptions being made, rather than reasonable commercial decisions or risk assessments connected to offering products to particular age groups; and
- we’ve seen a number of cases involving mortgages and retirement – with people experiencing difficulties moving home, paying off their mortgages, and taking out extra lending.

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5 For all complaints including PPI, 17% of consumers bringing complaints to the ombudsman in 2014/2015 were aged over 65. Source: Financial Ombudsman Service, Annual Review 2014/2015, 19 May 2015.
2 understanding of the law on age discrimination

In our case review, we found there was some confusion around what the exception for financial services in equality law really means. There were misunderstandings amongst both consumers and financial businesses.

In some cases we've heard from consumers who think that financial providers are breaking the law because age discrimination is unlawful for other services. But in others, lenders or insurers have told us that they don't need to provide any further information because the law says they can discriminate on the basis of age.

box 1: the law on age discrimination and financial services

The Equality Act 2010 banned age discrimination in goods and services. But there is an exception in the law for providing financial services such as bank accounts, loans, insurance, credit cards, warranties, mortgages and investments.

This means that financial businesses can continue to use age as a factor in designing, pricing and offering their products. But where businesses carry out a risk assessment for the purposes of providing a financial service, the exception will only apply if the risk assessment, in so far as it involves a consideration of the person's age, is done by reference to information which is both relevant to the assessment of risk and from a source on which it is reasonable to rely.

Financial businesses are not allowed to behave towards consumers in a way that could be considered harassment due to age, and must not victimise consumers who make a complaint relating to age discrimination.

Consumers can challenge a financial business if they think a risk assessment, where it involves a consideration of the person's age, has not been carried out by reference to relevant information which is from a source on which it is reasonable to rely.


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6 Age discrimination in employment and vocational training has been unlawful since 2006. The new rules which came into force in October 2012 cover the provision of all services to the public, whether in the private, public or voluntary sector – for example leisure facilities, public utilities, sports centres, advice agencies, shops and hospitals. Source: Equality and Human Rights Commission, www.equalityhumanrights.com
Although the law says that financial providers don’t need to justify objectively why they’ve treated someone differently according to their age, they do need to make sure that, if they’re using risk assessments to make decisions about which ages to offer products to, these assessments are made on the basis of relevant information from a reliable source.

In insurance, there’s an accepted link between age and pricing, but there are differences in how different types of insurance are evaluated and underwritten. The Association of British Insurers publishes annual data on motor and travel insurance to help consumers understand why age is relevant to risk assessments and pricing for those products.7

7 Further information is available on the Association of British Insurers website: www.abi.org.uk.
The most recently available data is reproduced below and shows that age can materially influence how likely people are to make motor or travel insurance claims and the value of the claim that they make.

chart 1: average claim, average premium and claims frequency for motor insurance by age, 2014


chart 2: average claim, average premium and claims frequency for travel insurance by age, 2014

Some of the people who’ve come to us felt that underwriters should be looking at their individual circumstances to decide prices. But when we look into complaints we wouldn’t generally expect insurers to carry out an individual assessment if they can show they’ve made appropriate use of statistical or actuarial information about the general consumer population – and that they’ve treated people that share the same circumstances equally.

The following two case studies show different ways that financial businesses use information in their decision-making. In the first case we concluded that the consumer had been unfairly disadvantaged on the basis of their age; in the second that the insurer had legitimately used its commercial judgement.

**ombudsman case study: older consumer denied ‘free car insurance’**

Mr A, in his early eighties, bought a new car. He was attracted by an offer which said that he’d receive one year’s free motor insurance with his purchase. But when he bought the car he was told that the insurance was only available to people aged between 21 and 80.

Mr A queried this and the insurer explained that it was a business decision to put this age limit on the free insurance to ‘minimise potential losses’. The insurer also provided Mr A with a separate quote for insurance but Mr A was able to find more competitively priced cover with a different insurer.

Mr A thought this was unfair age discrimination and referred the case to us. We asked the insurer to show us the information it relied on to make the decision to restrict free insurance to people within these age bands. The industry data the insurer used showed that drivers aged 21-25 were a higher risk than drivers in Mr A’s age group of 81-85 and that there wasn’t a significant additional risk for older drivers until the age of 86.

We decided that Mr A had been unfairly disadvantaged and ordered the insurer to pay for the alternative insurance that Mr A had taken out. We also told the insurer to make a further payment to Mr A for the trouble they’d caused him.

**ombudsman case study: consumer feels circumstances not properly considered**

Mr B had a packaged bank account for a number of years which included worldwide travel insurance as one of the features. Rules introduced in 2013 mean packaged bank account providers need to tell their customers each year what benefits they’re eligible for. As Mr B approached his 70th birthday, his bank wrote to him to let him know that he would no longer be covered by the insurance – as it was only available to people under the age of 70.
Mr B felt the bank had unfairly discriminated against him – because they hadn’t considered his personal circumstances – particularly that he was in good health. He said he didn’t think his bank had used ‘information on which it is reasonable to rely’ to make their decision.

The bank told us they had an insurance scheme which best met the needs of a majority of their diverse range of customers and allowed them to offer good value premiums. And they also told us they reduced the cost of their packaged bank account once consumers reached the age of 70 to reflect the fact that they wouldn’t have as wide a range of benefits.

When we looked into the case we found that the insurer used by the bank had relied on its own claims data to decide to limit cover to people under the age of 70. The data showed the costs and number of claims rising according to age and that people over 70 were more likely to make a claim than people under 70. So we thought that the insurer had used relevant information from a reliable source to assess the risk of insuring older consumers. As a result we didn’t think Mr B had been treated unfairly.

When assessing mortgage applications, lenders will also carry out a risk assessment. But, because of the nature of the product, this is usually based on people’s individual financial position rather than broader data about their age group. But in some of the cases we looked into, we found that lenders weren’t considering individual affordability and were instead applying blanket age restrictions. This is something that the law allows lenders to do. But just as with insurance, where the age restriction is informed by a risk assessment relating to age, the risk assessment must be based on relevant evidence from a reliable source.

The following case studies show different ways in which this can affect people. In the first example, a married couple weren’t given the mortgage deal that they’d agreed to. In the second case, a person was told he couldn’t move his mortgage to a new property because of his age, whereas in fact it was for other reasons.

**ombudsman case study: consumers given shorter mortgage term than requested**

Mr and Mrs C had a fixed rate mortgage deal which was coming to an end. After shopping around they decided to take out a five-year fixed-rate deal with a new lender as they felt this was the most competitive deal for them.

The new mortgage was agreed and Mr and Mrs C started making their new payments. But when they received their annual mortgage statement they discovered the mortgage had only been given for a period of three years rather than the five year period they’d agreed with the lender.
When Mr C questioned this the lender said it was due to his wife's age. They said the term could be extended but only by a further ten months – until Mrs C's 75th birthday. Unhappy with the lender's decision, Mr C contacted us.

Mr and Mrs C's mortgage was interest-only and they were planning to repay the capital through the sale of another property. So we didn't think an additional 14 months – making it a five-year mortgage – would affect the affordability of the loan, as Mr and Mrs C's circumstances were unlikely to change.

We didn't think the lender had treated Mr and Mrs C fairly. We told it to honour the deal that it had originally made for a five-year mortgage and to pay compensation to Mr and Mrs C for the trouble and upset it caused.

ombudsman case study: consumer's age had no role in mortgage decision

Mr D took out an interest-only mortgage when he was in his late sixties. A few years later he wanted to transfer the mortgage to a new property but his lender said he couldn't because he'd be paying the mortgage beyond the age of 75. The lender said it had changed its age policy since Mr D took out the original mortgage.

When we looked into the case, it became clear that Mr D's application to transfer his mortgage had been turned down for a number of other reasons – not just his age. In particular, the lender had a policy of not providing mortgages for flats in blocks over a certain size. The property Mr D had wanted to buy was in a large block of flats.

As none of the other reasons were given to Mr D and he was told that he couldn't change his mortgage simply because of his age, we ordered the bank to pay compensation for the trouble and upset it caused. We acknowledged that Mr D's application would have ultimately been unsuccessful in any case – and we didn't think the lender's decision was unfair.

The cases we looked at to inform this paper show the wide range of interpretations around what the age exception for financial services means and how it should be put into practice – three years after the law came into force.
making assumptions based on age

The law allows financial providers to offer products to certain age *groups*, but it doesn’t permit providers to make assumptions about *individuals* because of their age. In the cases that have come to us we’ve seen some consumers who’ve felt that a provider has made decisions based on preconceptions about their age.

**box 2: types of discrimination**

There are nine “protected characteristics” in equality law and it is unlawful to discriminate on the basis of these for services apart from financial services. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

**Direct discrimination** is when someone is treated worse than another person because of one of the protected characteristics.

**Indirect discrimination** is when an organisation puts a rule, policy or way of doing things in place which has a worse impact on someone with a protected characteristic than someone without one – unless it can be “objectively justified”.

*Source: Equality and Human Rights Commission*

**ombudsman case study: consumer not allowed to contest insurance claim**

Mrs E, in her late seventies, was driving alone when she was involved in a collision. She told her insurer that the other driver involved had caused the accident but the other driver said it was Mrs E who was at fault.

The insurer’s accident investigator interviewed Mrs E and then told the insurer it wasn’t a good idea to contest the claim any further. He advised against going to court saying that Mrs E shouldn’t be put on the witness stand ‘because of her age’. Ms E brought a complaint to the ombudsman. She was upset that assumptions had been made about her ability to contest the claim, and that there had been a knock-on effect on her insurance record through no fault of her own.

Mrs E was unable to say exactly what happened at the time of the accident. And as there wasn’t another witness willing to provide a statement, we thought it was reasonable for the insurer to decide to settle the claim. This was based on a factual assessment, rather than Mrs E’s age, although we did point out that the investigation could have been handled better.

**ombudsman case study: young driver charged excess for ‘act of God’**

Mr F, in his early twenties, was insured as a named driver on his parents’ car. He parked the car outside a friend’s house, where strong winds caused a tree to fall on top of the vehicle. The car had to be written off.
When Mr F put in a claim for the loss of the vehicle, the insurer charged a young driver excess despite the damage having been caused by something outside of his control. After the case came to the ombudsman service, the insurer said that Mr F had been the last person to drive the car and so it was his fault that it was parked where it was.

We didn't agree. We said there wasn't any reason for the excess to be applied as the age of the last person to drive the car had no bearing on the likelihood of a tree falling on it. We ordered the insurer to repay the young driver’s excess with interest.

On the other hand, we've also seen cases where consumers have been disappointed that more consideration wasn't given to someone’s age.

**ombudsman case study: insurer 'should check up' on older consumer**

Mr G brought a complaint to us about the way an insurer had dealt with his father.

Mr G’s father took out a new car insurance policy. When he spoke to the insurer to buy his policy over the phone, he mentioned one previous driving offence and the insurer adjusted the quote accordingly. Mr G’s father then had an accident, which was when it came to light that he had actually had several previous driving convictions. So the insurer cancelled his policy.

Mr G explained that his father suffered from memory problems and this was why he hadn't told the insurer about all his previous offences. He also felt that the insurer should have done more to check the information his father had given because he was in his late seventies.

When Mr G asked for our help, we looked into the discussions between Mr G’s father and the insurer. We found that there hadn't been anything to make the insurer question what they were told. The insurer pointed out that Mr G’s father had had an opportunity to check what he had disclosed in the documents that were sent to him to sign and that, legally, they couldn't make assumptions just because of his age.

We understood what Mr G told us about the fact that his father hadn't intended to deceive the insurer but we felt, on balance, that it was reasonable for the insurer to assume it had been given the full picture. And that it was fair to cancel the policy.

These complaints illustrate the fine line financial businesses sometimes have to tread between providing the right support for people according to their needs, and avoiding making wholesale assumptions about capability, or circumstances, based on people’s age.
4 lending and retirement

A number of the cases that we looked at for this paper have related to mortgages. People have come to us with concerns that they have been treated differently because of their age when wanting to move house, when wanting to change the term of their mortgage, and when using property as an investment to boost their retirement income.

According to the latest statistics on housing in England,\(^8\) most first time buyers are aged over 25 and 8% are 45 or over. At the same time, more than half (56%) of first time buyers in 2013/14 had between 20 and 29 years to run on their mortgage when they took them out, and 38% took mortgages with a term of 30 years or more. So it’s likely that a number of people taking out mortgages for the first time will be making repayments into their retirement in the future.\(^9\) Indeed, at the end of 2014 lending to borrowers who will be older than 65 when they repay their mortgage made up 35% of all lending.\(^10\)

At the same time, people are working longer following the end of a default retirement age in the UK in 2011. At the end of 2014, over a million people aged over 65 were in work\(^11\) and polling suggests that nearly half of people want to continue working between the ages of 65 and 70.\(^12\)

These demographic trends are reflected in some of the cases that have come to the ombudsman. The following case study examples show that household income – and with it the ability to repay lending – isn't necessarily related to “expected” retirement age.

ombudsman case study: age limits and consumer circumstances

Mr and Mrs H had seven years left on their existing mortgage when they decided to move house. They found a new property and applied to their existing lender to increase the size of their mortgage.

The lender initially turned them down because Mr H was over the age of 70. Mr and Mrs H pointed out that they were allowed to port their existing mortgage so the lender looked at the case again. This time, Mr and Mrs H were offered the option to move their existing mortgage to a new property but with a lot less additional borrowing than they needed to buy their new house. Mr and Mrs H felt they had no option but to sell their house and

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\(^10\) Building Societies Association, Lending into retirement: interim report, 12 November 2015.
\(^12\) Building Societies Association, Lending into retirement: interim report, 12 November 2015.
move into rental property while looking for a new home. This meant they had to pay an early repayment charge to the lender.

When Mr and Mrs H asked us to look into the complaint they told us that Mrs H was in full time employment and that Mr H had business and rental income. Their circumstances hadn't changed since they took out the mortgage.

Mr H was aged 62 when Mr and Mrs H had taken out the 15-year mortgage, meaning that the lender had always known he would turn 70 before the mortgage was due to be repaid. When they'd taken out the loan, their lender had told them that the mortgage could be moved to a new property.

We said that applying the new mortgage criteria wasn't fair because the lender had always known that Mr H would turn 70 during the mortgage and nothing else about their circumstances had changed. So we ordered the lender to repay the charges Mr and Mrs H had paid to redeem their mortgage, and to make a further payment for the inconvenience it had caused.

**ombudsman case study: lender insists on 'compulsory retirement age'**

Mr I, in his thirties, worked in the armed forces. He applied to his mortgage lender for new borrowing to move to a bigger house and asked for an extension to his existing mortgage term to make sure that the repayments stayed affordable. The lender refused to extend the term of the mortgage because this would have taken Mr I past the age of 60, the compulsory retirement age for the armed forces.

Mr I explained that he intended to continue working beyond 60, and pointed out that people in different professions changed job over the course of their mortgage term. He also pointed out that his state pension age was 67 so he expected to work until then. The lender still turned down the application. Mr I felt he had no choice but to move to a different lender that was willing to offer a longer term, and had to pay an early repayment charge to redeem his existing mortgage.

Mr I brought his complaint to the ombudsman. We noted that the lender had flexibility in their lending criteria and that it lent to people up to the age of 70 unless the customer said they were retiring sooner. As Mr I had explained to the lender that he wasn't planning to retire at 60, we felt it hadn't looked properly into his personal circumstances and that this was unfair.

We told the lender to reassess the application based on when Mr I had said he was planning to retire. We said that if the lender found that the application would have been successful it should refund Mr I half of the early repayment charge, as he would have
been required to pay a reduced 50% early repayment charge had he stayed with his existing lender and made the changes he wanted to. We also said the lender should refund any fees he’d had to pay to set up the new mortgage with another lender.

There’s been more scrutiny of how the mortgage market is operating in recent years, particularly following the growth in lending prior to the 2008 financial crisis. The Financial Conduct Authority carried out a review which led to new rules coming into effect in 2014.\(^{13}\)

**box 3: the Mortgage Market Review**

The Mortgage Market Review was a comprehensive evaluation of the mortgage market, carried out by the Financial Conduct Authority.

The review came about because the regulator recognised that the rules weren’t strong enough to stop high-risk lending and borrowing.

The review led to a new set of rules, including clarifying that lenders are always responsible for assessing income and affordability, even when they lend through a broker. They are also allowed to continue to offer interest-only mortgages but only where there is a credible way to repay the capital.

The review said that lenders can provide new mortgages or deals to their existing customers even if they don’t meet the new requirements, as long as there isn’t an increase in the amount being borrowed.

The complaints that we looked at for this paper reflected that the mortgage market is in a period of transition, with the new rules affecting how some older mortgage consumers – most of whom have existing deals – are being treated.

Although the Mortgage Market Review makes it clear that existing customers can still be offered new deals for existing borrowing – even if the lending policies have changed for new borrowers – this doesn’t seem to always happen in practice. The following case study shows that existing customers are sometimes left in difficult circumstances because of changes in mortgage policies.

ombudsman case study: consumers given conflicting advice about porting their mortgage

Mr and Mrs J were looking to move as part of their plans for retirement. This depended on them being able to port their existing flexible offset mortgage to the new property. When they checked this with their current mortgage provider they were told they could do this.

As they got into the final stages of the process for porting their mortgage, the lender told Mr and Mrs J that their mortgage term would be reduced to less than three years as Mr J would then reach age 75. This meant reducing the current term by five years—an unaffordable situation for Mr and Mrs J who felt they had no choice but to pull out of their plans to move house.

When Mr and Mrs J complained, the lender said that as existing customers they would be able to have a mortgage beyond the age of 75 if affordability criteria were met and that they'd look at this. Mr and Mrs J were unhappy that they'd had to pay solicitors' fees and lost the opportunity to buy a new home. They brought their case to the ombudsman.

After the case came to us, the lender offered to pay all of Mr and Mrs J’s costs and to consider any new application to port their mortgage in the following 12 months.

“My original mortgage was taken out specifically to end at my 70th birthday. At no time have I been informed that the taking out of a new fixed term product, for a third time, would be refused because there had been a change in policy.”

We've also seen a number of cases from people reaching the end of their interest-only mortgage terms. As these were popular products in the 1990s, there's likely to be a steady increase in the number of interest-only mortgages reaching maturity in the coming years: the Financial Conduct Authority has estimated that 600,000 interest-only mortgage borrowers will come to the end of their term between 2013 and 2020, and that just under half of these borrowers face a shortfall in repaying the capital. And Citizens Advice has estimated that 934,000 people currently have interest-only mortgages and don’t have a plan to pay the debt off when their term ends.

The two case studies below show how the financial climate has altered the extent to which lenders are willing to risk lending on an interest-only basis, which can have a serious impact on people who’ve planned their finances around these deals.

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14 Financial Conduct Authority, “The FCA publishes findings of review into interest-only mortgages and reaches agreement with lenders to contact interest-only borrowers”, news release, 2 May 2013.
15 Citizens Advice, “1 million mortgage holders have no plan on how to repay”, press release, 4 September 2015.
ombudsman case study: interest-only term extension turned down

Mr and Mrs K took out an interest-only mortgage. To make sure they’d be able to repay the capital amount at the end of the loan they also took out endowment policies. But these didn’t perform well and so they decided to sell them and used the money to invest in some buy-to-let properties.

When they were approaching the end of their interest-only mortgage term Mr and Mrs K asked their lender for a five-year extension. But the lender refused as both Mr and Mrs K would be over the age of 75 at the end of the additional five years.

When we looked into what had happened, we could see that age wasn’t the main reason the lender turned down the request for an extension. The lender was more concerned about how Mr and Mrs K would repay the loans – they would have needed house prices to rise, which couldn’t be guaranteed.

We understood why the lender was concerned. Having considered all the circumstances of the case, we didn’t think it had treated Mr and Mrs K unfairly.

ombudsman case study: consumers facing financial hardship due to lack of flexibility on interest-only mortgage

Mr and Mrs L were both made redundant from their jobs and had two mortgages on their home. The first mortgage was paid through Pension Credit payments but, because they’d lost their jobs, they couldn’t afford to make payments on the second mortgage.

The second mortgage was an interest-only deal and, because the lender didn’t offer this product to consumers over the age of 65, they insisted that it had to be repaid in full before Mr L reached his 65th birthday. This meant that their monthly mortgage repayments doubled, and arrears quickly built up. But they couldn’t sell the property to pay off the loan as house prices remained low in their area.

We worked with both the lender and Mr and Mrs L to put a repayment plan in place. The lender agreed to extend the loan past Mr L’s 65th birthday if he was fully retired and on a guaranteed income which enabled repayments to be made at the existing level.

Mr and Mrs L were relieved to be able to stay in their home while they found a way to improve their financial situation.
The Council of Mortgage Lenders and the Building Societies Association have both identified two distinctive challenges facing their members: lending into retirement and lending during retirement. A particular area where we have seen cases involving lending during retirement is when people have been looking for a mortgage to help provide a retirement income plan – generally a buy-to-let product. In some cases this has been a new product, but in others people have been looking to change or extend the term of their existing mortgage.

**ombudsman case study: consumer ‘too old’ for buy-to-let mortgage**

Mr M, who was aged 80, applied for a mortgage to buy an additional buy-to-let property. He’d already taken out two buy-to-let loans with the same lender which were due to come to an end when he reached the age of 90. But the lender told Mr M it had changed its lending criteria and new applicants had to be aged under 70 at the time of making the application.

Mr M felt the lender was discriminating against him because of his age and brought his complaint to the ombudsman.

The lender told us that it had introduced a maximum age for applications because the majority of its buy-to-let landlords viewed their investment property as the main source of their retirement income. So capping new applications at age 70 helped to ensure people could benefit from income through their retirement and was – in the lender’s view – more responsible lending. The lender also pointed out that it didn’t set a maximum age for mortgages to be paid back, which was why Mr M could repay his existing mortgages up to the age of 90.

We understood why Mr M was disappointed about this but felt these kinds of changes to lending criteria represented commercial decisions lenders were entitled to make. We didn’t feel that Mr M hadn’t been treated unfairly.

In a recent survey, 61% of people aged over 55 said they would welcome the opportunity to borrow in retirement. This trend is reflected in the cases we’ve seen, with people telling us they want the flexibility to take money from their mortgages to meet their current spending needs. But the following case study shows that this isn’t always straightforward in practice.

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ombudsman case study: consumers unable to take advantage of additional lending due to age

Mr and Mrs N had a mortgage with flexibility that allowed them to withdraw up to £75,000 from the loan at any time up to their 75th birthdays. When they were both 68, they asked to borrow £15,000 from their mortgage to carry out some home improvements. But they were told that the lender’s new rules meant that that type of borrowing was no longer available to anyone over the age of 68.

Mr and Mrs N told us they were very disappointed about this decision and that they’d only chosen this particular mortgage because of the ‘drawdown’ facility. Following our involvement, the lender agreed to look again at whether it could offer additional borrowing as an ‘exception’ to its usual rule. The lender decided that Mr and Mrs N could have the facility up to the age of 75 as originally agreed. It also made a payment for the inconvenience caused.

It’s clear that people who are approaching, or who are in, retirement are experiencing a number of different problems around their mortgages. While every problem is unique, we’ve heard from a number of people who’ve been in financial difficulty, or who have potentially been pushed into financial hardship through a lender’s action. Others have told us they’ve been unable to take their retirement in the way that they planned – or had lost out financially by not being able to rely on the products that they’ve taken out.

“Due to the lender's refusal, we have to accept lowering our status and...go into a rental property.”

consumer

“The [bank] wants to reduce the length of our repayment terms due to my age! This would take our monthly payments from approx. £460.00 a month to £617.00 a month; this is an increase we simply can't afford.”

consumer
5  Discussion

The interaction between age and financial products seems likely to continue to generate debate. Our review of some of the age-related complaints that have come to the ombudsman service highlights a number of issues which it may be useful to consider.

- There doesn’t seem to be consistent or widespread understanding of the law around age discrimination and financial services. For consumers, this is perhaps made more confusing by the fact that it’s illegal to discriminate on the grounds of age for other goods and services.

- Financial businesses don’t always share the reasons behind their pricing or lending decisions with consumers. But when we’ve asked for the details after cases have come to the ombudsman, it’s often made it much easier for consumers to understand what has happened – or for the business to acknowledge where they might have got things wrong.

- In some cases consumers have been told they’re not eligible for a product because of their age but actually it was for a completely different reason. In others, businesses have realised that they haven’t conducted a proper assessment and looked at their decision-making again. Sharing more information earlier on – and giving clear, common sense explanations for decisions – might stop problems escalating to the point where the ombudsman service needs to step in.

- The UK mortgage market is in a state of flux – lenders have a duty to lend responsibly but they also need to remember their obligations to existing borrowers. In some of the cases we looked at for this review, consumers had been pushed into financial hardship, or stopped from moving home, by the actions of lenders. It’s important for financial businesses to have constructive conversations with their customers to find workable solutions when people find themselves in difficulties.

- On the other hand, the changed economic climate means that consumers won’t necessarily be able to rely on the products that they’ve had in the past – the number of interest-only and buy-to-let mortgages has decreased in recent years, for example. Withdrawing from, or limiting exposure to, these markets might be a legitimate commercial decision for lenders to take, providing that risk-based decisions related to age are made according to what the law requires. There might be an impact on the way that consumers will need to plan their finances over the coming years.

The nature of financial products and services means that businesses will often need to consider age when deciding what they offer to consumers. But the cases that we’ve seen show that that isn’t always straightforward, and businesses may need to look at the circumstances of their customers more closely to make the fairest decisions.
To inform this paper we reviewed a sample of complaints from older and younger consumers involving mortgages, motor insurance or travel insurance.

We chose these three products following initial case analysis that suggested that these were the areas where we'd most likely be able to identify problems around treatment based on age.

We first selected all complaints relating to these three products that were brought by people aged under 25 or over 60 and closed by our service between January 2013 and July 2015. We then manually analysed the archived material in those complaint files. Our aim was to identify all complaints from that period that were about treatment on the basis of age.

This analysis identified 75 complaints about treatment on the basis of age. 48 of these cases were about mortgages with the remainder related to insurance products.

We also spoke to ombudsmen and adjudicators working on these types of complaints to get their perspective on what we've seen.

The complaints included in this briefing paper are not representative of a wider population of consumers, but they do reflect the themes that we found across the cases that we analysed.