

Report of the Independent Review of the Financial Ombudsman Service

Richard Lloyd

July 2018

Note from the independent reviewer

This Independent Review has been prepared by me, Richard Lloyd, for the Financial Ombudsman Service as required by the Terms of Reference. The findings and conclusions set out in this review are my own and do not reflect the views of the Financial Ombudsman Service, its board or executive. As such, I am solely responsible for the findings and recommendations made here, which are the result of careful investigation and deliberation on my part, and are presented in good faith.

The report is broadly structured in line with the terms of reference. The scope of this exercise, and the time available for it, has required some generalisation and simplification in describing a substantial organisation, its work and operations.

A number of service users have contacted me to request that I review the substance of their individual cases. This has not possible within the time available, and to do so would be outside the review's terms of reference. Nevertheless, experiences described to me by consumers have been used to inform this report, and where appropriate individual cases have been passed to senior ombudsmen for further review.

I am very grateful to the many individuals who have taken time to provide me with evidence for this review. Where I have relied on information or opinions provided to me, I have taken reasonable steps so far as possible to ensure that such information or opinions are accurate, complete and provided in good faith. Neither I, nor the Financial Ombudsman Service can be held liable for the use of and reliance on the information, opinions and findings in this review.

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Chapter 1

1.1. Introduction and executive summary

The Financial Ombudsman Service (FOS) was set up by Parliament to provide an important, impartial service to both consumers and financial services firms. By resolving disputes with minimal formality and decisions that are legally binding, the FOS gives consumers the means to get free and fair redress where otherwise it would simply not be possible. It does this through a process with human judgement at its centre, often about problems that matter hugely to the people concerned. But although it was established in 2001 to overcome an imbalance of power between individuals and financial businesses, the FOS is not a campaigning consumer champion or a regulator, and that is not always well understood or explained.

In recent years the FOS has faced unprecedented external pressure: mass complaints about Payment Protection Insurance (PPI) and, more recently, short term lending; a relatively small but important caseload of complex problems, for example complaints involving vulnerable consumers and certain products such as pensions and investments; and demand for speedier resolution in a digital age while markets also change at a growing pace.

This review of the FOS was prompted by concern that some of its staff were not behaving appropriately and fulfilling the organisation's legal duty as they should. A number of specific issues were raised by the Channel 4 programme *Dispatches* in March 2018, many centred on the way in which complicated casework is being done and how the FOS organises its people.

There is also concern about whether recent media attention means there is an underlying, institutional problem at the FOS. While most of the stakeholders interviewed for this review felt that some coverage has not accurately portrayed the organisation they know, it has given pause for thought, in particular as to its capabilities, how it meets new demand, and whether its recent reorganisation has directly resulted in consumer detriment.

1.2. The role of the Financial Ombudsman Service

About one in ten of all complaints to financial services firms are eventually handled formally by the FOS, and many more consumers are given free information and guidance when they contact the service. This generates insights into the market that have wider value for the majority of people who do not use the FOS, because the organisation can use its knowledge to bring about positive change in business behaviour. Along with its powers to resolve individual disputes, this preventative role that the FOS can play through effective engagement with consumers, firms, regulators, and the government should be at the forefront of any ombudsman scheme's strategy and the government's evolving approach to alternative dispute resolution generally.

In general, this review has found support for the organisation, including strong advocacy for its work among the consumers I met face-to-face (despite a range of experiences with service quality), and an appetite for more of its preventative work. No stakeholder expressed the view to me that the FOS is unnecessary or overly costly.

But there are legitimate frustrations about the speed with which the FOS resolves disputes, and concerns about the quality of some casework. This is not new: balancing fast, fair and free to the consumer has been a tension for the FOS since it was created.

1.3. Continuous improvement

The FOS continues to face major challenges as it struggles to balance the competing demands of increasing speed and quality, resolving its remaining PPI caseload and keeping costs under control. Internally, long-considered, well-intentioned but difficult changes to the structure of the organisation have placed new demands on a large workforce facing an uncertain future. A new approach to case-handling, aimed at bringing ombudsmen closer to consumers, with better problem solving and earlier dispute resolution, has come with different risks to service quality.

Against this background, the potential for the FOS to get it wrong for consumers has arguably been higher recently than might otherwise have been the case. The important advisory and preventative roles have not been given the recognition and support they deserve either, in part because of the nature of the funding model. And there remain critical risks to the quality of the service's work, including people, leadership, technology and costs. There are uncertainties as to future resourcing, and while morale appears to be improving as a new organisational design is adapted, a number of experienced staff are disengaged.

Despite this, I have found that people at the FOS have strongly-held and positive values. They believe in its mission and want to 'do the right thing', while recognising the need to improve. There are, and have been, a range of initiatives aimed at mitigating the risks to the service, some prompted by internal learning, for example in response to a negative staff survey in 2017.

The FOS now has the opportunity of this external review and its recommendations to take stock and do more to improve consumer confidence in the quality of its work, to extend its preventative work, and to ensure the right organisation is in place for the future, fit for the possible extension of its scope to handle larger SME complaints. This should start with a new strategic plan and, with the support of the FCA as necessary, appropriate positive action for improvement, especially in the following areas:

- Casework handling capability for new complex complaints
- Information technology and data
- Quality assurance and complaints about the FOS
- Staff management and internal communications
- Funding that supports strategic priorities
- Strategic planning and risk management.

In summary, I have found that the FOS provides an effective and essential service for many thousands of people. It is important that more consumers use the FOS, knowing that it is not institutionally biased against them, while realistic about its limitations and aware of their right to escalate complaints. But to retain public confidence the FOS must work hard to continuously improve the service it provides for consumers and businesses.

1.4. Summary of specific issues contained in the terms of reference

A more detailed analysis of the 14 specific issues raised in the *Dispatches* programme is provided in **chapter 4**. The table below sets out a summary of the findings.

<p>1. That some staff are not equipped to deal with “complex” problems, specifically some investment and pension complaints. This goes to how the organisation handles casework complexity. See chapter 3.</p>	<p>8. That the “pressure ... to deal with caseloads quickly” meant that it is more likely that cases would be decided in favour of the banks. There have been new risks to casework quality, but there is no evidence of systemic bias.</p>
<p>2. In the case of a complaint about fraudulent activity on a bank account, that there was a failure to ask for detailed information about the account’s transaction history. The case was not handled as well as it should have been. The consumer has been reimbursed most of the money. The FOS approach to fraud has been reviewed.</p>	<p>9. That in 2014/15, 11,000 PPI complaints were not dealt with for two years. There were approximately 23,000 cases more than 24 months old at the time of this review, (in part due to the Plevin decision). This has been publicly reported. No evidence has been found of 11,000 complaints that were unattended at any point.</p>
<p>3. That awards for distress and inconvenience are not calculated by using a “formula”. The approach to this was revised in 2014; internal guidance suggests levels of award based on severity. FOS should review its training and assurance in this area.</p>	<p>10. That in both 2015 and 2016, 1000 letters were found to have been unopened - some of which were two years old. The FOS has operated secure digitisation of all incoming mail since 2012; that a large batch was left ‘unopened’ is highly improbable.</p>
<p>4. That the application of the provision for “exceptional circumstances” to extend the time limits under which a consumer may make a complaint, is not appropriate. FOS reviewed this in 2017 and found improvements could be made, including to training, consistency and quality checks. This should be reviewed for effectiveness.</p>	<p>11. That if targets were missed, the pay or promotion of investigators could suffer. This was a risk under the performance management approach as introduced in 2016. A more balanced approach has been introduced, and requires careful monitoring.</p>
<p>5. That staff are biased against some complainants, specifically those who complain about credit card and PIN fraud and those who complain about payday loans. There is no evidence of systemic bias in relation to the specific product areas, in the handling of cases or at a policy level. See chapter 3.</p>	<p>12. That there is a major backlog of PPI complaints. This is well known and publicly reported, and is largely due to the significant volumes the FOS has received over the years and a number of external events that have disrupted case progression.</p>
<p>6. That the provisions which require banks to be “positive and sympathetic” are not applied correctly. New internal guidance is being developed and a review carried out to determine whether there is evidence of consumer detriment from past approaches.</p>	<p>13. That some PPI complaints were wrongly rejected because, although it was concluded PPI had been mis-sold, it was assumed that the cover would have been useful. This is the subject of an ongoing dispute between a CMC and the FOS about the law, and is a matter to be decided by a court, not this review.</p>
<p>7. That the ability to require a debt to be written off is not applied correctly because of a reluctance to set a precedent. The FOS frequently issues decisions which set precedent for businesses and it also requires debt to be written off in certain circumstances. Internal guidance should be clear and updated.</p>	<p>14. That when Rushanara Ali MP visited the ombudsman service in 2015 she “was misled, that managers preselected and rehearsed cases to make the service appear more professional”. The arrangements for this visit appear to have been normal and appropriate.</p>

1.5. Summary of recommendations on wider matters

During my assessment of the 14 specific issues raised in the *Dispatches* programme, I identified a range of other matters as possible underlying causes or important relevant context.

As provided for in the Terms of Reference for the review, I examined these other matters to determine their relevance to the specific issues shown in the programme, as well as to draw lessons more generally and focus attention on actions aimed at improvements in the future. These wider findings are grouped into four broad themes:

- service quality;
- organisational issues;
- finances; and
- governance.

Chapter 3 sets out a more detailed assessment of the wider issues identified, along with conclusions about what this means for the FOS and the steps it should take. An overview of the key recommendations is set out below, which should be read in the context of chapter 3.

Service quality

Casework capability

1. The FOS should identify gaps between existing capabilities and what is needed for the future, including in relation to case-handling, developing casework approaches, knowledge support, training and quality assurance. The FOS should then plan for continuous improvement to ensure that the quality of casework, including complex cases, is sufficiently robust and consistent.

Preventing bias

2. Staff continuous development training and incentives that work against bias should be strengthened at the FOS, along with investments in technologies that support staff, enable machine learning and better data analytics.

Casework objectives

3. The management approach should focus more on quality, learning, technological support, and motivational team building. There should be a realistic view of productivity targets that enable robust, high quality casework, proper resource planning and appropriate funding.

Complaints about the FOS

4. Clearer, earlier, oral or written communications to consumers should explain the implications of an ombudsman's decision, and its final and binding nature in the event it is accepted by the consumer. Such communication should also provide an explanation of the right to make further representations and submit additional evidence. Consumers should also be fully informed about their right to make a

service complaint. Quality assurance checks should be carried out to ensure that staff are not putting undue pressure on consumers to accept a decision quickly.

5. The single stage complaints process for handling issues should be introduced across the organisation without delay, and an extension of the process that explicitly encompasses both service issues and casework substance should be piloted where senior ombudsmen investigate complaints in the round.
6. The FCA should examine the impact of CMC behaviour in relation to threats of litigation against the FOS, and take this into account in developing new rules of conduct for CMCs, preferably before the FOS takes on the handling of CMC complaints.

Quality assurance

7. The FOS should update and bring together its policies and procedure guides for casework quality assurance and ensure these are better communicated to staff and interested service users. In doing this, it should carry out an assessment of the effectiveness of quality assurance, the scope for improved data collection and analysis, and identify how the quality assurance function could be improved.
8. There should be a continuing role for assurance checks by experienced and knowledgeable staff at arm's length from the primary decision-making teams, focused on the greatest risks.

Organisational issues

Reorganisation

9. As part of its medium-term planning, the FOS board should reflect on and learn from the operational execution of the reorganisation to date and consider ways to more effectively realise its objectives, including the approach to case handling and the capabilities that will be required. This should include a further exercise to check an appropriate sample of casework, to make sure that decisions made during the early stages of the reorganisation were handled in accordance with the controls and standards put in place at the time.

Knowledge, technology and data

10. The FOS should realistically assess the balance between digital knowledge capture and provision and caseworkers' experience of financial products and services, in particular for complex problems, and value and invest in people accordingly.
11. The FOS should review its investment in information technology, and ensure that planned levels of investment and delivery are fit for operational purposes. Consumer-facing technology that enables people to better manage their complaints should be built on a mobile-first platform that works for those who have been less engaged with the FOS to date.

12. The organisation should invest in building its technical capability for data analysis, to strengthen its early insight for preventative work and engagement with the financial services industry, regulators and government.

Management capability and internal communications

13. Strategic planning should be less top-down and informed by a wide range of experience and expertise within the FOS.
14. Managers at all levels, but the executive in particular, must give a much greater priority to ensuring clear and consistent communication, starting with a demonstrable commitment to an inclusive style of leadership. Communications and staff engagement expertise should be central to future change.

Culture and morale

15. A consistent, strategic and expert approach is needed for staff engagement to be returned to a satisfactory level, including a shift in leadership approach and skills in some areas at senior and middle management levels.
16. Alongside the staff Information and Consultation Council, the FOS should extend its recent work with a trade union, taking into account union membership levels.

Finances

Resourcing

17. The FOS should project its medium-term costs based on sensible assumptions about case volumes and the organisational capabilities, human and technological, required to provide a good quality, efficient service.

Funding

18. Based on this analysis, the FOS and FCA should consider consulting on a new levy funding structure for the FOS that meets this cost, is based on the risk that firms bring to the market, and enables more stable forward planning.

Governance

Strategic planning and risk

19. The FOS board should now lead the development of a new strategic plan, taking into account the conclusions of this review.

Board and executive effectiveness

20. The FOS board and executive should, as part of its succession planning, assess its composition, effectiveness, capabilities and skills in the light of this review and strategic planning.

Whistleblowing

21. The board should consider engaging an external provider to facilitate its whistleblowing procedures as confidence in the management of the organisation is rebuilt.

Reporting on progress

22. The FOS should publish its review of progress against these recommendations before the end of 2018.

Chapter 2

Background to the Independent Review and the Terms of Reference

2.1. The Financial Ombudsman Service (FOS)

The FOS became operational on 1 December 2001, bringing together eight different dispute bodies into a single ombudsman for financial services.¹ It was created through the Financial Services and Markets Act 2000, the same legislation that merged existing financial regulators into a single Financial Services Authority (later the Financial Conduct Authority).

The legislation established a scheme ‘under which certain disputes may be resolved quickly and with minimum formality by an independent person’.² It provided for complaints ‘to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case’. In doing so the FOS is required by its rules to take into account relevant law, regulatory rules, codes of practice and what the ombudsman considers to be good industry practice at the relevant time. A determination by an ombudsman, if accepted by the complainant, ‘is binding on the respondent and the complainant and final’.³

The rules governing how regulated financial services firms have to handle complaints are set out in some detail by the FCA in a rule book on dispute resolution, known as the DISP. This includes how the business has to make consumers aware in an appropriate way of their right to take a complaint to the FOS, and the relevant time limits. The process once a complaint has reached the FOS is shown in summary on page 12.

It is important to note that in most cases consumers can be required to wait eight weeks to take their complaint to the FOS, unless the business consents otherwise and where the FOS has been given greater flexibility. This eight-week rule is clearly out of kilter with the reality of providing a responsive and timely service in a digital age, or when a consumer is in financial crisis, and makes it more likely that consumers will bring their complaint to the FOS already frustrated by the amount of time it can take to get a final response from their financial service provider.⁴

The number of complaints handled by the FOS and the size of the organisation itself has grown considerably since its formation. In 2001/02, the FOS employed 450 staff and its first annual review reported that it had resolved 31,350 complaints during that financial year. Eighteen years later the FOS employs over 3,000 staff and its latest annual review showed that it resolved 400,658 complaints in 2017/18. Total enquiries in 2017/18 averaged 121,366 per month.

The most recent FOS data show that it received 23,972 new mass claim cases and 10,131 new general casework cases in the month of March 2018.

¹ <https://api.parliament.uk/historic-hansard/commons/1999/jun/28/financial-services-and-markets-bill>

² FSMA 2000, s. 225

³ FSMA 2000, s. 228

⁴ DISP 1.6.2. MoneySavingExpert, in a November 2017 report, proposed reducing this so that the FOS can accept a complaint after the firm has had between 2-4 weeks to resolve it, or sooner for consumers in crisis.

The FOS gathers data on customer satisfaction through on-line and postal surveys, sent at closure (whether initial view or final decision) for closed cases. The table below shows this data for the three years 2015/16, 2016/17 and 2017/18, split between initial view and final decision stage.

Overall FOS measure of customer satisfaction	Initial view	Final decision
2015/16 (April 2015 to March 2016 closures)	77%	47%
2016/17 (April 2016 to March 2017 closures)	76%	45%
2017/18 (April 2017 to March 2018 closures)	75%	41%

Unsurprisingly, consumer satisfaction is affected by the outcome of the complaint, and in particular the final decision stage at the end of the process. One key question in the survey asks consumers whether the FOS 'got to grips' with their case. This is the nearest the FOS comes to asking consumers whether they felt it got the decision right or not. The table below shows the proportion of people who agreed. It is worth noting that there has been a fall in the proportion of upholds over the last three years, driven by the fall in uphold rates in PPI (at a scale which has a resultant disproportionate impact on the average), but the average uphold rates across general casework have been consistent over the last three years.

The FOS 'got to grips with things and used common sense'	Initial view	Final decision
2015/16 (April 2015 to March 2016 closures)	73%	43%
2016/17 (April 2016 to March 2017 closures)	73%	40%
2017/18 (April 2017 to March 2018 closures)	70%	36%

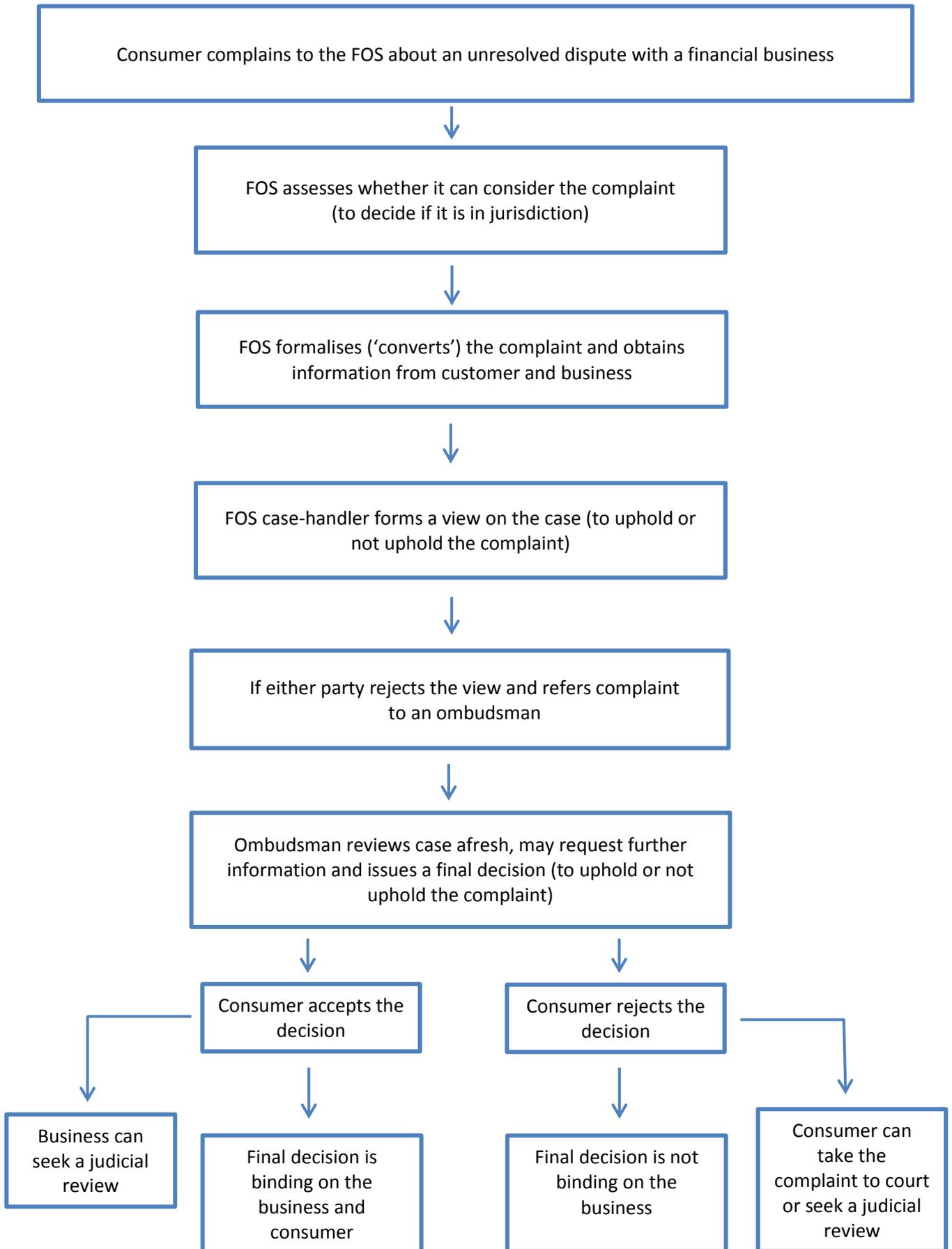
2.2. Channel 4 Dispatches

On 12 March 2018, Channel 4 broadcast an edition of its *Dispatches* programme featuring covert filming of ombudsman staff. In response, the FOS board commissioned an Independent Review into the issues raised in the programme and I was appointed in April 2018 to undertake the review. Given the wider interest in the work of the FOS, the Terms of Reference of the review were confirmed with the Financial Conduct Authority and the Treasury Select Committee.

The full Terms of Reference are attached at **Annex C**, but, in summary, they provided for a review to consider as quickly as possible:

- whether there were any matters of substance in relation to 14 issues identified in the programme which should be addressed;
- any other matters of concern and identify possible root causes for them; and
- the extent to which governance and arrangements for providing assurance about the work of the FOS to its board were applied effectively and consistently.

Complaining to the Financial Ombudsman Service: the process in summary



Chapter 3

Key findings

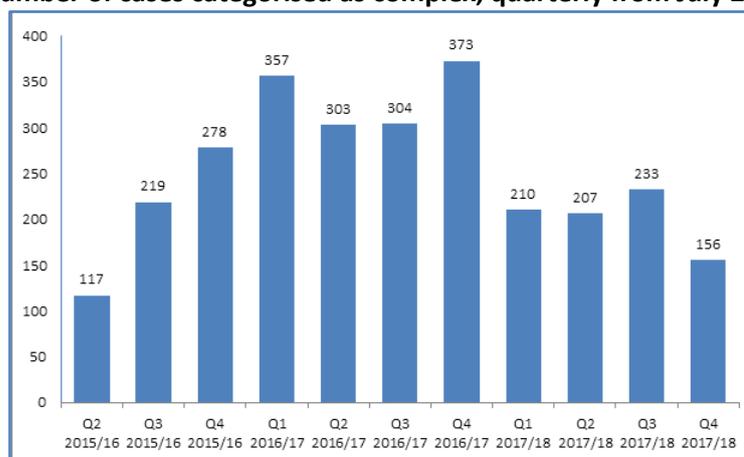
3.1. Service quality

Casework capability

Casework complexity does not solely arise in pensions and investments, but is possible in almost any product area or due to the circumstances in which the complaint arose, for example where people are vulnerable or where there are equalities issues; the same is true of simplicity. It is therefore not possible to simply categorise certain products as always inherently complex. In some cases, however, the risks and the impact on the consumer of gaps in case-handlers' knowledge or capability will be greater, whether through a consumer's own circumstances, for example vulnerability, or the sum of money involved. (This was why the FOS originally began exploring how to solve problems earlier, in high cost credit cases).

The data available shows that while there are fluctuating levels of consumer satisfaction with casework likely to present the greatest complexity, there are reasonable confidence scores even where a complaint has not been upheld (for example satisfaction with pensions cases not upheld ranged from 48% to 60% in the first four months of 2018).

Number of cases categorised as complex, quarterly from July 2015



The chart above shows the number of cases categorised as complex for the purposes of the EU ADR directive (over the last three years). This is not a comprehensive categorisation of cases that the FOS treats as complex, so the data should be treated with caution. Under the ADR directive the FOS should be providing a view on cases within 90 days of being 'ready to start'. The directive makes exceptions for cases which are complex - either a new type of complaint or product for the FOS to deal with, or affected by factors outside the FOS' control – typically court action. In these instances the FOS lets both parties know it might take longer to resolve.

As it adapts its casework model, based on the investigation model which relies on staff being skilled across a range of different types of cases, the FOS has recognised that where these higher risks arise, case-handlers require more support, or that the problem needs to be looked at by an experienced product expert with up to date

knowledge. New investigators can lack knowledge, confidence and consistent exposure to complex problems, and so more often use internal helplines and product specialists for advice.

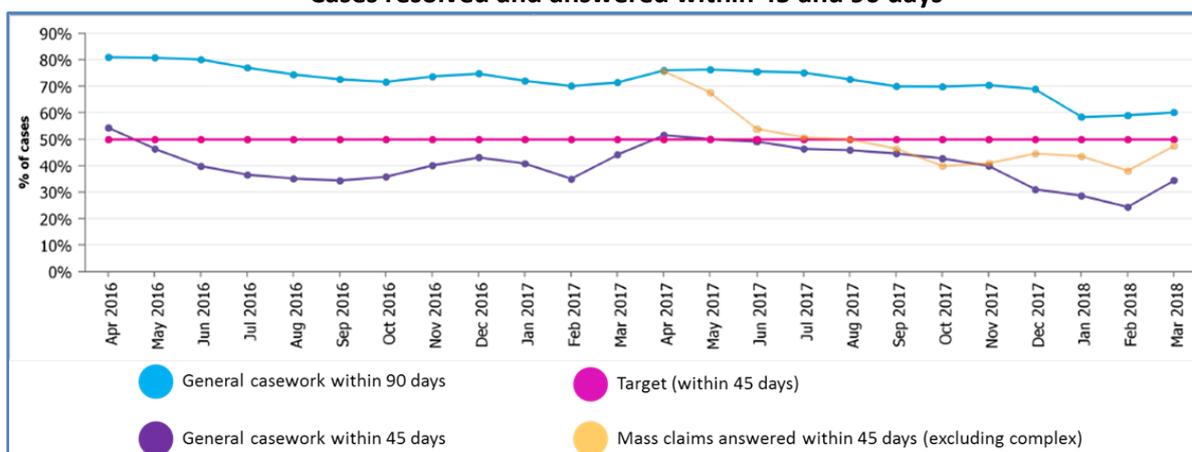
During the first two years' introduction of the new investigation model, therefore, higher risk and more complex cases have been managed in a range of different ways, including by discrete areas of the organisation, for example, virtual teams of product experts and more recently, a temporary 'transition' support area of caseworkers operating under the previous model of adjudicators and ombudsmen (who have not joined the new investigation teams). New and emerging case complexities are also passed to a casework development pod and the legal team.

Staff have access to casework clinics and 'practice groups' led by experienced ombudsmen focused on certain product areas or cross-cutting complexities (although these have, by most accounts, only recently become effective), and interactions with other staff members prompted by managers. Certain types of cases are also given red or yellow 'flags' or 'tags' (presently, this approach covers about 180 issues or product areas in general casework) and are allocated to particular people or teams tasked with handling cases of that type. And since May 2018, investigators have started to be trained and formally allocated an area of product specialisation, in recognition of the proportion (30%) of higher risk cases.

While the quality of casework has not, overall, been adversely affected by the new organisational design because of these arrangements, some customers still have to wait longer than they should to get an answer to their complaint. For example, legal involvement and the casework development process can be slow, especially so if resources are stretched. The red and yellow 'flag' and 'tag' systems to help identify tricky casework, can lead to queues in certain product areas and overall timeliness in general casework is under pressure. Further, where there is on-going or threatened litigation, progress can be held up pending the resolution of the legal dispute.

Avoiding such queues was an aim of the reorganisation, but they remain and they have driven service complaints by both consumers and firms.

Cases resolved and answered within 45 and 90 days



The FOS monitors the time it takes to resolve cases (this includes issuing decisions on cases that are referred to an ombudsman – so the 90 day target here is not the same as the 90 day requirement under ADR regulations). As the chart above shows, in the first half of 2017/18 performance was at or close to the 45 day target for general casework,

but has since fallen back. At the end of the 2017/18 financial year, the FOS ran a '10 week challenge' to improve timeliness.

In future, it is inevitable that there will be new or infrequently seen casework problems. So, in its resource planning, including for any changes to its jurisdiction, the FOS must identify how it will deploy specialist knowledge to decide such cases fairly and swiftly. Decision support technology will help, but must be balanced against the need for experience and human knowledge, particularly where products are highly complex or long term. The necessary expertise may not always be required in-house, however, and could, for example, include the creation of expert panels.

In summary, knowledge support, training and quality assurance will require continuous improvement, in particular to ensure the quality of casework is sufficiently robust for higher-risk issues (including those associated with complex cases) and that the consumer experience is first rate.

Preventing bias

The potential for bias towards the best presenting party – overwhelmingly likely to be firms – has long been recognised at the FOS. Although some firms and industry bodies that contacted this review pointed to uphold data as evidence of bias in favour of consumers. This is one reason why the FOS seeks to be transparent about the outcomes of cases and every quarter publishes the rate of complaints upheld by product area on its website.

During my review, staff across the FOS consistently denied any bias against consumers, and cited the organisation's values and training as the strongest defences against this. And staff from all areas reacted with horror to the allegation of bias made in the *Dispatches* programme.

The FOS believes that consistent bias by any one member of staff would be identified by its quality assurance checks. Furthermore, where decision support tools (such as *Navigator* in mass claims) are used, a significant amount of false data would have to be entered which would take more time than following the procedures in place properly. More broadly, over the past nine months, an 'academy' has been put in place for new recruits to undertake six months' training.

Overall, the allegation that staff are biased against some complainants, and specifically those who complain about credit card and PIN fraud and payday loans, is not borne out by the evidence.

On payday loans, for example, the approach taken by the FOS makes the risk of bias appear low; uphold rates in 2017 were around 60% (although customer satisfaction for such cases has been markedly lower than the average). For fraud cases, because of the complexity and evolving nature of the problem, there are around 4,000 where progress and handling is being managed while the policy approach is being reviewed, alongside the development of new industry and regulatory guidance for the treatment of authorised push payment scams.

There remains though the risk that poorly trained staff, left to their own devices and under pressure to meet performance targets, could reject a claim to avoid technical arguments with a firm, relying instead on a less well-informed consumer accepting the

outcome, especially early on in the process and unaware that they can escalate the issue. It is risks of this nature that the FOS must take further steps to mitigate.

Knowledge support, training, incentives that work against bias and in support of getting decisions right, quality assurance and data analytics will be key. Parts of this framework have been under-resourced to date or are still in development, so these areas should be a focus for continuous improvement. IT decision support and machine learning tools will also help to reduce the risk of potential bias.

In summary, this review finds that consumers and firms can have confidence that FOS is not institutionally biased against them, and acts independently through its ombudsmen as required by legislation. The best safeguard against bias is its strongly-held values about the need for fairness and impartiality, reinforced by transparency (for example the publication of casework data and decisions), and the prospect of escalation and complaints about an individual's behaviour and case-handling conduct.

Casework objectives

In early 2017/18, FOS had targets in place for caseworkers in investigations teams to resolve five cases a week, assuming they were working full time (and intended to be adjusted over the year for holidays and other absences). In August 2017, the target was reduced to 3.5. The existence of targets is not new: they have been in place for many years, and until 2012 staff exceeding their targets were given a bonus.

The issue raised in *Dispatches* though was that the higher targets in early 2017/18, put pressure on case-handlers to deal with cases quickly, at the expense of the right outcomes for consumers. However, an analysis of uphold rates between the first half of the year (when the higher targets were in place and productivity was higher) and the second half (when targets were reduced and productivity dropped) does not support this. The data shows no significant correlation between the reduction in pressure and uphold rates – in fact there was a slight reduction in uphold rates. This suggests that, overall, 'target pressure' did not incentivise caseworkers to reject cases in favour of businesses.

More broadly though, while 'fast and fair' is the right aim for the FOS, care needs to be taken to guard against the inherent operational tension this creates. And while management focus on sustainability has been strong - and it is right to strive for efficiency because the costs are ultimately borne by consumers through the prices they pay for financial services - this has been perceived by staff as the overriding priority.

That is not to say that targets in themselves are wrong or opposed by most staff, but poorly advised approaches to driving productivity, alongside circumstances where people might be dealing with unfamiliar products and issues without adequate support to hand, can have unintended consequences in this setting. Staff told me that in the early stages of the reorganisation, for example, they did experience increased pressure. This was especially the case for those unused to taking calls direct from the public and used to having more time to consider cases on the papers.

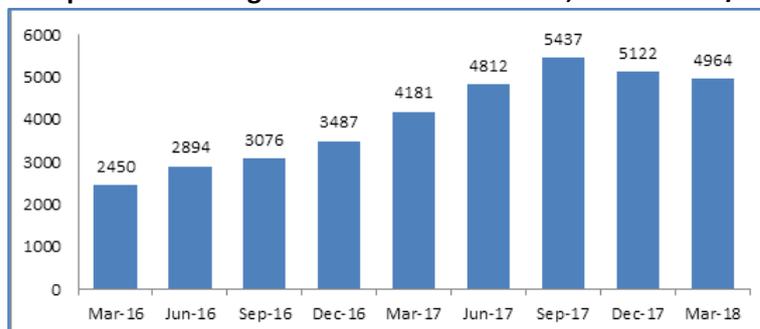
As well as handling more cases, under the investigations model, case-handlers also take direct inbound calls. The new operating model has made call handling more challenging for the FOS than was previously the case, for two main reasons. The first relates to the wider role that investigators perform. But calls also now typically tend to be longer,

averaging almost 10 minutes in 2017/18 compared to around seven minutes in previous years. Since the start of March 2017, the target time for answering the majority of calls has been achieved in eight weeks out of 68.

While generally there have been improvements in overall casework timeliness since the change to the investigation model, one area where the FOS has seen increased queues has been in the number of cases awaiting an ombudsman decision in general casework. There is likely to be a range of factors that contribute to this increase, but it is evident that the change in the nature of the ombudsman role in investigations has had an impact. Rather than working wholly on making decisions, ombudsman managers have management responsibilities for their teams of investigators, as well as involvement in more ad hoc but significant exercises such as the recruitment and training required to help set up and continually support the new model. The majority of ombudsman managers were formerly ombudsmen; while the recruitment of others, such as staff formerly working as heads of casework or team managers, to the ombudsman panel has boosted the numbers of ombudsmen, this, in conjunction with use of associate ombudsmen, has not been enough to retain decision queues at pre-change levels. The model was also in part predicated on a lower proportion of cases being referred for ombudsman decisions, in part because of the greater level of support at view stage, but as yet these reductions have not been achieved.

As the chart below shows, the number of cases within general casework awaiting a decision by an ombudsman increased from March 2016 to September 2017, but then started to reduce. At the time of this review, final data for June 2017 was not yet confirmed but indicated that the decision queue was increasing.

Complaints awaiting an ombudsman decision, March 2016/18



The new operating model also stretched inexperienced managers, exacerbating the risk. And of the 40% of staff who reported feeling stressed or worried about work in the 2017 staff survey, 54% attributed this to their ability to meet targets or objectives.

The FOS has though recognised that the performance management system introduced in 2016, based on external advice, was not wholly suitable for the organisation and it has since been adapted to ensure a more balanced approach. Senior managers are communicating to staff that ‘doing the right thing’ – and spending the right amount of time needed on individual cases – should not impact on staff progression. Staff in mass claims also confirmed during this review that extra time spent dealing with complex or sensitive cases was being taken into account in target setting, and it is important that this approach is applied consistently.

Overall, the consequences of people feeling under pressure could have been negative for consumers and firms but appear more likely to have been the avoidance of complex cases, potentially resulting in queues, and a focus on simpler cases.

The benefits of a new casework management system, knowledge and other technology support have yet to be fully realised. With 24 months experience of the new organisational model, achievable productivity levels should now be established that enable robust, high quality casework and proper resource planning, and avoiding a reliance on overtime to clear backlogs.

The management approach to productivity should balance a focus on quality, learning, technological support and motivational team building and numerical targets. There are examples of this already happening, but best practice needs quickly to become the norm.

Quality assurance

As shown in chapter 2, overall consumer satisfaction levels have held steady for the FOS as a whole since 2016. An internal 'consumer confidence' measure of satisfaction remained at 68% in April 2018, slightly above target, but was significantly lower for cases handled by the transition teams and in certain product areas. Unsurprisingly this metric varied widely between those consumers with cases upheld and those whose cases were rejected (the data shows a range of 40-90% for consumers who were satisfied) and between general casework and mass claims. The picture beneath the headline data is therefore more complex.

Multiple mechanisms have been put in place for checking quality of decision-making, including by casework pods themselves, the casework development pod (although the approach to this has been changed during the course of this review), and thematic reviews by practice groups. Some of these 'check the checkers'. There are also peer reviews of casework, but the volume of these varies significantly across different parts of the FOS. The number of cases in each 'pod' that go through quality assurance has now been halved to 25 per month, with an increased emphasis on thematic reviews that are intended to provide richer assurance.

Data suggesting the extent to which decisions are got right are contained within the metric on 'getting to grips', shown above in chapter 2. But most checks and resulting data appear focused on process matters such as timeliness, and less on checking that the outcomes for consumers are right or that formal decisions (20% of cases) have been made correctly.

Key metrics reported for governance purposes can also be too high level to allow for the identification of problems with quality by product area, and in particular this applies to both complaints resolved at the very early stages and final decisions by ombudsmen.

There is a risk that managers are now too often checking their own team's work in the new organisational model, although this has been mitigated by the separate casework development pod reviews. The FOS should also consider how it can record and report consistently at a more detailed level. Technology will help identify quality and consistency issues at a more granular level, but systems are not yet in place.

It is also surprising that there is no single policy document describing how quality assurance is done at the FOS. The FOS should update and bring together its policies and procedure guides for quality assurance and ensure the quality assurance framework is better communicated to staff and interested service users. In doing this, it should carry out an assessment of the effectiveness of quality assurance, the scope for improved data collection and analysis and identify how the quality assurance function should be improved.

Overall, though, it is clear that there have been improvements in quality assurance; consumers and firms can be reassured that there are now much stronger systems in place for quality assurance checks than in 2016/17. And it remains the case that more is done to check quality at the FOS than in other ADR schemes.

Complaints about the FOS

If a consumer or business is not content with a view on a complaint issued by the FOS, it can refer the complaint to an ombudsman for a final decision. Sometimes the ombudsman's decision is different from the previous view; in the last three years, of the cases that have been referred to an ombudsman, between one in 11 and one in six caseworker views have been overturned.

Separately, service users can complain about the nature of the service they have received from the FOS, and generally, the level of these sort of complaints is low, at below one per cent. The casework model introduced in 2016 creates opportunities to resolve service complaints early, but staff find it hard to separate complaints about service matters from case substance. A single-stage service complaints process has been piloted and found to be effective, but not yet applied to the whole organisation. The FOS also has an Independent Assessor, tasked with investigating service complaints that cannot be resolved at the first stage. Her annual reports to the board show that poor communication by FOS staff persists in exacerbating service complaints, especially when there are lengthy delays to resolution in complex and difficult cases.

Some consumers, including a number that contacted the FOS and this review after the *Dispatches* broadcast, are clearly highly dissatisfied with the narrow window for complaints on 'service' grounds only and that the process does not extend to appealing the outcome.

If a consumer is unhappy with a final decision and does not accept it, they have the option of taking the financial business to court, or seeking a Judicial Review of the ombudsman's decision. And while there are rare circumstances in which the FOS can set aside a decision and effectively start again, with the agreement of both parties to a complaint, or where there is new material evidence, this is not common. A very small number of cases (29 in the two financial years) were effectively reconsidered and decisions withdrawn because an ombudsman felt the decision was wrong or the reasoning flawed.

The lack of formal appeal is not new, or unique to the FOS and it is understandable, in alternative dispute resolution schemes where it is necessary to balance the need to finally resolve a dispute with fairness, speed and cost, that there has been a reluctance to extend the process into further stages of appeal. But it does not help perceptions of

fairness if consumers are refused an appeal on the merits of their case, on any ground, at final decision.

On a related note of consistency between decisions, because of the judgement involved and the individual circumstances contained in each case, not every ombudsman will arrive at the same conclusion, every time, based on the same facts. Ombudsman decisions are published on the FOS website (which should incentivise careful decision-making), and in general, the FOS does not see significant numbers of complaints about inconsistency.

Another consideration in this territory is the approach that certain claims management companies and some financial businesses routinely take in threatening to take legal action at every stage of the process. This has led to a relatively small number of Judicial Reviews but the service is acutely conscious of this threat. It has created processes to deal with it; but this can have an impact on other consumers' complaints, and is costly.

In future, clearer, earlier, oral or written communications to consumers should explain the implications of an ombudsman's decision, and its final and binding nature in the event it is accepted by the consumer. Such communication should also provide an explanation of the right to make further representations and submit additional evidence which may necessitate a provisional decision before a final decision can be made. Consumers should also be informed of their right to make a service complaint.

Quality assurance checks should be carried out to ensure that this is being done and to check that staff are not putting undue pressure on consumers to accept an outcome quickly in the name of early or informal resolution. The single stage process for service complaints should be introduced across the organisation as soon as possible. And a clearer complaints process that explicitly encompasses both service issues and casework substance should be piloted with senior ombudsmen.

The FCA should also examine the impact of CMC behaviour in relation to threats of litigation against the FOS, and take this into account in developing new rules of conduct for CMCs - preferably before the FOS takes on handling CMC complaints.

3.2. Organisational issues

Reorganisation

A new organisational design was agreed by the board in 2015, introducing an investigations model with staff working across a range of different types of cases. The core principles behind this were soundly based and intended to help more consumers, avoiding future risks of irrelevance and unsustainability. While the rationale of the reorganisation was understood at a senior level, the changes were perceived by some staff from the outset as overly driven by costs.

The trials did not test the final detailed design of the new model, but suggested a number of potential benefits of different ways of working. A concern about people working in specialised silos, many not engaging directly with consumers, and the risk of industry capture or dated knowledge drove a vision of more flexible, generic capacity. But staff cited changes within the 'old' model of general casework which were also proving effective and productive.

All the key risks associated with the change – costs, leadership, people, technology and timescales – were clearly identified at the outset and all assessed as critical in January 2016. The first teams felt under strong pressure to deliver challenging productivity gains, at times without the proper support. A consultant-designed staff performance model, now much softened, was also perceived by staff as alien and more suited to a sales environment; it failed to locate the new performance approach design within a full understanding of the organisation and its culture, and was not sufficiently challenged. This was always likely to meet strong resistance at the FOS, yet staff engagement plans were too weak and late.

An additional challenge for the organisation was the scale of recruitment: there have been some 3,000 interviews for new roles, a time-consuming task for managers, and many people who might have been expected to leave were kept on to deal with expected case volumes in PPI. The reorganisation has also been reliant on many ombudsmen new to middle management of this kind.

Overall, the reorganisation appears to have been done at too great a pace for an institution of this nature to absorb without at least affecting morale. On the evidence available, however, the overall quality of service was no less than had previously been achieved under the old model and in some key respects (timeliness and customer service) it appeared at first to improve. This in part was due to the willingness of staff to find ways to work around obstacles, the retention of large numbers of experienced staff able to support those struggling with new jobs, and a pool of external ombudsmen.

But morale and confidence have clearly been set back and will take some time to recover. There is, therefore, an increased risk that service quality, timeliness and productivity will be impacted further.

There was a period at the beginning of the reorganisation when some staff in the first ‘wave’ of investigations found themselves handling casework without the right level of training and support. It is apparent that in a number of ways staff tried to ensure that cases were handled appropriately during this early period of change. But in the time available for this review, it has not been possible to assess in detail whether or not there was any specific consumer detriment as a direct result of the change in approach. I therefore recommend that the FOS carries out a further exercise to check an appropriate sample of case work, to make sure that the decisions made during that period were handled in accordance with the controls and standards put in place at the time.

The reorganisation is not complete; the FOS will have to be much reduced in size and the next phase presents, arguably, a greater strategic risk. As noted earlier, the board and executive should realistically assess its future requirements for supporting complex cases, developing its casework approaches and quality assurance. As part of this, the FOS must be clear about its resource, skills and capability needs.

As part of its medium-term planning, the board should reflect on and learn from the operational execution of the reorganisation to date and consider ways to more effectively realise its objectives, including the approach to case handling and the capabilities that will be required.

Knowledge, technology and data

Key to supporting cross-skilled case-handlers and staff new to complaints-handling has been the internal capturing and availability of knowledge in an intranet portal named '*Discovery*', a staff helpline and virtual teams known as 'practice groups'.

In September 2016, an internal review found that a large amount of information existed within the FOS but that there were a number of barriers to making best use of this. This included an over-reliance on individuals and a lack of confidence in using knowledge sources, particularly when multiple options existed; and cumbersome processes to update and manage knowledge information. The intranet content available assumed a level of existing expertise, was poorly structured and hard to navigate. Gaps were found in certain complex areas including pensions and investments.

Since then, the content in *Discovery* is vastly improved, but the system awaits further investment. Helplines to support staff report a reduction in call volumes, but in April 2018, 75% of issues in relation to certain product areas that staff looked up could not be resolved by referring to *Discovery*.

Other decision support tools – *Navigator* and *Compass* – have been essential to managing very high levels of similar complaints (confirmed by an external review of PPI casework in January 2016); they guide and provide structure but do not make decisions. These tools require staff to analyse complex documentation and to input key facts, and judgement about them, in a way that suggests outcomes but leave the decision-making to the staff member.

Further data analysis and technological tools are in development that will support faster, more consistent decision making and more forensic quality assurance, though it is unclear when these will be available.

And further investment in knowledge, machine learning and data analysis, along with the necessary staff, will help the FOS to improve and will benefit both consumers and firms. But greater efforts will be required to ensure understanding among consumers, stakeholders and staff of the capabilities and limits of these tools.

IT systems more broadly, including the introduction of a new customer relationship management system (*Phoenix*), have yet to be fully implemented. The first phase of *Phoenix*, comprising the front-end, has been in place since May 2017, but the full end-to-end *Phoenix* system is expected now to be available in early September (against an original timescale for the system to be in place closer to the start of the 2018/19 financial year).

Looking ahead, and as noted earlier in this review, as a key part of its strategic planning, the FOS should realistically assess the balance between digital knowledge capture and provision and caseworkers' experience of financial products and services, in particular for complex problems, and value and invest in people accordingly, whether in-house or through external specialists or both. The FOS should review its investment in information technology, including *Phoenix*, and ensure that planned levels of investment and delivery are fit for operational purposes.

Consumer-facing technology will also enable people to better manage their complaints; this should be built on a mobile-first platform that works for consumers who have been less engaged with the FOS to date.

Finally, aggregated data is essential to support stronger engagement with the financial services industry and regulators to prevent problems for consumers who do not use the FOS. The organisation should put in place plans to build the technical capability to support insight-sharing and preventative work.

Management and internal communications

Managers interviewed during this review appear well intentioned, highly committed and professional individuals. Training has recently been focused on key tiers of management, and the new academy approach is an important element of this.

However, staff survey results in 2017 showed significant levels of mistrust and dissatisfaction with senior management. While this is not unexpected during a period of significant change, it is striking that scepticism still exists about senior leadership capabilities.

Ombudsman managers are now the key to operational effectiveness, yet face the most stretch; until late 2017 their recruitment had been widely regarded by junior staff as flawed and inconsistent, while their training and support was not always adequate.

Many newly appointed middle managers and senior leaders have spent much of their careers at the FOS as ombudsmen. Management experience, capabilities and approaches vary at different levels and in different parts of the organisation, and this inconsistency is felt by the large numbers of staff who have moved, or been moved, or given new managers. Staff also feel that responsibility for operational matters is confused and there is a perception that lines of accountability are unclear.

As for internal communications, the approaches to communicating the changes have been widely perceived as poor. Inconsistent and contradictory messages have been commonplace on important operational matters, which was especially unhelpful at a time of significant internal change and external pressure. In the absence of effective communication, rumour has exacerbated the uncertainty and distrust that staff have felt in recent years.

More recently, senior leaders' communications in response to *Dispatches* have, though, been regarded as effective and supportive and new people and approaches to internal communications are now being put in place. It is too early to assess the effectiveness of newly formed internal communications plans, but it is vital that communications and staff engagement experts are central to future change.

It is also crucial for the future of the FOS, given the current and future challenges, that a clearly articulated and prioritised strategic plan is put in place in 2018, informed by a wide range of experience and expertise. People need to feel able to constructively challenge and contribute to the strategy and so this should be a key part of the internal communication strategy going forward. Managers at all levels, but the executive in particular, must give much greater priority to ensuring clear and consistent communication and this should start with a demonstrable commitment to an inclusive style of leadership.

The FOS is about to embark on further significant change as the PPI caseload declines following the FCA time bar decision. The organisation needs to move on, and demonstrate the high levels of staff engagement necessary for its effectiveness. As part of its succession planning, the CEO and board should consider the future size, scope and responsibilities of the executive to ensure it has the full breadth of experience and skills it will need. This should include a realistic assessment of capabilities required, and address any management capability gaps, including leadership and communications.

Culture and morale

FOS staff consistently display strongly-held and positive values and a belief in its mission. Staff survey results in 2017 were positive on commitment, collaboration, and benefits. The culture is strongly centred on 'doing the right thing', is cautious, intelligent, and lawyerly and can be slow or resistant to change. Inherent to an intelligent workforce dealing with complaints is a tendency to analyse and hold strong opinions about operational matters. The workforce overall is diverse, but the FOS has acknowledged that it could do more, including to increase the number of people from black and ethnic minority backgrounds in senior jobs.

As is well recognised at the FOS though, morale has been significantly affected during the reorganisation. There is a widespread feeling that executive-level leadership has become detached and many staff have said that they would find it difficult to challenge the executive. There has been significant turnover in the HR function, including its leadership, although this has now been addressed with a new appointment. But the concerns that remain among staff are exacerbated by a perception that operational leadership at the FOS lacks credibility and accountability. A number of staff turned to posting their feelings about the changes and leadership at the FOS anonymously on an external employer review website.

As well as on the external website, poor staff morale was plainly evident in the staff survey results in 2017. As noted elsewhere in this report, 40 per cent of staff reported feeling stressed or worried about work often or all of the time (compared to a typical rate of 20 per cent). Sixty two per cent attributed this to the organisational changes. Indicators of staff stress suggest there are certain areas that require further inquiry and more work needs to be done to enable management information to help identify and tackle problems in local areas.

Human resources data also show that sickness rates for mental health or stress-related reasons (23% of days lost) appear high, but this may, in part, be because of initiatives to tackle mental health stigmatisation in the work place and to encourage staff to say when this is the cause of their absence. Despite signs of staff unhappiness, turnover rates have, though, steadily declined in the past two years, from 20 per cent in April 2016 to 15.2 per cent in the same month of 2018.

Overall, the culture of the organisation remains strong in positive values, but this requires careful nurturing as morale is rebuilt. There is a range of initiatives to improve staff engagement, but it is too early to judge their impact. Morale now varies across the organisation and it will take a consistent, strategic and expert approach for staff engagement to be returned to satisfactory level across the FOS, including a shift in leadership approach and skills in some areas at senior and middle management levels.

While the lowest levels of morale are unsurprisingly found among teams still subject to the greatest uncertainty about their futures, operational refinements, staff engagement efforts and improved internal communications must be directed at the organisation as a whole. Where morale has improved in the investigations teams, for example, this has been prompted by better internal communications and the introduction of the 70/30 model which enable staff to develop areas of expertise, something which staff there have responded to positively.

The internal Information and Consultation Council (ICC) has a key part to play in representing the interests of the different constituencies across the organisation and providing their feedback to the executive during the next phase of change. Unusually, the FOS has no recognised trade union and so alongside the staff ICC, the executive should consider extending its recent work with a trade union, taking into account union membership levels.

3.3. Finances

Resourcing and funding

The FOS has grown significantly over the last decade, driven primarily by mass claims in PPI. In the current financial year, the FOS has budgeted revenues of £99m for non-PPI work and £132m for PPI-related casework, a total of £230m. Eight firms are the source of about two thirds of all cases. The FOS has budgeted for expenditure of £290m in 2018/19 which will lead to a financial deficit of £60m, which, as had been planned, is funded through utilising accumulated reserves. The budgeted cost per case in 2018/19 is £703, higher than the prior year actual of £613. Looking ahead, the FOS expects the unit cost to rise until the volume of PPI cases reduces to a level where they are able to fully integrate the PPI operation with other areas of work. However, significant uncertainty remains about the scale of any future rise in PPI complaints as the time bar approaches, and the degree of complexity that might be seen.

It was never expected, when the FOS was created, that it would have to deal with 500,000 complaints a year (as was the case in the 2013 peak). The PPI time bar introduced by the FCA now provides a degree of certainty for when PPI-related revenue is expected to fall and how human resources can be matched to demand. Other mass claims have not materialised to anywhere near the volume of PPI.

After mass PPI claims have largely worked through the system, the revenue that FOS currently receives is not going to be sufficient to cover the assumed cost base. The future cost of the FOS is projected to be £120m-140m per annum, depending on complaint volumes and mix. Industry representatives interviewed for this review did not consider FOS costs excessive.

Meanwhile, the reorganisation has not yet reduced the cost of handling each formal case because it has proved difficult to achieve the assumed level of productivity per employee in the new investigation model, and in part because of the cost of more managers and support needs.

The existing funding principles for the FOS include that they should be: fair; broadly proportionate (costs relate to the workload users generate for the FOS); transparent; simple to administer; free to consumers; sustainable over time; provide (within reason) predictable/stable revenue flow; and not create perverse behavioural incentives.

But the present funding regime – a mix of case fees and levy with the greater proportion of funding coming from case fees – neither supports planning as well as it might nor places sufficient emphasis on preventative work. The preventative work the FOS undertakes currently helps individual businesses, the financial services industry as a whole, and regulators to learn from the complaints the FOS sees and stop complaints from coming to the FOS in the first place. Businesses said they valued this aspect of the FOS’ role, but would welcome more, including better trend and data analysis. The current funding arrangements also fail to recognise the value of the very large volumes of information and guidance that FOS staff provide to consumers (approximately 30 per cent of calls do not ‘convert’ into a formal case).

There are a number of potential responses to the funding problems faced by the FOS. It could attempt to reduce the costs of casework, reduce the size of the organisation’s support functions, review the future funding arrangements, or a combination of some or all three of these.

As noted elsewhere in this report, the FOS now has two years’ learning from its new organisational design and greater certainty about the future of PPI. It should, in 2018, project its medium-term costs based on sensible assumptions about case volumes and organisational capabilities, human and technological, required to provide a quality service. The total volume of projected casework should explicitly recognise the demand for information or guidance from consumers that do not convert into formal complaints.

It should also be clear about what is needed to build the right organisational culture, to maintain public confidence, and to become more efficient.

Based on this analysis, the FOS and FCA should consider consulting on a levy funding structure for the FOS that is based on the risk that firms bring to the market through their unfair treatment of consumers as presented by complaints that are not resolved before they reach the FOS. This would more strongly incentivise firms to change their behaviour and remove any perception that case fees inappropriately influence decision making at the FOS. As well as providing for a greater degree of stability to the FOS and firms to enable more effective resource planning, a levy-based funding arrangement would also facilitate an extension of the FOS’ preventative work.

3.4. Governance

Board and executive effectiveness

Overall, governance structures and processes at board level are of a recognisably high standard. The board is deliberately small, with three sub-committees, and has recruited experienced and highly committed non-executives, which has arguably enabled better quality debate but risks overstretch.

As part of its succession planning, the executive and board should assess its composition, effectiveness, capabilities and skills in the light of this review to ensure it has the full breadth of experience it will need for the next phase in the organisation’s transformation. The FOS should also ensure that strong, quality governance processes are the norm throughout the organisation.

Strategic planning and risk

Although there is an annual plan, and multiple lower level strategies, staff and stakeholders struggle to see a clear strategic plan for the FOS that provides an overall framework for future decisions and gives them clarity about the future direction and priorities.

Beneath this, risk identification at FOS has been significantly improved since early 2016, and is now as strong as it should be. But in the early stages of the change programme in 2015/16, while there was a strong case for organisational change underpinned by the risks associated with failing to modernise and make efficiencies, the interdependencies between specific risks inherent to the changes that were made, and the strategic or cumulative risks they implied, appear to have been given insufficient weight by the board during the crucial decision-making period. In leading the development of a new strategy for the next phase of the reorganisation, and as part of its medium-term planning, the board should take this review into account and reflect on and learn from the operational execution of the reorganisation to date.

Whistleblowing

Suitable whistleblowing procedures and practices are in place, and have been tried and tested. This is a vital and healthy part of any organisation, and has been taken seriously by the board. There is, however, a question as to whether, in the present circumstances, staff feel able to use the procedure as currently constructed without worrying about potential personal repercussions.

The board should consider appointing an external provider to facilitate the whistleblowing process, as confidence in the management of the organisation is rebuilt.

Chapter 4

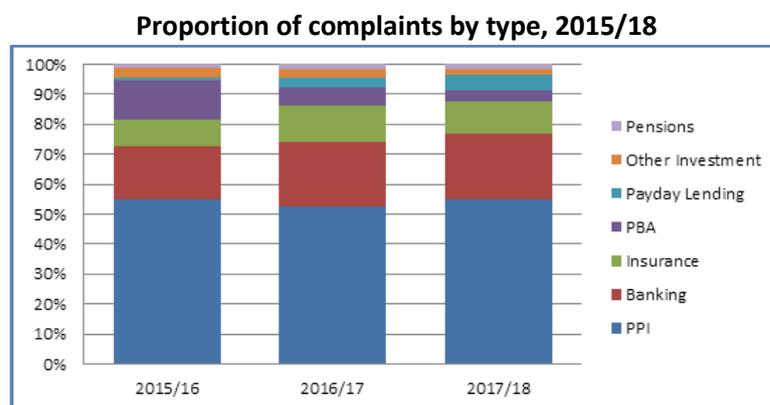
Dispatches issues

This section sets out the 14 issues raised by *Dispatches*, as contained in the review terms of reference, and summarises the evidence found, conclusions and recommendations.

4.1. That some staff are not equipped to deal with ‘complex’ problems, specifically some investment and pension complaints.

Context

The FOS handles hundreds of thousands of cases each year, which can vary considerably in complexity. Though investment and pension cases can be complex, this can also be the case for complaints in other areas as well, for example cases involving vulnerable consumers.



The FOS ‘converts’ complaints that it can consider. Over the last three years PPI has represented over 50% of the complaints that the FOS has converted, with most of the rest comprised of banking and insurance complaints, although payday lending complaints are growing. The chart above shows that there are fewer complaints about investments and pensions than in other areas – they represented four per cent of the cases the FOS received in 2017/18. This means some staff may see them less often; and they can involve larger sums of money, increasing the importance to both parties to the complaint.

Summary of findings

Currently the FOS deals with investment and pension cases in different areas of the organisation. This includes investigations pods, where investigators and ombudsman managers should be multi-skilled; by specific associate ombudsman, who have experience and expertise relevant to these cases; by adjudicators and ombudsmen in a ‘transition support pod’; and by contingent adjudicators (contractors) working in the ‘managed operations’ area of the FOS. In 2017/18 almost half of investment and pension decisions were made by ombudsmen who had previously worked in investment and pension specific areas; one third by ombudsman managers from investigations, and the rest by either specialist associate ombudsman who work under contract, or ‘entry grade’ ombudsmen working in mass claims.

As well as any relevant training and experience, adjudicators, investigators and ombudsmen can make use of knowledge information retained on *Discovery*, and contact experienced colleagues through the use of internal knowledge helplines. Currently many investment and pension cases are ‘red flagged’ – which means they need to be handled in specific areas where more experience is held – or ‘yellow flagged’, in which case investigators and ombudsman managers should seek support before working on them.

There is a range of formal and informal quality checks that are carried out on the work of ombudsmen depending on the type of case involved and the experience of the ombudsman themselves. As ombudsman managers in the investigation pods are building up their experience on a wide range of products there is a proportionately higher level of checks being undertaken. In 2017/18 a quarter of decisions made in investigation pods were peer reviewed before they were issued, and quality assurance checks were carried out on one in six decisions that had been made. For more experienced ombudsmen now working in the transition pod, or as associate ombudsmen (paid per case), the level of formal checking is much more limited, but there is a significant level of more informal checking. However, this was not recorded in a way that could be quantified for this review. The way checks are undertaken is also different depending on which part of the organisation the work is conducted in.

The FOS is also altering the structure of its investigation area, with four ‘pods’ within investigations taking a lead in dealing with investments and pensions to help build up the relevant experience for the future. Over time it is planned to scale down the support from the transition pod as these areas are assumed to become self-sufficient.

During the period of the transition from the old operating model to the new, the FOS has put in place a number of mitigations to reduce the risk relating to complex cases (including those relating to investment and pensions), as experience and support mechanisms for the investigation model are built up. These mitigations, and the quality scores on investment and pension cases, suggest that risks to casework quality that could have arisen from the changes were appropriately managed by staff. However, this is not a sustainable longer term approach, and the FOS is seeking to address this through concentrating expertise relating to more complex areas in specific investigation pods.

The current approach to delivering views for complex cases is somewhat fragmented with different parts of the organisation handling cases under different management approaches and with different oversight mechanisms. While this range of approaches offers the FOS more flexibility for case handling – which is important given the fluctuations in complaint numbers, and the type of complaints it sees – it does make it more challenging to get a consistent view of quality across the FOS.

Recommendations

The recommendations on ‘casework capability’ in chapter 3 are relevant to this issue. In addition, the FOS should review its approaches to providing formal and informal quality assurance and support to investigators, adjudicators and ombudsman –

including in its contingent operations – to ensure that a consistent and comparable approach is used across all areas, adapted for the level of risk involved.

4.2. In the case of a complaint about fraudulent activity on a bank account, there was a failure to ask for detailed information about the account's transaction history.

Context

In a specific case related to a disputed transaction, the FOS issued an initial view that did not uphold the complaint. This was not a binding decision; either the consumer or business could still refer the case to an ombudsman. A representative for the consumer contacted the FOS to make further representations, which were passed on to the bank. The bank then agreed to refund most of the loss. The consumer accepted this settlement and the case was closed.

Summary of findings

Because of the constant development of techniques to defraud people, the FOS needs to continually consider its approach. Disputed transaction cases are 'red flagged', which means they need to be dealt with by specific teams which have prior experience of dealing with these types of complaints. There is guidance to staff provided on *Discovery* about this issue and also on specific scams, which is updated as the nature of fraud and scams develop.

The rules which apply in this area mean that businesses can reject complaints from consumers when they are defrauded if they consider that the consumer was 'grossly negligent', for example if a PIN was given away. But the differing nature of scams means the threshold for gross negligence needs to be under constant review, and this is something the FOS is considering when complaints in this area are brought. In addition, there is work in progress to develop an industry code for the reimbursement of consumers suffering from authorised push payment scams. This will assist the FOS in assessing complaints, and is expected to be in place in September 2018.

In this case the FOS did have the relevant transaction history from the bank. It is not within the scope of this review to determine what a fair outcome would have been on this case. But the salient facts are that, at view stage, the FOS was not going to uphold the complaint; the customer and their representative did have the option to refer the case for ombudsman consideration; but before that occurred, the bank provided a good will payment and the consumer accepted the matter as closed.

Recommendations

The FOS should ensure that it clearly and consistently communicates its process for handling cases to consumers, including the right to refer a case for an ombudsman decision. This should be done orally and in writing, with mandatory standard wording.

4.3 That awards for distress and inconvenience are not calculated by using a 'formula'.

Context

As well as being able to award compensation for financial loss, the FOS is empowered to make money awards for 'distress and inconvenience' under the dispute resolution rules within which it operates.⁵ Where a money award is made in a final decision and the consumer accepts the decision, the financial service business is bound to pay the award, subject to any legal challenge. Where there is evidence a payment has not been made, a consumer can seek to enforce payment of the award through the courts,⁶ and the FOS can also make a referral to the FCA – which does have the power to withdraw authorisation for the business to operate.

Summary of findings

The FOS refers to payments encompassing financial loss, pain and suffering, damage to reputation and distress or inconvenience as 'trouble and upset'. The current approach appears to date from 2014, when a review was conducted and updated guidance and training were issued. The FOS has published its approach to trouble and upset on its website, and notes that although some cases might look similar, the impact on the individual can vary depending on their circumstances, and this is what is considered.

The FOS does not use a 'formula' to calculate the amount of trouble and upset compensation that should be awarded in a given case. It provides guidance internally for staff on its knowledge management system, *Discovery*. This sets out a range of considerations to be applied to cases where it might be appropriate to make an award; and although a formula is not used, there are bandings with numerous examples of the type of issue that might lead to a particular level of award. As such, there is clear guidance designed to balance consistency with the need to make individual decisions on the merits of each case. It is clear - according to FOS records - that this guidance is well used; on average the eight pages of guidance for trouble and upset on *Discovery* have been accessed a total of 4,367 times a month so far in 2018. Where an award for trouble and upset is made, caseworkers are required to record this – and the amount – on the casework management system.

All new caseworkers joining the FOS are now undergoing training in its academy on trouble and upset. This can apply to any case brought to the FOS, so existing staff should be experienced in considering it, and it can be identified as an issue in quality assurance reviews of cases. However, there is not a specific check regarding whether it has been appropriately applied.

Overall, the approach taken, and its accompanying guidance, is clear and appropriate. As with any policy, however, there is a risk that it might be applied inconsistently. The quality assurance framework does not check these awards specifically, so it is difficult to give assurance about the consistent application of the approach.

⁵ DISP 3.7.2 ([link](#))

⁶ DISP 3.7.13 ([link](#))

While the FOS prepared useful e-learning modules on trouble and upset in 2014, only three hundred staff completed these before they were added to the academy training. Most staff should be familiar with considerations for trouble and upset, both when making awards themselves or reviewing work by others (for example through quality assurance), but there is clearly a need for refresher training to ensure their approach remains in line with the organisational policy.

It is also unclear as to when caseworkers should make a record of trouble and upset payments being awarded. This means that, in practice, caseworkers sometimes record trouble and upset when the business has made an award but the complaint has not been upheld; or in cases when the complaint has been upheld but no change has been made to an award proposed by the business. While the FOS reports annually on the number of times it has 'awarded' trouble and upset, the data is drawn from any case where there has been a 'change in outcome' and an award has been made. In reality whether the FOS has really 'made an award' can be a difficult judgement on any individual case; with some cases involved mediated outcomes where the business may have offered compensation and the consumer has accepted this with the FOS needing to make a determination that this is fair and reasonable. So it is difficult to determine whether caseworkers are becoming more or less likely to propose awards over time.

Finally, the size of such awards has attracted comment. There is evidence that the awards are not out of step with practice in other alternative dispute resolution schemes with awards typically averaging in the low hundreds of pounds for most schemes where such information is published. By comparison, in 2017/18, while almost 90% of the awards recorded by the FOS were in the 'up to £500' bracket, over 10% were for higher amounts. But the FOS should review its approach to this for the future, especially to take account of where a consumer has had a protracted dispute with a firm involving considerable sums of money.

Recommendations

The FOS should review its approach to training, guidance, review and monitoring to ensure it has sufficient assurance that caseworkers are applying trouble and upset payments in line with the organisational approach. The FOS should review the size of awards it can make in future to ensure they are up to date and proportionate to the nature of the complaint in question.

4.4 That the application for the provision of 'exceptional circumstances', to extend the time limits under which a consumer may make a complaint, is not appropriate.

Context

The FOS has a duty to consider complaints in line with the DISP rules under which it operates. This remit includes certain time-based limits on when complaints can be brought.⁷ In short, a consumer must give a business time to respond to his complaint and must bring his complaint to the FOS within a stipulated timeframe. If the complaint is brought outside that time frame then the FOS cannot consider it.

⁷ DISP 2.8.2 ([link](#))

However, the DISP rules allow for these limits to be extended where there are 'exceptional circumstances'.

Summary of findings

The FOS has a guidance note set out on its internal knowledge management system, *Discovery*, which explains the relevant time limits and the sorts of circumstances which might qualify as exceptional, or not. It also provides training for all new staff in its academy, which includes case studies considering different circumstances, and which might count as exceptional. Existing staff need to consider jurisdiction on every case. However, there is no specific training currently applied to more experienced staff, and although quality assurance checks do consider time limits in jurisdiction within investigation, there is no specific question or reference to the application of exceptional circumstances.

The FOS has put in place a 'jurisdiction practice group' which can help determine policy and process, and provide assistance, for issues around jurisdiction – including through provision of a helpline. Previously, in 2013, a specific tool was created to aid jurisdiction decision making in PPI. This provides assistance with both the application of appropriate time limits, and also provides prompts in relation to the potential applicability of exceptional circumstances.

A review exercise was carried out in August 2017, when a sample of 40 cases were checked for how jurisdiction rules on time limits had been applied. In a number of cases reviewers felt the reasoning or approach could have been better, including around considering exceptional circumstances. The review was presented to a committee of senior staff and a number of recommendations made, with two so far implemented and two more to be undertaken in 2018/19.

Ongoing quality assurance reviews in the investigation area identify around one per cent of cases where there might be issues with the investigator or ombudsman manager's approach to jurisdiction. The data obtained does not show whether or not this relates to exceptional circumstances.

Recommendations

Given the importance of this issue for casework, there should be mandatory refresher training and testing for all staff on jurisdiction and time limits. The FOS should complete the implementation of the recommendations arising from the 2017 internal review and undertake a follow up exercise to determine if improvements have been embedded. The standard quality assurance approach should be amended to include reference to exceptional circumstances, and the FOS should undertake a 'deep dive' to quantify any ongoing issues.

4.5 That staff are biased against some complainants, specifically those who complain about credit card and PIN fraud and those who complain about payday loans.

Context

The FOS considers fraud related complaints, where sometimes it is difficult to obtain conclusive evidence on what has occurred; and payday loan complaints, where lenders may have provided loans to consumers inappropriately. As with all complaints, the FOS is required to resolve such disputes on a fair and reasonable basis – without bias.

Summary of findings

Disputed transaction cases are flagged as needing to be dealt with by specific individuals who have prior experience of dealing with these types of complaints. There is guidance provided on *Discovery* which is updated as the nature of fraud and scams develop. And, as noted above, the developing nature of such scams also means the FOS needs to continually consider its approach. Complaints can be turned down if the FOS judges that a consumer was ‘grossly negligent’ when being defrauded, for example if a PIN was given away. But the differing nature of scams means the threshold for gross negligence needs to be under constant review. And there are also potential considerations around the individual circumstances, including vulnerability, of the consumer involved.

Payday loans are dealt with in a specific area of the organisation as a ‘mass claim’. There is a well-established approach that ensures a level of consistency when considering what level of checks payday lenders should have been carried out before making a loan to a consumer.

In the area of disputed transactions, the FOS identified a need to look again at the thresholds around gross negligence following developments in scams. This had been identified through a combination of quality review of relevant cases and through comments provided by customer representatives. As such, at present the wider policy approach is being considered and a number of cases are being managed with more central oversight.

The approach to payday loans that the FOS uses is predicated on the lender’s responsibilities, rather than the spending habits or lifestyle of the people being provided the loans. As such, bias relating to these areas should not be a relevant factor in decision making. The tools used to help determine whether suitable checks were carried out should ensure an appropriate degree of consistency in this area.

The Independent Assessor appointed by the board to consider service complaints arising from casework issues an annual report on her findings. Her findings for 2017/18 state that, while some consumers have complained of bias, she has not found evidence of this in any of the cases she has reviewed.

Recommendations

The recommendations on ‘preventing bias’ in chapter 3 are relevant to this issue.

4.6 That the provisions which require banks to be ‘positive and sympathetic’ are not applied correctly.

Context

Regulations in place governing lending activity by banks set out the circumstances in which banks should take a ‘positive and sympathetic’ approach to dealing with consumers in financial difficulties. This might, for example, determine the approach taken to setting out a suitable repayment plan. The FOS can consider the bank’s approach when considering what is fair and reasonable in respect of a consumer complaint.

Summary of findings

The FOS has an internal guidance note on *Discovery* which sets out wider considerations around financial difficulties. This note explains the requirements around banks being ‘positive and sympathetic’, and sets out some examples of what this might look like. There is no specific training or quality assurance activity relating to the application of these rules.

Following the airing of *Dispatches* the FOS reviewed its approach and identified that some of its internal guidance needed updating in the light of some changes in the relevant governing regulations. A review to consider whether any consumer detriment may have occurred as a result of referring to previous regulations was being finalised at the time of publication of this review. The emerging findings indicated some minor guidance changes were required but did not identify any evidence of consumer detriment having occurred.

Recommendations

The FOS should complete its sample review of cases to determine if there was a risk of consumer detriment, and address any issues identified.

4.7 That the ability to require a debt to be written off is not applied correctly because of a reluctance to set a precedent.

Context

A debt write-off is in effect a money award, so the FOS can write off up to £150,000 in theory. In a case where lending by a financial business has been judged to be unaffordable or inappropriate, the FOS is able to ask the financial business to take steps to put things right. This can include, if it is fair and reasonable to do so, requiring the business to write off debt.

One of the requirements of the FCA’s DISP rules is that a financial business takes previous decisions by the FOS into account when handling complaints.⁸ Firms are also required to identify ‘(from its complaints or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service’ and put them right for other

⁸ DISP 1.3.2A

customers.⁹ FOS is required to take the individual circumstances of each complaint into account when making a decision. Subject to the DISP rules referred to above, FOS final decisions do not represent a formal legal precedent, although they may be indicative of a 'pattern' or approach.¹⁰

Summary of findings

If the FOS upholds a complaint in relation to lending to a consumer, there is a range of potential outcomes that the FOS can require, including cancellation of interest and charges, which may have the effect of writing off debt owed by a consumer. Writing off the actual original debt, rather than interest and charges (or requiring a different repayment schedule) is uncommon because it is usually assumed that the consumer would have at least benefitted from the loan itself if they had made use of the money. However, internal guidance to ombudsman staff does make clear that there are circumstances where write off of the original debt – not just the interest and charges – can be fair and reasonable, but recommend consulting a practice group to discuss the details, for example, if there is clear evidence to suggest the credit should never have been extended in the circumstances.

The FOS generally takes a different approach when issuing a decision that is clearly relevant for other existing or future complaints. The casework development pod will often take the lead on this work, with support from senior decision-makers and the FOS' legal department, to ensure that the ombudsman concerned has the appropriate support.

The FOS does not hold specific data on the number of times debt write-off has been decided as the fair and reasonable outcome of a case. This kind of award would cover a number of different scenarios across different products – so it is not possible to identify any trends in this area. But in any case, FOS internal guidance is clear that this would only occur in exceptional circumstances. More widely, it is clear that making decisions which can have wider ramifications is something the FOS frequently does.

Recommendations

The FOS should ensure its guidance is clear and up to date, that caseworkers receive refresher training on how to handle debt write-off and that it gathers data to enable better quality assurance of casework involving this issue.

4.8 That the 'pressure ... to deal with caseloads quickly' meant that it is more likely that cases would be decided in favour of the banks.

Context

The FOS was set up to resolve complaints fairly and reasonably, but also quickly and informally. It is a certified provider of ADR, which means that it has standards for timeliness that it needs to meet. As such, and given the need to obtain value for money

⁹ DISP 1.3.6

¹⁰ DISP 1.3.2A(2)

from its resources, the FOS needs to balance the need to provide fair and reasonable answers with the need to resolve cases in good time.

Summary of findings

The FOS measures its timeliness for resolving cases by reporting on the proportion of cases which it resolved within 45 and 90 days (with 90 days being the ADR directive target). One of the ways it has performance managed staff in relation to this is by looking at productivity, measured by the number of cases resolved each week. A case only counts as resolved once the FOS has no further action to take, so a frontline investigator, for example, can issue a view on a case, but if the consumer or business refers it to an ombudsman, it remains open until the ombudsman has made a decision. As such, high referral rates for any individual would make it harder for them to reach their productivity targets.

Following the establishment of the investigations model, caseworkers in investigations were set a target to resolve five cases a week, assuming they were working full time (and intended to be adjusted over the year for holidays and other absences). In August 2017, the target was reduced to 3.5.

Two pieces of analysis were conducted to get a sense of whether target pressure could lead to bias in outcomes. The first was to analyse whether there was any significant change in uphold rates after the target for investigators was reduced. In theory, if target pressure was reduced and the allegation was correct, an increase in uphold rates would be expected. In reality, the analysis showed hardly any variation, with uphold rates remaining consistent. This suggests that the prior increased target pressure did not lead to this sort of bias at any level that could be evidenced.

The review also examined referral rates to ombudsmen when the investigator's view went against either the business or the consumer. Over the last two years consumers have, on average, been twice as likely to refer a case for an ombudsman decision as a business has.

There are two product areas where this is not the case. Businesses are more likely to refer to an ombudsman for payday lending cases – but the normal uphold rate here is high, and as noted elsewhere, there is evidence of controls in place in this area to reduce the risk of bias by caseworkers. Referral rates from businesses and consumers for pension cases have been fairly similar over the last couple of years.

As noted above, a case cannot be counted as resolved, and therefore contribute to an investigator's target, if it is referred to an ombudsman, until that ombudsman has made their decision. And an ombudsman who picks up a case will take into account the work undertaken by an investigator, which should act as a form of quality check and can highlight inappropriate behaviour. So overall, the data suggests that rejecting a complaint is more likely to impact performance against productivity targets than upholding it.

One area where the FOS has yet to modernise its quality reviews is in checking whether some valid complaints might have been turned away and not registered in the first

place. This would be very difficult to identify without a significant amount of quality reviews of the hundreds of thousands of calls that the FOS receives every year.

Recommendations

The conclusions and recommendations in chapter 3 on casework objectives, reorganisation and quality assurance are all relevant here. The management approach to productivity should focus more on quality, learning, technological support, motivational team building. There should be a realistic view of productivity targets that enable robust, high quality casework. The FOS should explore automated solutions – such as voice analytics – that could provide better information about how initial calls are handled. This should include consideration of whether it is possible to identify inappropriate call handling that could result in consumers not being able to register valid complaints.

4.9 That in 2014/15 11,000 PPI complaints were not dealt with for two years.

Context

PPI is one of a large number of different types of complaint the FOS has dealt with in its history, but the volume of complaints received compared to other product areas is vast. This stemmed from a decision by the then regulator, the Financial Services Authority, not to impose a mandatory consumer redress scheme on firms that had clearly mis-sold PPI to consumers on an industrial scale. This would have required banks and others to refund consumers proactively, rather than rely on the FOS to handle the ensuing flood of complaints.

Since 2011, the FOS has resolved over 1.6 million PPI cases, an average of over 200,000 a year over that period. It has awarded compensation in over one million PPI complaints. In order to deal with the PPI caseload the FOS has had to significantly increase in size, but even then this was not proportionate to the scale of increased caseload that PPI represented. Along with a number of external factors that impacted the FOS, this meant that at times there were significant delays in dealing with a large number of cases. Section 4.12 provides more detail on this.

Summary of findings

On receipt (whether by post or email) complaints are assigned unique case reference numbers. PPI work in 2014 operated on a task basis rather than through case ownership, so tasks on individual cases would be allocated to caseworkers to undertake, and once completed the cases would return to a holding pool until another task could be assigned. A central team monitored the number of incoming cases and the number retained in pools at any one time.

There are over 23,000 cases more than 24 months old, at the time of this review. During the period in question there were significant delays for a high number of PPI cases, and the FOS explained this in its public facing documentation and in letters to consumers. There is no evidence about delays in PPI that is further to what is already in

the public domain. The FOS has set out in its annual plans how it intends to deal with the backlog, taking into account the FCA time bar and Plevin decisions.

Recommendations

The FOS should work to ensure consumer confidence in its PPI redress service, more clearly explaining the causes of delay in resolving cases and trends in uphold rates. The FCA should note the impact on the FOS of the decision not to impose a consumer redress scheme on firms, and take this into account in any future decisions about large scale consumer complaints.

4.10. That in both 2015 and 2016 1,000 letters were found to have been unopened, some of which were two years old.

Context

The FOS receives thousands of complaints each week, and during the peak of the PPI complaints period, could receive up to 8,000 items of post a week.

Summary of findings

Since 2012 the FOS has had in place a stable process for managing the large volumes of post arising from PPI complaints. This works on the basis that all incoming post is scanned into an 'e-file' system on the day of receipt. The FOS pays for an early morning delivery from Royal Mail which arrives at around 7am. All post items are opened on the day; where they were not complaint related, they are directed to the relevant department. Where they are complaint related, they are barcoded and scanned into the e-file system on the same day. The hard copies are retained on site for around two months and then archived off-site.

There are a number of controls in place to ensure that the post scanned into the system can be reconciled to the post receipted at point of entry to the FOS. The FOS operates a policy of having no outstanding mail at the end of each working day, with the exception of any late mail (for example if couriered).

As part of this review, members of staff responsible for the post room and other post room staff were interviewed, all of whom had worked at the FOS since before the alleged incident. None had any recollection of 1,000 items of post being left unopened. No evidence has been found to support the allegations of unopened post, and from a review of the post-room procedures and physical environment, the allegation appears implausible.

Recommendations

None in this area.

4.11. That if targets were missed, the pay or promotion of investigators could suffer.

Context

The FOS has finite resources and receives hundreds of thousands of complaints about financial services each year. In order to provide a quick and informal service, and avoid building up a backlog of complaints, it needs to resolve complaints on a timely basis.

Summary of findings

The performance management approach up until the end of 2017/18 involved mid-year and end of year reviews, with five ratings: two that are effectively 'unrated' because someone is new in role; and three substantive ratings: not meeting, meeting or significantly exceeding expectations. Staff meeting expectations within the salary range for their role receive the same percentage increase in pay; in 2017/18 this was 2.5 per cent. Staff significantly exceeding expectations received a higher pay increase, with the actual rise depending on their placement in the salary band for their role. Lower paid staff may be eligible for proportionately larger pay rises. All staff are also eligible for a collective reward; with a standard payment for most staff, and an enhanced payment for those significantly exceeding expectations.

The FOS has set targets for caseworkers for a number of years. For a period, investigators were set a target of five cases a week, assuming they were working full time (and intended to be adjusted over the year for holidays and other absences). In August 2017, the target was reduced to 3.5. For investigators, performance management reviews are predicated on assessment in four different areas, one of which includes productivity. The performance management regime also includes a number of other areas of assessment. Investigators are not able to progress through grades within investigation unless they are meeting assessment levels across all relevant areas. The FOS carries out internal consistency checks at various levels to reduce the risk of bias in this area.

The FOS is revising its approach to performance management in 2018/19, with more focus on continuous performance management and coaching than formal reviews twice a year.

Performance against targets is relevant in terms of being able to achieve progression and potentially promotion, but as part of a balanced array of performance. As designed, the system should ensure a proportionate focus on meeting targets to enable progression; that does not necessarily mean that the targets themselves are at the right level, or that the performance management system is applied consistently fairly.

The FOS staff representative body highlighted in 2017 that some staff, particularly investigators, had concerns about whether progression was fair or sufficiently based on merit. Performance management can be an emotive and subjective area, and as noted elsewhere in this review, ombudsman managers and investigators have been under pressure in adjusting to the new model, and some ombudsman managers had limited recent line management experience. It has not been possible to determine

within the scope of this review whether the performance management system has been applied unfairly, but if a significant number of staff feel the process is unfair, then that presents a problem whether it is the reality or not.

Recommendations

The FOS should review its approach to performance management. It should consider how to address staff concerns, for example through stronger consistency checks and training.

4.12. That there is a major backlog of PPI complaints.

Context

Dealing with PPI complaints at scale has been the principal challenge of the last decade for the FOS. PPI was widely mis-sold, and there were likely to have been upward of 64 million policies sold in total. At times the number of new complaints made to the FOS about PPI has dwarfed the number of complaints in other areas, at one point reaching a peak of around 14,000 cases per week. Dealing with this massive increase in complaints led to severe operational strain for the FOS; for any organisation with limited funding, dealing with this level of change would inevitably lead to delays to usual timescales. The volume of open cases and older cases has reduced since its peak, but the backlog has not yet been resolved.

Summary of findings

The approach FOS has taken in this area has been publicised both in its own public-facing documentation and in two separate reviews that have been carried out. The FOS trebled in size to enable it to deal with the surge of complaints, and set up new systems and processes to enable it to deal with PPI as a 'mass claims' issue, where many similar complaints could be received, and therefore resolved in a consistent manner.

There have been significant delays in dealing with large numbers of PPI cases, and there remains a backlog of cases to deal with, but it is clear that the FOS has been transparent about this from the outset. Many of the factors leading to this have been outside the control of the FOS, for example a high court judgment which ultimately led to the FCA issuing rules and guidance on how commission levels on PPI products should be treated. This prevented the FOS from resolving some cases for over a year, with an inevitable impact on timeliness and an increasing backlog.

Two reviews have previously been published looking at this area. In 2016 the NAO concluded that the FOS had 'continued to provide an effective service to complainants' during this change, 'without any evidence of a fall in the quality of its decision making'. But the NAO also noted that despite almost halving the number of open cases, almost 40,000 cases had been open for over two years, and only 52 per cent of complainants agreed the FOS settled disputes in an acceptable length of time.

Richard Thomas also carried out an independent review in 2016. This was positive about the strategic decisions the FOS had made and the way it had implemented them, while noting the delays were unwelcome for consumers and firms. The length of time that some consumers and firms have had to wait for answers to PPI complaints is far from ideal, but previous reviews have stated that, given the scale of the challenge, the FOS has dealt with this well.

Uphold rates for PPI complaints have reduced to 36% in 2017/18 (excluding cases affected by *Plevin*). The trend towards lower uphold rates has been assessed by the FOS, with the conclusion that it is a consequence of dealing with a long tail of complaints but – importantly – that firms have improved their PPI complaints handling in the first instance to take into account FOS decisions. The FOS has ongoing discussions with businesses to draw attention to areas where their complaint handling can improve, including with reference to existing decisions (for example where publicised through ‘*ombudsman news*’). Better complaint handling by businesses can lead to a reduced number of cases going to the FOS, and the cases that do being more finely balanced. While the impact of the *Plevin* judgment complicates matters, the FOS’ analysis of uphold rates indicates that, over time, businesses have on the whole been dealing with PPI complaints more effectively.

Recommendations

Wider recommendations in chapter 3 relating to funding and casework targets are relevant to this area, as is the recommendation for the FCA in 4.9 above.

4.13. That some PPI complaints were wrongly rejected because, although it was concluded PPI had been mis-sold, it was assumed that the cover would have been useful.

Context

The *Dispatches* programme featured a consultant to a claims management company (CMC) that fundamentally disagrees with the approach taken by the ombudsman service to PPI complaints. In very broad terms, the CMC’s view is that no reasonable consumer would have taken out PPI because of what it considers to be the poor value of the policies. Therefore, the CMC concludes that in (almost) every case the consumer should get their money back. Cases where compensation has not been awarded must, in the CMC’s view, be wrongly decided, and the CMC believes that the ombudsman’s approach amounts to a systemic failing.

The CMC has threatened the FOS with legal proceedings on a number of occasions, and the review has received detailed correspondence and documents setting out its concerns. The CMC and its consultant have been clear in meeting the independent reviewer that it intends to air these concerns in full in court through a judicial review of the FOS. In response, the FOS says that it strongly disagrees with the CMC, and will continue to progress PPI cases in line with its usual process. This assessment would ordinarily include the nature and extent of the seller’s failings, the type of policy and cover provided, the consumer’s wider circumstances, needs and risk appetite.

Summary of findings

It is clear that the CMC's objections go to the heart of the way the FOS has approached its assessment of over 1.6 million PPI complaints since 2011. The process which the FOS has put in place to assist it in resolving PPI complaints seems to be appropriate and proportionate to achieve fair and reasonable outcomes in a consistent and legitimate manner on a large scale. But it would be wrong for this review to comment on how those processes have been applied in individual cases. The CMC is able to pursue this through its proposed judicial review.

There are, of course, implications for the timely handling of complaints made by other consumers of this protracted legal dispute. The FOS was not created with a view to dealing with multiple legal challenges by intermediaries claiming to represent the interests of many thousands of consumers.

Recommendations

Since this is the subject of an ongoing dispute between a CMC and FOS about the law, the matter should be decided by a court, not this review. The FCA, however, should take this matter and the consequences for other complainants into account in its future approach to the regulation of CMCs.

4.14. That when Rushanara Ali MP visited the ombudsman service in 2015 she 'was misled, that managers preselected and rehearsed cases to make the service appear more professional'.

Context

Rushanara Ali MP visited the FOS in 2015. Ms Ali is the MP for a nearby constituency, and a member of the Treasury Select Committee.

Summary of findings

All organisations prepare for meetings, and it is to be expected that this would include high profile visits from MPs. The FOS continues to arrange meetings with MPs to help to inform them about its work and the insight obtained from it. The FOS is clear when setting up meetings that it would not be appropriate to meet to discuss the details of an individual case, as it wishes to protect its statutory independence in decision making, and data protection considerations can also apply.

The FOS did prepare for the visit by Ms Ali, setting out a schedule of meetings and visits to view frontline work. Briefings were prepared and provided to staff taking part in the day, including providing information on areas of potential interest. Having reviewed these briefings and interviewed staff involved in handling the visit, the arrangements for this visit appear to have been normal and appropriate.

Recommendations

It is important that the FOS continues to engage with key decision-makers, including Parliamentarians, to ensure the best possible understanding of its work and the implications of its insight for effective regulation and primary or secondary legislation.

Operating environment in 2017/18

The Channel 4 *Dispatches* programme was filmed and aired in the 2017/18 financial year. The following commentary provides an overview of the prevailing internal context during that time, and some of the more relevant external developments. This context forms an important backdrop to the review findings.

April, May and June 2017

In the first quarter of 2017/18, the first teams to join the new investigation model had been in operation for a year. The setup of the investigation area was nearing completion as the third 'wave' of investigators and ombudsman managers came to the end of their training. The fourth wave of investigators joined the existing pods throughout May and June.

Early in the first quarter, responsibility for taking incoming calls from consumers passed from the Customer Contact Division (CCD) to the investigation pods. The majority of CCD staff elected to take on roles in mass claims.

The practice groups, made up of subject experts on different areas of casework, were established at this point, along with casework clinics working across different pods, and more material was added to the internal intranet guidance on casework, '*Discovery*'. The first phase of '*Phoenix*', the new customer-centric case handling system, was released and this provided a new 'front-end' interface. The existing system continued to provide the main case-processing function. In terms of overall operational and financial performance, new cases and resolutions were slightly above budget. Just over 50% of general casework and mass claims cases were being resolved within 45 days (against a target of 50%). The timeliness for non-*Plevin* PPI cases (*ie* those that didn't require *Plevin* rules and guidance from the FCA in order to progress), was falling behind, as was timeliness in general casework as volumes increased.

Overall business satisfaction was 82%, and overall consumer satisfaction (for both upheld cases and not upheld cases) was 67%. The Financial Conduct Authority (FCA) finalised the rules and guidance for cases affected by the *Plevin v Paragon Personal Finance* judgment regarding PPI sales and commission, and on a time bar for complaints about PPI. While this provided more certainty, the planning environment was still volatile.

The FOS published its annual review for the year 2016/17 in May 2017. Alongside PPI, which continued to represent a very substantial part of its work, the review highlighted the growth in complaints about consumer credit.

July, August, September 2017

In the second quarter of 2017/18 the internal and external recruitment of investigators and ombudsman managers was completed. The new Academy was being set up and a 70/30 model was under development which would provide for investigators to spend 70 per cent of their time on all types of general casework, and 30 per cent of their time on specialised or complex areas of casework. More casework content was added to *Discovery* and the data showed increased usage.

In August 2017, the FCA's rules setting a deadline for PPI cases and for *Plevin*-affected cases came into force. The FOS was included as an interested party in a legal challenge to these rules from a claims management company, which was subsequently refused permission by a judge. At this point, approximately 160,000 *Plevin*-affected cases were on hold. In July, the staff survey results were shared with staff and published on the FOS' website. As discussed in this report, the results showed, amongst other things, very poor staff morale stemming from the changes that were being made and widespread mistrust of senior management.

Three new non-executive directors were appointed during this quarter.

October, November, December 2017

In the third quarter of 2017/18 the transition support area and Academy pods were established to provide additional support to the investigation pods. At this time, more general casework cases were being resolved than received, but timeliness across the board and overall general casework resolutions were behind target.

Plans for the 70/30 model were continuing to be developed. The FOS' new Friargate office in Coventry was opened during this period too.

Staff in mass claims were updated on the outlook for work and were told that there would be no mass redundancies in 2017/18. Staff there were told that the options open to them were to apply for roles in investigation, help do PPI casework until the end, take on roles in the transition support area, or leave. The establishment of the transition support area went live in December.

In Q3 operational performance was under pressure. *Plevin*-affected PPI cases were progressing, but timeliness remained behind target.

January, February, March 2018

In the final quarter of 2018, the plans for the 70/30 approach were finalised. Adjudicators and ombudsman were continuing to work with practice groups to transfer and retain knowledge. Building on existing support for staff on vulnerability, new Money Advice Trust training was rolled out and a new practice group on support for helping vulnerable customers was set up. Following on from the earlier communication for staff in mass claims, a programme was set up to help staff understand more about, and work towards, roles in investigation or as entry grade ombudsmen.

A 10 week action plan was put in place towards the end of the financial year, as performance had fallen behind operational targets. At the year end, the operational metrics showed strong performance in some areas, but a shortfall against targets in others. More cases were resolved than received, but not as many as set out in FOS' budget; customer satisfaction remained high; performance against quality measures was the highest it had been; but timeliness targets were not met.

The FCA published a consultation paper (CP 18/3) on access to the FOS for larger SME customers than provided for under its current jurisdiction. In this last quarter of the financial year, the *Dispatches* programme which prompted this independent review aired.

Review methodology

The methodology for the review included interviews with members of staff from across the organisation. Those meetings were held on an entirely confidential basis where requested. The independent reviewer weighted time towards staff on the ‘front line’ of complaints handling, but also met managers responsible for decision making, and held several meetings with the Information and Consultation Council (ICC), a body that represents staff at the FOS. In total, well over 70 members of staff were interviewed while carrying out the review, the majority with individuals, with a smaller number of group discussions.

The scope of the review is, of course, relevant to a large number of external stakeholders, many of whom had useful evidence to contribute. The reviewer met with Parliamentarians, representatives from businesses that deal with the FOS, with trade bodies, and with policy makers in government and the wider regulatory landscape. More than 20 such meetings were held during the course of the review.

To better understand the perspectives of consumers, the independent reviewer held a two-hour round table event with a randomly selected group of people who had recently used the FOS. The reviewer was also contacted by a number of consumers who wanted to provide feedback on their experience of using the FOS.

The methodology included analysis of internal and external documents and data. As well as published material, a large number of internal documents were requested and accessed including the relevant board papers. In tackling the issues laid out in the terms of reference, both quantitative and qualitative analysis was carried out where it was useful and appropriate in helping to answering the questions raised.

The independent reviewer is very grateful for the time of everyone who contributed their views and insight.

Internal interviews and document review

- Interviews with more than 70 FOS staff, from across all departments in London, weighted towards frontline functions
- Observation of frontline teams, including call listening and use of digital tools
- Review of confidential written representations by staff members
- Discussions with board members (non-executives)
- Three meetings with the staff Information and Consultation Council
- Discussions with auditors and management consultants
- Review of board papers and minutes
- Review of internal assessments, plans and data on knowledge, quality assurance, risk management, reorganisation and other key areas of operations
- Financial modelling
- Auditor reports
- Independent Assessor reports.

External interviews and document reviews

- Consumer engagement session with a group of 12 recent service users
- Review of written representations by consumers for relevant non-case specific lessons
- Meetings with FCA and HM Treasury
- Meetings with Parliamentarians
- Discussions with industry bodies including UKF, ABI, CFA, PIMFA, CCA and one CMC
- Discussions with consumer advice and debt charities
- Meeting with Channel 4 and Nine Lives Media (*Dispatches* programme makers)
- Discussions with ADR and consumer policy experts
- Review of relevant external reports including NAO, 2016 and Richard Thomas, 2016 on PPI, and MoneySavingExpert, 2017 on ADR.

Terms of Reference

Independent review commissioned by the Board of the Financial Ombudsman Service.

Terms of reference

About the Financial Ombudsman Service

The Financial Ombudsman Service was created under the Financial Services and Markets Act 2000, which provides for an ombudsman scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person. The ombudsman scheme is administered by a “scheme operator”, the Board of the Financial Ombudsman Service. The scheme operator is responsible for appointing a panel of people, with appropriate qualifications and experience, to act as ombudsmen for the purposes of the scheme, on such terms as it considers to be consistent with the independence of those appointed.

Last year the Financial Ombudsman Service resolved more than 336,000 individual complaints about a wide range of financial products and services.

Matters for review

Channel 4 broadcast an edition of its “*Dispatches*” programme on 12 March 2018. This featured covert filming of ombudsman staff, included the comments of three unidentified individuals who were said to be “current and former staff” and considered the handling of two specific cases.

The issues raised by the programme were:

- That some staff are not equipped to deal with “complex” problems, specifically some investment and pension complaints.
- In the case of a complaint about fraudulent activity on a bank account, that there was a failure to ask for detailed information about the account’s transaction history.
- That awards for distress and inconvenience are not calculated by using a “formula”.
- That the application of the provision for “exceptional circumstances” to extend the time limits under which a consumer may make a complaint, is not appropriate.
- That staff are biased against some complainants, specifically those who complain about credit card and PIN fraud and those who complain about payday loans.
- That the provisions which require banks to be “positive and sympathetic” are not applied correctly.
- That the ability to require a debt to be written off is not applied correctly because of a reluctance to set a precedent.
- That the “pressure ... to deal with caseloads quickly” meant that it is more likely that cases would be decided in favour of the banks.
- That in 2014/15, 11,000 PPI complaints were not dealt with for two years.
- That in both 2015 and 2016, 1000 letters were found to have been unopened - some of which were two years old.
- That if targets were missed, the pay or promotion of investigators could suffer.
- That there is a major backlog of PPI complaints.

- That some PPI complaints were wrongly rejected because, although it was concluded
- PPI had been mis-sold, it was assumed that the cover would have been useful.
- That when Rushanara Ali MP visited the ombudsman service in 2015 she “was misled, that managers preselected and rehearsed cases to make the service appear more professional”.

Scope of the review

The scope of the review, and any recommendations, must take account of the service’s statutory role and the need to ensure ombudsmen decisions are free from any influence, directly or indirectly.

The review will assess the evidence presented by *Dispatches* in respect of each of the issues raised in the programme (and set out in the section above) to consider whether there are any matters of substance which should be addressed, although it will not be restricted to the issues raised in the programme.

If the review finds matters for concern, it will seek to identify possible root causes for them (such as management action or inaction, cultural factors, staff objectives and performance management, organisational structure or any other underlying factor) and how they might be addressed. The review will also consider staff morale and the factors which contribute to it.

The review will consider the extent to which the current governance and arrangements for providing assurance about the work of the Financial Ombudsman to its Board, including whistleblowing procedures, are applied effectively and consistently.

The review will make recommendations for addressing matters of substance and, where necessary, for strengthening governance and assurance arrangements.

Delivery of the review

The review will be led by Richard Lloyd who will report his findings to the Board. The reviewer will be provided with full access and the resources necessary to complete the review. The reviewer will have unrestricted access to all ombudsman service staff and all necessary documents.

The review will be completed by the end of June 2018 and published during the summer.

25 April 2018

Glossary

Academy – The Academy provides training for new investigators, which takes place over a six month period.

Adjudicators – Adjudicators are members of staff at the FOS that handle cases outside the investigation model.

ADR – Alternative Dispute Resolution is a form of mediation or arbitration separate to the courts, typically designed to be lower cost and less formal.

Associate ombudsman – Associate ombudsmen are a flexible resource of contractor ombudsmen that can be drawn upon when required.

Authorised push payment scams – Authorised push payment scams are where a consumer is tricked into instructing their bank to send money to a fraudster.

Casework development – The casework development pod is an area that handles emerging issues in casework.

CMC – Claims management companies are companies that handle complaints on behalf of consumers, typically in return for a fee or share of compensation.

Discovery – *Discovery* is an internal system providing information and guidance to FOS staff. As of 31 May 2018 it had 1356 live content pages.

DISP – The DISP rules are the section of the FCA Handbook concerning the handling of complaints.

Exceptional circumstances – The FCA's DISP rules set out the time limits within which a complaint is within the jurisdiction of the FOS. For instance a complaint must be brought to the FOS within 6 months of a business issuing a final response to a complaint, unless the complaint was not brought within the time limits "*as a result of exceptional circumstances*".

FOS board – The board of the FOS is non-executive (the executive team of the FOS are not members of the board). The responsibility of the board is to ensure the FOS is properly resourced and is able to carry out its work effectively and independently.

General casework – General casework refers to complaints other than mass claims (see below).

Independent Assessor – The Independent Assessor is an independent person appointed by the FOS board to look at complaints about the level of service provided by the FOS.

Information and Consultation Council (ICC) – The ICC is a body elected to represent members of staff at the FOS and to hold regular discussions with senior management.

Investigators – Investigators are the case-handlers within the FOS' new way of working, taking calls directly from consumers and issuing initial views on complaints.

Mass claims – Mass claims refers to complaints about PPI, short term lending and packaged bank accounts.

Micro-enterprise – A micro-enterprise is an enterprise with fewer than 10 employees and a turnover or balance sheet which doesn't exceed €2million.

Ombudsman – An ombudsman makes final decisions on cases, which are legally binding if accepted by a consumer. Appointments to the panel of ombudsmen are made under paragraphs 4 and 5 of schedule 17 of the Financial Services and Markets Act 2000.

Ombudsman managers – Ombudsmen working as managers to a group of investigators.

Phoenix – *Phoenix* is the new software for handling complaints under development, designed to replace the previous programme, *Clipper*.

Plevin – *Plevin v Paragon Personal Finance* was a decision by the Supreme Court that in some circumstances, the failure to disclose commission on a PPI sale could result in an unfair relationship between a lender and a consumer under the Consumer Credit Act 1974.

PPI – Payment Protection Insurance was a product sold to cover repayments in circumstances where they couldn't otherwise be met, such as due to an accident, illness, disability or death. There may have been as many as 64 million policies in total going back decades, and it was widely mis-sold.

Practice group – Practice groups consist of FOS employees with particular knowledge of and responsibility for a product area or other specialism (such as jurisdiction), which provide guidance to staff more widely.

Red and yellow flags – Red and yellow flags are a system for designating cases that either need to be handled by a particular team – for instance the casework development pod – or handled with particular assistance from a practice group.

Reject/non-uphold – A reject or non-uphold is where the FOS does not think that a business has to do anything further in response to a complaint (i.e. – there is a no change in outcome from the position the business took on the complaint).

Short term lending – Short term lending mainly refers to payday loans and instalment loans, but also other kinds of credit that are generally for a relatively small amount and run for no more than 12 months.

SME – The FCA is currently consulting on expanding the jurisdiction of the FOS to include a new category of eligible complainant – a “small business” – defined as all businesses with fewer than 50 employees, annual turnover of under £6.5m and an annual balance sheet total of under £5m.

Transition support pod – The transition support pod is a group of adjudicators and ombudsmen providing support to investigation.

Uphold - Where the FOS requires a business to take steps to put things right for a consumer (i.e. there is a change in outcome from the position the business took on the complaint).