

**A paper delivered by the Ombudsman at the LOA Convention at Arabella on 26 August 2004**

**THE DISCONTENTED POLICYHOLDER**

1. This is a Convention. Being a convention one must, I suppose, be more or less conventional. But you will forgive me if, for once, I am less so. I propose to start with a rhetorical question: if “LOA” stands for Life Offices Association, where does the Life Offices Ombudsman stand? The answer is: firm, in the middle, between, on the one side, the discontented complainant and, on the other, the unrepentant insurer.
  
2. And that is as it should be. The Ombudsman is, after all, a middleman. He intermediates. As such he must empathise with both but identify with neither. Eventually, if he can't achieve conciliation, he must adjudicate, he must make a decision. Statistically the Ombudsman's office is able to assist

complainants, in one way or another, in about 30% plus of all cases. That means that 30% of the time, with his own subscribing members, he is less than popular. The Ombudsman shouldn't be popular. Again, that is as it should be. If he is too popular, he is not doing his job properly. After all, he's a downright nuisance. He may resolve old problems in the long run but in the short run he creates new ones. Insurers want to get on with new business, to look forward, to go forward. The Ombudsman compels them to look back, to reopen old correspondence, to reconstruct old events, to justify and explain old decisions; at the very worst, to confess to old sins. A letter from the office of the Ombudsman simply means: for someone, more work. I can recall one of the complaints' handlers at one of the offices saying to us, "Every

time I see an envelope with the Ombudsman's name on it, my heart sinks."

3. What about the complainant? His heart should jump for joy whenever he sees a letter from the Ombudsman. That is because his expectations are invariably high. The Ombudsman may well be his only hope and a cry to us is often a cry of despair. That is particularly so when he is disappointed in his investments. Or when he claims for disability. A bad investment is money down the drain. One man's misfortune may of course be another man's fortune, but the fortune never seems to be that of the policyholder. Yet the disappointed policyholder counts on us to be able to help him. The greater his expectation, the greater his disappointment when his hopes are dashed.

Like those of the man in the upper bunk of an overnight train in a sleeping compartment in Europe. The only other occupant, this being Europe, is a good looking lady in the lower bunk. In the middle of the night he wakes up, cold. He could hear the lady was awake. "Excuse me, Madame", he said, "but would you please pass me one of the blankets which is stored underneath your bunk." "Monsieur", she said, "I have a better idea. Why don't we pretend, just for this one night, to be husband and wife." "Wonderful", he said, "what a splendid idea!" "Well then", she said, "get down here and get your own damn blanket!".

4. Unsuccessful complainants, equally stung by disappointment, can sometimes be embittered, even abusive. We recently

introduced a system of canvassing all our complainants on whether the office is perceived to render a courteous and efficient service to consumers. As soon as a case is closed, except where the enquiry is a purely routine or administrative one (what we call a mini case), we send out a questionnaire with a prepaid envelope inviting a response to questions such as:

- whether the complainant concerned is adequately informed about the progress of his/her complaint;
- whether the reasons for our decisions were adequately explained;
- whether the complainant concerned was treated with courtesy by our office;
- whether there were delays for which the office was to blame; and

- whether the complainant would advise family or friends, should any of them experience a problem similar to theirs, whether to approach our office.

5. Of the more than thousand questionnaires sent out we have had a response rate of more than 25%, of which the majority constituted unsuccessful complainants. That, I think, is a surprisingly good result, considering that the public as a whole is saturated by questionnaires of this sort. By and large we fared well on all areas. Especially encouraging is that all but a few complainants, even those who were unsuccessful, would recommend the office to others who found themselves in a similar predicament. Our highest rating was for the courtesy with which we treated complainants. But of course there were

also those who were seriously disappointed with, and dismissive of, the office.

6. One stock answer we do get, naturally only from complainants whose complaints have not been upheld, is: "Just what I expected; you are only there to help the insurers." This notion, that we are a mere facade for the industry, a pretence to protect the interests of insurers, is sometimes also expressed by others, outside and even inside the industry, who should know better. To be suspected of favouritism goes against the grain of the very existence of our office. We pride ourselves, as we pride ourselves on the quality of our work, on our impartiality. It would be easy, in just about every case, simply to accept, uncritically, and pass on to the complainant, whatever explanation the insurer may tender. It would do our

turn-around times a world of good. But we don't. We look at every response we receive from the insurer, carefully and critically. The first question we ask is not: does the explanation sound plausible, but: is there anything at all that we can do, if we dig a little deeper, to help the complainant? One's commonplace inclination is to try and help consumers, to help the small and the weak against the large and the strong. Even the underdog sometimes has his day. It is a constant refrain from satisfied complainants: "Thank heavens that there are offices like yours prepared to take on and stand up to large organisations." But, ultimately, what counts is not sympathy and sentiment but what is fair to both parties. When the facts are plain and the law and the equities are on the side of the insurer, it would be quite wrong for the office to try and squeeze out some relief for the complainant simply because

he is a complainant. Even so, there are deserving cases where it may pay the insurer, from a reputational point of view, to pay the complainant. In such cases it is only right that the insurer, and not the office, should gain credit for the gesture.

7. The accusation is sometimes levelled against our office, as it is against all voluntary schemes, that, being funded by the industry, we are also in its thrall. "I pay, therefore I say." That, as every member of every complaints handling unit of every insurer dealing with our office knows only too well, is grossly inaccurate. It is of the essence of any voluntary scheme that it would fund its own Ombudsman. If the members do not fund it, who else would? The funding, almost invariably, is by way of a levy which in our case constitutes about 5% of our budget, and otherwise on a cost-per-case basis. The more

cases there are that the insurer itself cannot resolve, the greater its bill. The insurer pays even if it wins. Some insurers, incidentally, remark about this apparent oddity. They don't mind paying when they lose, but they balk at paying when they win. Well, if they pay only when they lose, who is going to pay when they win? It cannot be the losing complainant since that would defeat a fundamental purpose of the scheme, which is to provide free and ready access to complainants. That implies that the other subscribing members must pay, which in turn means that this particular winning insurer will be paying an aliquot share of the burden, not only on this but in every other case where another subscribing member wins. So the insurer concerned may as well pay for its own case; it is paying for the luxury of having

an objective outsider taking the flak by telling its own customer that he is to get nothing.

8. Payment is the same for all subscribing members; it applies across the board. No single subscribing member can, therefore, on an individual basis, threaten the office: if you don't favour me, I shan't pay you. The industry as a whole can of course decide: because the scheme is costing more than it is worth, it should be closed down. So far as I know no voluntary scheme, anywhere, has ever been discontinued for that reason. Our own scheme has been in operation since 1985. It enjoys the overall support of the industry, notwithstanding the fact that it rules against individual insurers in a not insubstantial number of cases. But it is a myth to think that it would, consciously or unconsciously, favour insurers, at

the expense of consumers, because if it does not, it may go out of business; hence, it is not truly independent; hence, it is not truly impartial.

9. Does the statistical fact, that the success rate of complainants is only 30%, not perhaps bear out the accusation of calculated partiality? The answer is again: an emphatic no. One must remember that most of the obvious cases have already been creamed off by the insurers themselves. The 30% success rate is a fairly universal phenomenon. When the UK Ombudsman for Long-term Insurance was still a voluntary scheme, its rate of success for complainants was also about 30%. After it was incorporated into a statutory scheme, and was no longer funded by the industry but by the State, the success rate was still in the region of 30%. So much for the

so-called conflict of interest. It simply does not exist. Judges are not fearful of ruling against the State because the State pays their salaries. Nor is the Office of the Ombudsman hesitant to rule against its subscribing members, indebted as it may be to the industry for both its historical and financial existence.

10. The Ombudsman's view of the insurance industry, unlike that of the LOA, is not wide-angled but microscopic, perhaps even myopic. The trouble with a keyhole view is that you sometimes see things you shouldn't but it is never the whole picture. By its terms of reference the Ombudsman's office deals not with industry pathology but with individual ills. Our focus is not on the industry as such but solely on complainants. The very fact that a complainant comes to our

office means that he is not content. And that, finally, brings me to that imagined but not imaginary figure: the discontented policyholder.

11. His discontent can, at the outset, be with his insurer, and, at the end, with our office. I have already spoken about his interaction with the office. What about the nature of his complaint against his insurer?

12. His complaint can and does cover the entire spectrum, from pre-contractual misrepresentations to post-contractual missed payments. All the mischiefs; misselling, mistakes and misunderstandings about policy terms, misleading marketing material, misconduct by agents, miscalculation and

misappropriation of policy proceeds. The lot. The rule is: if a policyholder can complain about anything, he will.

13. I have canvassed our assessors at the office, who deal with all incoming complaints before the more complex ones are referred to one of seven adjudicators, about the question: what do policyholders complain about mostly? And the answer, which is also borne out statistically, is:
- (a) poor communication and service; and
  - (b) poor policy performance.

About poor service we can do something; about poor policy performance we normally cannot.

14. Poor customer service is associated, in the first instance, with that bane of modern life; the ubiquitous call centre, which is

designed, one is entitled to believe, not as a source of information but as a source of irritation. A common complaint is that the operators are either not properly informed or not properly equipped to furnish the required information; or the information is not consistent; or one can never return to the same operator. As an aside I may mention that incorrect information furnished by a call centre can cost an insurer dearly. We have on occasion held insurers liable when unsuspecting policyholders acted to their detriment on the strength of detailed information furnished and confirmed by a call centre, for instance about surrender values.

15. Another persistent complaint is the failure to return calls.

There are instances where up to 11 phone calls have had to be made before a sensible response is elicited – and, so I am

told, not only at the lower level of call centres. Insensitivity, elusiveness, even arrogance, on the part of middle management, is a constant theme of complaint. It can, of course, in itself become the cause of compensation awarded by the office against an insurer, regardless of the outcome of a complaint. Our Rules provide for that very eventuality.

16. And what really arouses policyholders to flights of inspired sarcasm is when their unhappy experiences on the ground are contrasted to their insurers' extravagant advertising slogans and catch-phrases, implying special care and sensitivity to their everyday needs and concerns.

17. But all is not negative. In November 2003 the LOA introduced its "Code of Good Practice on Complaints Resolution". Its

purpose was to address “bad customer service and administrative problems”. It recommended certain guidelines for the resolution of disputes at company level to pre-empt their escalation to the Ombudsman.

18. Our own statistics reflect the beneficial effect of its introduction. What we call “mini” cases (i.e. simple routine enquiries which should never have come to us in the first place), have decreased by about 32% during 2004. And the category of finalised cases we call “communication/admin failures” have likewise reduced by a good 15%. All credit to our subscribing members on this one.

19. The second major area of complaint is poor policy performance. That picture has also improved by some 24%.

As markets improve, so complaints about poor performance will reduce. Complainants are not unappreciative that insurers cannot always be blamed for poor market performance. But they do complain, not without justification, that insurers fail in their customer relations in not keeping their policyholders better informed about current developments in the market. Illustrative values, however carefully worded, do create an aura of euphoria. Such euphoria may be an excellent climate for generating new business. But when market conditions subsequently change for the worse, and past predictions about future values become outdated, policyholders should not be left both in the dark and in the lurch. That, disillusioned policyholders say, is where the much-vaunted advisers should advise – as to what is happening, as to what can be expected and as to what they should now do. One can sum up this

complaint by saying that it reflects a certain lack of sensitivity on the part of insurers in not *managing* policyholders' expectations. If they are kept informed, as some insurers in fact do, and forewarned that the market is not performing to expectation, and that this may affect the performance of their policies on maturity, the let-down, when actual payment does not match expectation, will be less of a shock to the system - their own and that of the industry.

20. This is not, I fear, an area where the Ombudsman can do much for complainants. Where he can do something, is when the advice, given at the point of sale, was inappropriate. That is mis-selling. Perhaps I should say something about this trendy topic. Mis-selling, quite simply, means advice, at the point of sale, which, viewed objectively, was not appropriate.

Of course, inappropriate investment advice at the point of sale may prove to be good advice at the point of maturity. In that case no harm is done. But where harm is done, it is no excuse that the advice was well-meant. If it was ill-conceived, incompetent, based on outdated or wrongly interpreted data, or, particularly, if it was commission-driven, our office will step in, provided, and this is an important proviso, the customer was truly ill-informed.

21. There are two aspects to miss-selling. The one is the inappropriateness of the advice. The other is that the customer was not properly briefed to make a fully informed decision. The two lines can sometimes become somewhat indistinct. These are not easy cases to decide. We, as an office, are not unaware of the temptation for complainants,

when results are poor, to turn what was fair advice at the time ex post facto into unfair miss-selling. So too, complainants sometimes forget that their adviser, now accused of miss-selling, would have been crucified if he had kept them in the money market and equities subsequently boomed. It is all a matter of fairness to all concerned. Advisers cannot be blamed if their conduct was not blameworthy. It would not be blameworthy if it conformed to the standards and norms a reasonable adviser would have applied at that time and in those circumstances.

22. Another type of complaint, increasingly raised with us, relates to the penalties which apply on both surrender and policy changes, as, for instance, when a policy is made paid-up. These complaints are generally raised in respect of older

generation policies, before the PPR kicked in, when, at sale's stage, little or no disclosure of costs took place and no caution was issued regarding the impact of the deduction of future costs on surrender or paid-up values. A concept which complainants, even sophisticated ones, have some difficulty in understanding, is the deduction of unrecouped expenses at early termination of premiums. The upfront payment of commission and administration charges, without a corresponding "upfront" disclosure thereof, is a cause of huge unhappiness. This is an issue the office has raised with the LOA as being an industry concern. It is not the sort of complaint which the office itself is geared, or will readily presume, to redress. There are certain things this office is hesitant to do. One of them is to venture onto fields where actuaries roam.

23. The insurance industry has not, as of late, enjoyed a good press, locally and overseas. It is increasingly aware of its own shortcomings, particularly its lack of transparency to its own policyholders. On the other hand, the industry is not always given credit for what they do right. From the perspective of the office of the Ombudsman we are hugely encouraged by the positive response we have had in cases where we interacted with individual insurers on improvements to their complaints handling processes and procedures. Nor must we think that the fault lies only on the side of the insurers. Most policyholders are honest, some are not. Insurers should not be castigated for looking at claims with an unsentimental degree of scepticism.

24. But, in the end, insurers must never forget that the lifeblood of the insurance industry is premiums. If the lifeblood is reduced, the heart is under stress. Every clot knows that. Premiums are paid by policyholders. So, if policyholders are to be pampered, to keep the flow going, to ensure that they are contented rather than discontented policyholders, so be it.