

The impact of PPI mis-selling on the Financial Ombudsman Service

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Contents

INTRODUCTION	Page
1. EXECUTIVE SUMMARY & RECOMMENDATIONS	5
2. PAYMENT PROTECTION INSURANCE – A VERY BRIEF HISTORY	10
The PPI Marketplace	
Warning signs and regulatory interventions	
Industry resistance	
Complaint volumes and redress	
Claims Management Companies	
Complaints to the Financial Ombudsman Service	
3. THE OMBUDSMAN SERVICE OPERATIONAL RESPONSE	17
Background	
General approach	
Increasing capacity	
Recruiting for rapid expansion	
Induction and training	
Funding	
Process efficiencies	
Structuring teams	
PPIQ and BRF	
Navigator	
Influencing demand	
Engagement with firms	
Redress calculations	
Engagement with CMCs	
Engagement with regulators	
4. AN ANALYSIS AND ASSESMENT OF THE OMBUDSMAN SERVICE	27
Successes	
Weaknesses	
Grouping cohorts	
The case for further expansion	

5. RECOMMENDATIONS FOR FURTHER ACTION

34

Continuous improvement

Forecasting

Staffing

Triage and early resolution of cases

Navigator

Providing more assertive feedback

Market developments: the Plevin judgment

Dealing with Claims Management Companies: engagement with CMCs

Dealing with Claims Management Companies: engagement with the Claims management regulator (CMR)

ANNEX A – TERMS OF REFERENCE

Introduction

“It’s amazing that no-one yet has written a whole book all about PPI”

Interviewee

This is not the book “all about PPI”. Instead, it is a brief report to record and assess how the Financial Ombudsman Service (the ombudsman service) has responded to the tidal wave of PPI complaints which it has received, to identify the pressures it still faces and to explore how those pressures might be reduced.

My formal Terms of Reference, an extract of which is annexed to this report, were to:

“Review the impact of PPI mis-selling on the Financial Ombudsman Service and make recommendations for mitigating current and future pressures, which take into account the impact on consumers and financial businesses.”

The review started in June 2015 and was substantively concluded by the end of August, with some updating to January 2016. It has involved studying a wide range of papers produced by the ombudsman service and by others, alongside a series of 16 interviews. These interviews involved representatives from the ombudsman service, the Financial Conduct Authority, HM Treasury, Ministry of Justice, the National Audit Office and the worlds of both banking and consumer affairs. To maximise frankness and real insight, all interviews were conducted on an informal non-attributable basis with no-one expected to speak on behalf of their organisation. For that reason, they are not identified in this report, but without exception, those I spoke to were keen to help and their contributions proved to be invaluable. I thank them all.

I also thank Adam Cochrane-Williams from the ombudsman service, who provided Secretariat support, with the unenviable tasks of uncovering and verifying key facts, smoothing the way for numerous meetings and helping with the drafting.

The report is broadly structured in line with my remit – description, assessment and discussion. The limited scope of the exercise and the time available for it have required a steep learning curve and some generalisations and simplifications, but I hope that these do not detract from the overall analysis and discussion. Needless to say, the views expressed in this report are my own, not those of the ombudsman service, and I take responsibility for all judgements and opinions and for any errors or misunderstandings which remain.

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Executive summary

The PPI saga

- 1.1 This report summarises and assesses how the Financial Ombudsman Service has handled unprecedented volumes of complaints about the mis-selling of Payment Protection Insurance (PPI). It then goes on to consider a range of possible steps which could be taken to reduce the pressures it faces.
- 1.2 The PPI saga can be characterised as an iceberg rising from a foundation of at least 45 million policies sold¹ – possibly as many as 60 million. From these sales, well over 16.5 million² claims for compensation have already been brought forward by consumers – the vast majority stimulated by claims management companies (CMCs). At the top of the iceberg, 1.3 million³ of these claims have converted into complaints brought to the ombudsman service. Over 1 million cases have been closed by the ombudsman service, with average “uphold” rates as high as 89% in 2009, dropping to a “mere” 62%⁴ last year. Over £21 billion has already been paid as compensation⁵, but further sums already set aside confirm that the saga is far from over, taking the total to almost £27 billion. Some have estimated that the compensation paid or provided for has now exceeded an astounding £30 billion, with some suggestions that this figure could rise further still.

A million cases closed

- 1.3 How has the ombudsman service coped with such high volumes? This report sets out the overall strategy adopted by the ombudsman service Board, highlighting a determination that the PPI volumes should have minimal impact on service levels across the rest of the organisation, that the quality of decision-making would not be compromised, that PPI cases would not be contracted-out and that emphasis would be placed on getting ‘first answers’ to consumers as early as possible. Recognising the tensions, and reflecting the ombudsman’s statutory remit, the strategy effectively prioritised the proper handling of individual cases (described below as a *sine qua non* of the ombudsman service) over an ‘industrialised’ approach.
- 1.4 This led to a new funding model, rapid expansion (to almost 4000 staff), and intensive induction and training arrangements. The ombudsman service’s “methodology” – an informal, inquisitorial/investigatory approach with very few hearings – proved scalable and robust and it is difficult to see how such large volumes could have been resolved any other way. Of several developments, one stands out – the development and deployment of ‘Navigator’ – a tool which helps to analyse the permutation of circumstances in each case, applies the ombudsman

¹ FCA August 2014 - Thematic Review TR14/14 - Redress for payment protection insurance (PPI) mis-sales

² FCA November 2015 – CP15/39 Rules and guidance on payment protection insurance complaints

³ Financial Ombudsman service 2014/15 Annual Review

⁴ FCATR14/14

⁵ FCA CP15/39

service “jurisprudence” to that permutation, and *suggests* an appropriate response which the adjudicator can accept, reject or modify. Navigator has been absolutely essential in enabling the ombudsman service to reconcile the competing demands of volume, quality and consistency.

- 1.5 The overall assessment of the handling of individual complaints by the ombudsman service is positive. It is an achievement to have resolved more than one million cases, with 800,000 closed in the last three years alone. It is clear that the ombudsman service made the right strategic decisions, that these were duly implemented and that the approach has been largely vindicated. The ombudsman service geared up successfully in terms of funding, recruitment, training and accommodation and was right not to pursue the “out-sourcing” route. Perhaps more important, the challenges of achieving quality and consistency have been fulfilled, while maintaining satisfaction rates from consumers and without significant challenges from firms.
- 1.6 However, there have been delays which have been unwelcome to consumers and firms alike, but sensible steps have been taken to explain the situation and mitigate their impact. Backlogs are being eroded – last year more cases were closed than received. Other concerns (almost entirely historical) have surfaced, mainly from firms, about the efficiency of case-handling, sporadic shifts of jurisprudence and an occasional arrogance. As can be seen from the recommendations below, there are a number of measures that the ombudsman service can take to improve its operational response to the on-going PPI challenge.
- 1.7 This report has also probed whether more could or should have been done to group cohorts of cases together and treat them all in identical or very similar fashion. However, given in particular the complexities of PPI complaints, there would have been significant risks from excessive standardisation in terms of unacceptable quality, inconsistency and poor customer service. It is not surprising that no obvious basis has been identified for aggregating cases more effectively or more efficiently than has been achieved by Navigator. The conclusion has to be that any wholesale attempt to group cases any further into cohorts has not been, and is unlikely to be, a viable option.

Mitigating future pressures

- 1.8 This report has sought in particular to reconcile four principles which can pull in competing directions:
- it is right (in economic, political, legal and moral terms) that consumers should be compensated where financial firms have been responsible for PPI mis-selling;
 - the ombudsman service will need to continue handling extremely high volumes of PPI complaints even though it was not established to deal with demands on this scale;
 - to minimise volumes, firms should be encouraged and helped to adopt a “Right First Time” approach with much better complaint-handling arrangements;

- CMCs should be restrained from putting forward unmeritorious and badly-prepared cases.

1.9 It is almost impossible to predict whether the worst of the storm is over in terms of numbers of complaints reaching the ombudsman service. Demand forecasts for any complaint-handling body are notoriously difficult and unreliable. Whatever the outcome of the FCA consultation on a proposed deadline for PPI complaints, large numbers of further new complaints can be expected and a “hard” deadline may lead to a “bow-wave” surge. Even without this added uncertainty, the ombudsman service had already forecast an inflow of 300,000⁶ expected new cases over the next three years. This is on top of the current stock of some 250,000 cases which contains many “more difficult” cases⁷. There will of course be benefits from harnessing the ever-increasing experience of staff and from programmes of innovation and continuous improvement. But – reflecting its primary function – the ombudsman service can anticipate that, with over half a million cases still to resolve, a considerable “tail” of individualised PPI cases will continue to make up the bulk of its workload for some years to come.

1.10 That is not to say that complementary approaches to mitigate the pressures should not be explored. Public policy pulls in competing directions. On the one hand, consumer detriment should be compensated where financial firms have been responsible for PPI mis-selling. On the other hand, the ombudsman service was not established to handle the demands presented by such extremely high volumes of complaints. The remarkably high uphold rates for PPI complaints suggest that the main key to reconciling these tensions is to deter firms from allowing unmeritorious defences to go forward to the ombudsman service. In other words, the right policy is to encourage firms to improve their own complaint-handling arrangements.

1.11 Here, there may be more scope for the ombudsman service to ensure that there is a virtuous circle where assertive feedback from cases is used with the direct and explicit aim of minimising future volumes. The ombudsman service holds substantial (and sometimes unique) intelligence about the nature of commercial misconduct and consumer detriment, poor practice with complaint-handling and its own jurisprudence. This provides an invaluable resource for a “carrots and sticks” approach – constructive dialogue to help firms get it “right first time”, alongside a strong and well-publicised commitment to sharing evidence with regulators and pressing for enforcement action in appropriate cases.

1.12 The ombudsman service already does much on both fronts, but may have been unduly restrained by concerns about being perceived as a “backdoor regulator”. Given that firms should be trying to reach the same outcome as the ombudsman

⁶ Financial Ombudsman service projections as of March 2015

⁷ Financial Ombudsman service, March 2015 – Our plans for the year ahead

service adjudicators at an earlier stage, there appears to be a strong case for sharing Navigator with firms. Likewise, the ombudsman service should visibly welcome and capitalise on the galvanising effect of the substantial fines recently imposed by FCA for poor complaint-handling.

- 1.13 There seems to be less scope for a “regulatory approach” with specific requirements on firms to provide redress and less focus on individual complaints. It is perhaps not surprising that the ombudsman service’s attempt in 2008 to avert a “complaints-led” approach, with a strong letter to the FSA, came to nothing. PPI mis-selling has been such a complex issue that it is hard to envisage how at that time a “regulatory approach” would have secured the payment of compensation for PPI mis-selling any better than the “complaints-led approach”.
- 1.14 The conclusion has to be that it would have been extremely difficult to implement a regulatory approach which would have secured the payment of compensation for PPI mis-selling any better than the complaints-led approach. The FCA may, however, be well-placed to mitigate the pressures on the ombudsman service in other ways. As well as ensuring that fines for unacceptable complaint-handling have a salutary effect, there may be scope for a stronger line against firms with sustained high uphold rates across significant volume of cases. In addition the FCA is consulting on guidance about applying the Plevin judgment, in which the Supreme Court ruled in favour of refunding very high levels of commission received by firms selling PPI. It is likely that the steps the FCA takes will have an impact on the number of complaints made to the ombudsman service.
- 1.15 This links to attempts to “draw a line” under PPI, where firms face the dilemma that the more they rest their case on massive sums yet to be paid, the more they highlight the extent of questionable revenues and unpaid compensation. Although the policy issues are primarily for the FCA and, possibly, the Government, the ombudsman service has a direct interest in ensuring that any changes to the time limits are workable and do not have counter-productive effects. A gradual approach, incentivising firms to communicate clearly with affected customers, would be fairer and would avoid the burden and questionable effectiveness of mandatory requirements.
- 1.16 Since work on this report began, the government has announced the intention to introduce a cap on CMC commissions and a review of the regulation of CMCs. In the meantime, the ombudsman service can press the Claims Management Regulator to impose the heavy turnover-based penalties which have recently become available for unmeritorious or badly-prepared cases.

Recommendations

This report has been commissioned by the ombudsman service Board and the following Recommendations, based on my conclusions as summarised above, are addressed to the ombudsman service Board.

Recommendation 1: THE OMBUDSMAN SERVICE SHOULD MAINTAIN ITS APPETITE FOR INNOVATION AND CONTINUOUS IMPROVEMENT

Recommendation 2: THE OMBUDSMAN SERVICE SHOULD CONTINUE TO REFINE ITS FORECASTING CAPABILITY, ENGAGING WITH KEY STAKEHOLDERS AS IT DOES SO

Recommendation 3: THE OMBUDSMAN SERVICE SHOULD TAKE FULL ADVANTAGE OF THE GROWING EXPERIENCE OF STAFF RECRUITED TO HANDLE PPI CASES AND TAKE PROACTIVE STEPS TO MINIMISE THE POTENTIAL LOSS OF EXPERIENCED CASEWORKING STAFF

Recommendation 4: THE OMBUDSMAN SERVICE SHOULD CONTINUE TO FOCUS ON THE EARLIEST POSSIBLE RESOLUTION OF COMPLAINTS, EXPLORING NEW WAYS OF USING THE 5Qs TRIAGE TECHNIQUE AND CONSIDERING OTHER METHODS OR TOOLS

Recommendation 5: THE OMBUDSMAN SERVICE SHOULD SHARE THE NAVIGATOR TOOL AND INDIVIDUAL SYNOPSES WITH FIRMS UNLESS A FULLY REASONED ASSESSMENT SHOWS THAT (EVEN WITH SAFEGUARDS) THERE IS AN OVERWHELMING CASE AGAINST DOING SO

Recommendation 6: THE OMBUDSMAN SERVICE SHOULD MAKE A CLEAR, VISIBLE AND SUITABLY PRIORITISED COMMITMENT TO MORE ASSERTIVE FEEDBACK WITH THE EXPLICIT AIM OF REDUCING COMPLAINT VOLIMES

Recommendation 7: THE OMBUDSMAN SERVICE SHOULD VISIBLY SHARE AS MUCH INTELLIGENCE AS POSSIBLE WITH THE FCA AND WORK CLOSELY WITH THE FCA AS IT DEVELOPS ITS PLEVIN GUIDANCE AND CONSIDERS WHETHER AND HOW TO INTRODUCE A COMPLAINTS DEADLINE.

Recommendation 8: THE OMBUDSMAN SHOULD CONSIDER MAKING NAVIGATOR AVAILABLE TO CMCs

Recommendation 9: THE OMBUDSMAN SHOULD BE SWIFT TO SHARE EVIDENCE OF UNMERITORIOUS OR BADLY-PREPARED CASES WITH THE CLAIMS MANAGEMENT REGULATOR SO THAT IT CAN TAKE ADVANTAGE OF THE SUBSTANTIALLY INCREASED SANCTIONS NOW AVAILABLE AGAINST CMC MISCONDUCT

Payment protection Insurance: a very brief history

The PPI Marketplace

- 2.1 At its simplest, Payment Protection Insurance (PPI) – covering credit repayments in the event of unemployment, illness or other loss of income – is an attractive product. When sold to the right people in the right circumstances, alongside the right products, and with the right levels of understanding of costs, benefits and limitations, it can indeed be beneficial for both borrower and lender.
- 2.2 In reality, PPI was not a simple product – nor indeed a single product. There were several variations, including single premium, credit card, regular premium and mortgage (MPPI). It was certainly not suitable for many people under any circumstances. In other cases, the benefits were often severely circumscribed and bore little or no relation to the costs. Various exclusions and conditions dramatically narrowed its suitability. With emphasis upon generating maximum revenues, firms⁸ incentivised their staff to sell PPI heavily – with some employees receiving six times more commission when a loan was sold with PPI⁹. Some consumers were effectively told that PPI was compulsory or a condition of the loan. In other cases the apparent attractions of the product made it easy to sell. And many consumers, with understandable reason, did not even know that they had been sold PPI.
- 2.3 PPI policies were certainly sold in very large volumes through various channels by all the major UK banks and a wide range of other credit providers and intermediaries, including store card providers, furniture retailers and car finance companies. The Competition Commission demonstrated how profitable it was – documenting in detail high premiums, high commissions and low pay-out rates. In 2014, the Financial Conduct Authority (FCA) estimated that in just 20 years (1990 to 2010) 45 million policies were sold, generating £44 billion in premiums¹⁰. More recent estimates suggest even higher volumes – possibly as high as 60 million policies. Testimony given by bank executives to the Parliamentary Commission on Banking Standards (PCBS) suggests that PPI was viewed by industry as an essential source of revenue to support artificially cheap credit.

Warning signs and regulatory interventions

- 2.4 The first concerns about PPI go as far back as the late 1990s. In its 1997 annual review, the Insurance Ombudsman Bureau highlighted the issue of consumers having claims turned down because of exclusions in their policies that had not been made clear to them. An article in *Which?* in September 1998 highlighted the same issue. In April 2001 the Financial Ombudsman Service raised its first concerns about PPI: “Complaints reaching us show that sufficient care is not always taken to ensure the suitability of policies for prospective policyholders.”

⁸ This report describes all those involved in the provision of PPI as “firms”.

⁹ *Which?* evidence to Parliamentary Commission on Banking Standards

¹⁰ FCATR14/14

2.5 From 2005 onwards, scrutiny of the PPI market began to intensify. In January the Financial Services Authority took over regulation of general insurance sales. By November it had published its first report on the PPI market¹¹. It identified poor selling practices and a lack of compliance controls and wrote to the chief executives of firms selling PPI to highlight its concerns. This followed a September 2005 report by Citizens Advice: *The Protection Racket*, which had also identified problems with PPI sales. Following a super-complaint attached to the Citizens Advice report, the Office of Fair Trading started its own investigation. By the time the OFT issued its report on PPI¹² and announced its intention to refer the market to the Competition Commission, the FSA had already issued a number of fines for poor sales practices and had begun enforcement proceedings that would see it take action against 24 firms.

Industry resistance

2.6 Two thirds of PPI policies had been sold by 2005¹³ and yet, despite increasing warnings from consumer groups, regulatory scrutiny and more fines, firms continued to sell PPI in large volumes. One banking representative described the era as one of “*pushing the boundaries.*” When the Competition Commission published recommendations in January 2009¹⁴ that PPI should not be sold at the point of sale of the credit product, Barclays unsuccessfully challenged it at the Competition Appeals Tribunal. And it took a request from the FSA in May 2009 for firms to completely stop selling single premium PPI.

2.7 While the regulators clamped down on the sale of PPI, there was growing concern about firms’ handling of complaints about PPI. In September 2009 the FSA consulted on measures to improve PPI complaints handling. In August 2010 it published a policy statement setting out complaints handling standards¹⁵. The British Bankers Association (having won a Supreme Court ruling against the OFT on bank charges in 2009) judicially reviewed the FSA / the ombudsman service approach to PPI complaints. The industry argued that standards were being imposed retrospectively. In April 2011 the High Court ruled in favour of the FSA and the ombudsman and in May the industry’s legal challenge was withdrawn.

Complaint volumes and redress

2.8 PPI complaints to firms had been increasing steadily from 2007 to 2009 from tens of thousands to hundreds of thousands. According to FCA figures there were fewer than 300,000 PPI complaints to firms in 2009. This more than doubled in 2010 to

¹¹ FSA, November 2005 - The sale of payment protection insurance – results of thematic work

¹² OFT, October 2006 – Payment protection insurance: report on the market study and proposed decision to make a market investigation reference

¹³ FCATR14/14

¹⁴ Competition Commission, 29 January 2009 - Market investigation into Payment Protection Insurance

¹⁵ FSA, August 2010 – PS10/12 – The assessment and redress of Payment Protection Insurance complaints

700,000 and again in 2011 to 1.5 million. In 2012 firms received over 4 million new PPI complaints¹⁶.

- 2.9 Complaints to firms jumped from around 50,000 a month in the first four months of 2011 to around 150,000 a month immediately following the end of the judicial review in May 2011. By the end of 2011 they had risen to 200,000 a month, peaking at over 600,000 a month in May 2012¹⁷. It is widely accepted that, even after the FSA standards had been imposed, most firms did not handle PPI claims well.

“The banks were hit by ‘volume shock’. They were geared up for high volume sales, but not high volume complaints. Everyone started scaling-up – building huge machines. But these were not sophisticated and were not individualised.”

ombudsman service representative

- 2.10 The figures are astounding. In its August 2014 update on PPI, the FCA reported that there had been a cumulative total of 13 million PPI complaints since 2007 and that £18 billion had been set aside for redress. A continuing upward trajectory has been suggested, with more recent figures of 15 million¹⁸ complaints and £26.7 billion¹⁹ as the total amount paid or set aside by the five largest banking groups. Lloyds, for example, announcing in October that it had put aside a further £500 million for PPI redress, taking its total to £13.9 billion. Some have estimated that the total of compensation and provisions has now reached £31 billion²⁰, with some suggestions made during this review that this figure could rise further still.
- 2.11 These huge numbers have been driven by several factors, including publicity around the judicial review and consumer advocates such as MoneySavingExpert.com and Which? urging people to make a complaint. However, it is claims management companies (CMCs) that have been by far the most significant driver of high complaint volumes.

Claims Management Companies

- 2.12 The claims management market in financial services was already well established before PPI. CMCs typically work on a ‘no win, no fee’ basis and charge commission of around 25% of any redress, although this can vary up to around 40%. As a generalisation, the CMC business model is based on aggressive marketing, raising consumer awareness, capitalising on consumer reluctance and nervousness about complaining and keeping to minimum the effort they put into lodging and

¹⁶ FCA aggregated complaints data: <http://www.fca.org.uk/firms/systems-reporting/complaints-data/publication-dates-archive>

¹⁷ FCA TR14/14

¹⁸ Following the publication of Tr14/14 in August 2014, there were a further 1,058,918 PPI complaints to firms in H2 2014 according to the FCA’s aggregate complaints data. Assuming firms had received a similar figure in H1 2015, the total number of complaints to firms would now be over 15 million

¹⁹ Which? – 31 July 2015

²⁰ <http://www.express.co.uk/finance/city/597087/PPI-banks-31-billion-costliest-scandal>

elaborating a complaint. They have also been able to take advantage of a complaints system which is almost entirely risk-free – with no fees payable at any stage, nor costs payable for unsuccessful claims.

“Their enlargement was driven by the extent of mis-selling, the own-goal of the JR and poor complaint-handling by the banks.....The majority don’t add much value. They use our forms and take a box-ticking approach, without adding any real richness.”

ombudsman service representative

- 2.13 CMCs have been regulated by the Claims Management Regulation Unit (CMR) within the Ministry of Justice (MoJ) since 2007 and all CMCs must now be authorised. According to the CMR, the number of authorised CMCs operating in financial services jumped from under 400 in 2008 to over one thousand in 2009²¹, peaking in 2010 when over 1,200 firms were authorised. Since then, the market has shrunk and by 31 March 2015 this number was down to 847²².
- 2.14 It has proved a hugely successful business model for most of the companies. Having been heavily involved in mortgage endowment complaints, the mis-selling of PPI has proved to be very fertile territory. Annual reports from the claims management regulator show that CMCs received gross revenues of £2.17 billion from financial services (the vast majority from PPI complaints) over the six year period up to 2014-15. Revenues have dropped since a peak of £0.65 billion in 2012-13. The FCA estimates that CMCs have already made in excess of £2 billion from PPI complaints.²³

Complaints to the Financial Ombudsman Service

- 2.15 The Financial ombudsman service and its predecessor schemes have been receiving complaints about PPI for as long as the product has existed. In its 1997 annual report the Insurance Ombudsman Bureau said it had received 446 complaints about PPI.
- 2.16 Although volumes had been steadily growing it wasn’t until the middle of 2007 that complaints to the ombudsman service rocketed. From 1,832 new PPI complaints in the previous year the figure jumped to 10,675 in the year ended 31 March 2008.
- 2.17 From October 2010 (when the judicial review was announced) until May 2011 (when it was dropped) the ombudsman service was unable to address most PPI complaints – although the flow of incoming cases also slowed as banks put large numbers of cases on hold.
- 2.18 In the year immediately following the judicial review – from 1 April 2011 to 31 March 2012 – the ombudsman service received over 150,000 new complaints. This more than doubled during 2012/13 and then peaked in 2013/14 with just under

²¹ Claims Management Regulator, July 2010 – Annual Report, 2009/10

²² Claims Management Regulator, July 2015 – Annual Report, 2015/15

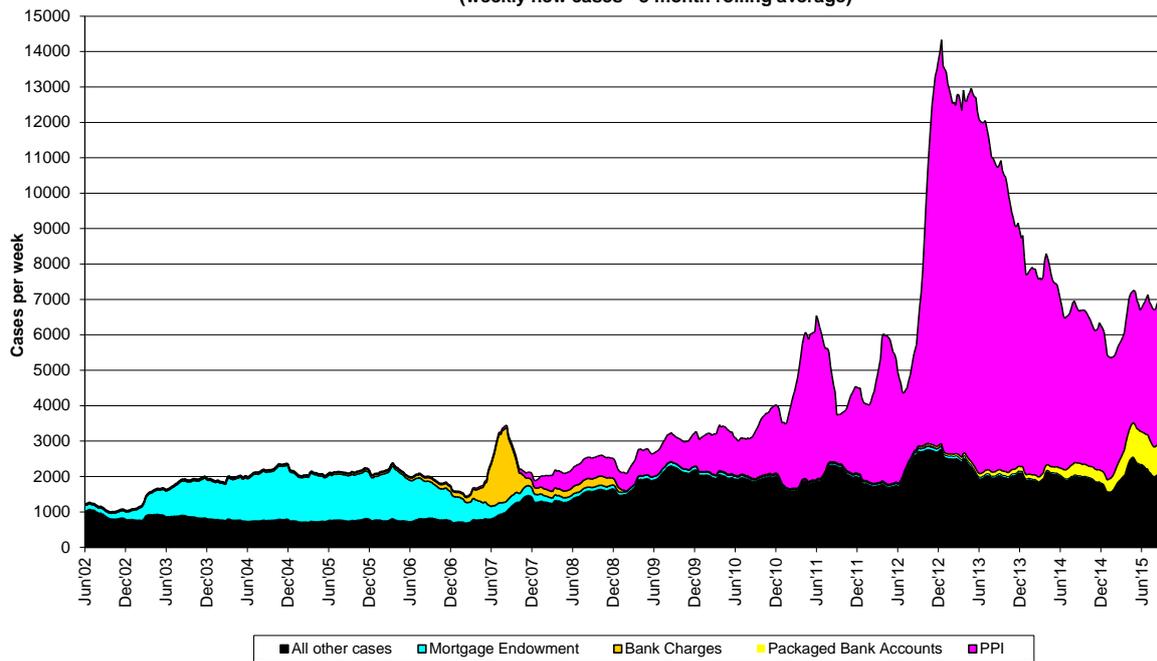
²³ FCA CP15/39, 26 November 2015

400,000 new complaints. At its height, the ombudsman service was receiving 12,000 new PPI complaints a week and had built up a stock of almost 400,000.

	PPI cases received by the ombudsman service	Cumulative total since 2006 of cases received by the ombudsman service	PPI stock	the ombudsman service cases closed	Cumulative total since 2006 of the ombudsman service cases closed
2006-7	1,832	1,832	-	1,191	1,191
2007-8	10,675	12,507	7,961	3,773	4,964
2008-9	31,066	43,573	26,184	16,279	21,243
2009-10	49,196	92,769	36,248	35,315	56,558
2010-11	104,597	197,366	81,851	57,757	114,315
2011-12	157,716	355,082	120,616	117,806	232,121
2012-13	378,699	733,781	395,315	101,321	333,442
2013-14	399,939	1,133,720	398,883	389,730	723,172
2014-15	204,943	1,338,663	264,249	328,915	1,052,087

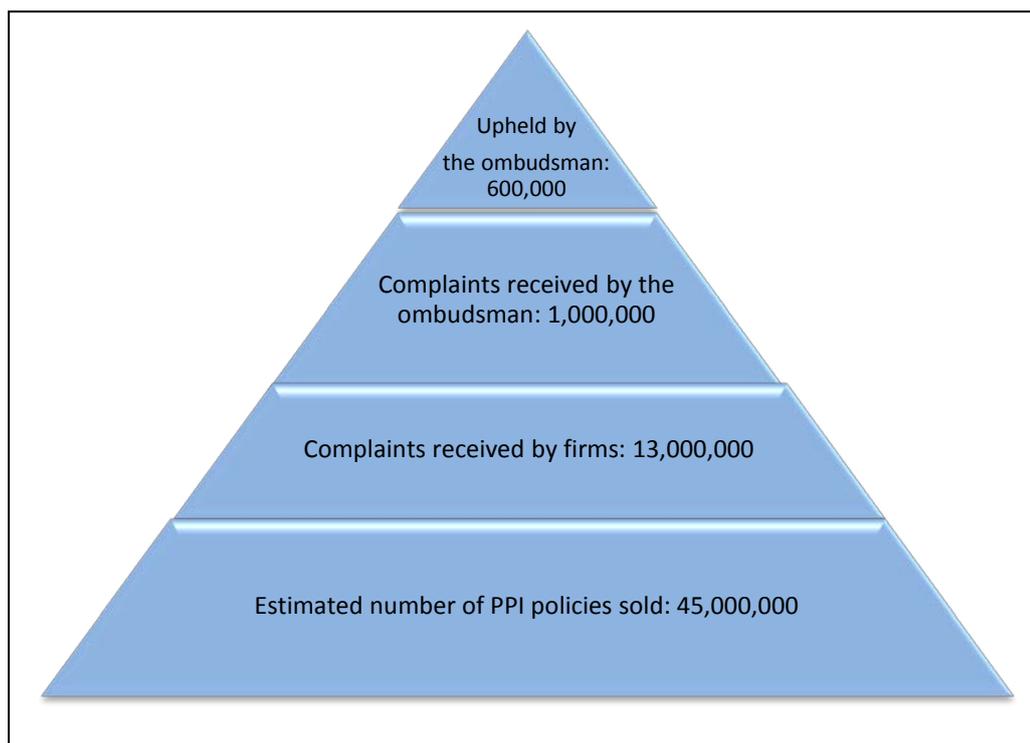
2.19 The impact of such high volumes of PPI complaints is made even more clear by their dominance over all the other types of case that the ombudsman service receives from across the entire spectrum of financial services. The chart below graphically reveals that although from the time of establishment there has been a steady increase in the ombudsman service's 'normal' caseload (especially banking), PPI complaints have totally dominated since 2010. The chart also shows how PPI cases dwarf the mortgage endowment (ME) surge which hit the ombudsman service between 2003 and 2007.

Financial Ombudsman Service case volumes (weekly new cases - 3 month rolling average)



2.20 It is important to remember that the ombudsman service has only dealt with the tip of a very large iceberg – though the shadow cast by that tip over the rest of the iceberg has been far-reaching. As shown in the figure below, the data reported by the FCA in August 2014 show that less than a third of known PPI sales had resulted in a claim to a firm and less than 10% of these (a little over 3% of total sales) had escalated to the ombudsman service. The proportions are lower still if total sales were in fact closer to the figure of 60 million, which was suggested during the course of my research.

The size of the 'iceberg' in 2014



Uphold rates

- 2.21 Since Autumn 2009 the ombudsman service has published business-specific complaint data every six months. The data comprises the number of new cases across different product areas and the percentage of closed cases where there has been a change in outcome in favour of the consumer, commonly referred to as the “uphold rate”. Uphold rates have been used as a barometer for how well firms are dealing with complaints. These have been remarkably high for PPI – 89% in 2009, dropping to 62% in 2014/15 which is still substantially worse than encountered elsewhere.
- 2.22 Some caution is needed with uphold rates, however. Because of the large stock of PPI complaints and the order in which cases are handled, the uphold rate for a given period will not reflect a firm’s complaint handling at any particular point in time. Furthermore, when firms opt to settle large cohorts of cases in bulk, this will result in spikes in uphold rates for that period. So whereas a sudden increase in uphold rates would be a cause for concern in general casework, in PPI it can actually be a sign of firms settling large numbers of cases without the need for the ombudsman service to rule on them.

The ombudsman service operational response

Background

- 3.1 The Financial Ombudsman Service was primarily set up – inheriting the model of its seven predecessor self-regulatory bodies – to be a fair resolver of disputes between individual consumers and financial institutions. It was designed, as an alternative to the civil courts, to be accessible and informal without the need for the intervention of lawyers. Its role was given a clear statutory basis in the Financial Services and Markets Act 2000.

“We were set up to resolve individual complaints between financial businesses and their customers – fairly and informally.”

“Keeping fairness at our heart – being fair and feeling fair.”

the ombudsman service annual review 2014-15

- 3.2 The ombudsman service’s statutory basis means that its approach to resolving complaints, is – and has to be – the assessment of each case on its individual circumstances. Across all the financial products and services covered, from current accounts to pensions, from mortgages to investment products, this has to be a fundamental feature for the service’s credibility in the eyes of both firms and complainants.
- 3.3 The same approach has had to lie at the heart the resolution of complaints about PPI mis-selling, as illustrated on the ombudsman service website:

In reaching an assessment of an individual complaint, the Ombudsman needs to take into account all the circumstances of the case. This will include:

- *any relevant circumstances particular to the individual consumer and sale; and*
- *where it appears that the sales process used by the financial business is designed and delivered as a standardised process, the features of that sales process.*

To assist in the process of assessing the sale, we will take into account all the evidence available. This might include:

1. *the documentation produced at the time;*
2. *the consumer's (or the financial business's) recollections of the sales process;*
3. *recordings of relevant phone conversations;*
4. *sales scripts and staff training-material;*
5. *the typical outcomes of the sales process at the time; and*
6. *information from regulatory authorities.*

We need to consider the overall picture, not specific issues in isolation. So, for example, a piece of information given to a consumer during a sales process cannot be read in isolation. Instead, some consideration needs to be given to:

- *the point in the process at which the information was provided;*
- *the way in which the information was communicated; and*
- *the issues facing the consumer at the time²⁴.*

- 3.4 The need to focus on the circumstances of each individual case has been severely tested by the unprecedented volumes of PPI complaints which the ombudsman service has received over a period of less than 10 years. The ombudsman service was never envisaged or constituted as an organisation for resolving extremely high volumes of complaints. An unsuccessful attempt was made in 2008 to persuade the FSA to find an approach which was not complaint-led. The ombudsman service was left no choice but to find ways to accommodate the demand and this has involved various changes and refinements to its standard operating procedures.
- 3.5 In facing unprecedented volumes of complaints and significant demands on its existing system, the ombudsman service could have been expected to respond by doing the following:
- increasing its capacity to receive and resolve complaints
 - improving the efficiency of its complaint handling processes; and
 - influencing demand flows (new case volumes).
- 3.6 Each of these presents its own particular challenges and risks. This section describes the action the ombudsman service took and the following section offers an analysis of their effectiveness. Of course, a description of how individual cases have been handled cannot capture each twist and turn of the ombudsman service's evolving approach – portrayed by one the ombudsman service representative as a *"very long gestation"*.

General approach

- 3.7 The response to PPI complaints can be split into two phases, pre- and post- the BBA's judicial review. As PPI volumes escalated from 2007 onwards, the organisation responded by incrementally increasing its capacity in an attempt to keep up with demand. By the time of the judicial review in October 2010, the ombudsman service had already built up a backlog of around 40,000 PPI complaints. During the judicial review – which was eventually abandoned in May 2011 – the ombudsman service was unable to work on most cases, including the new complaints which continued to arrive. During this period its backlog increased significantly – doubling from around 50,000 in February 2011 to over 110,000 in June.

²⁴ http://www.financial-ombudsman.org.uk/publications/technical_notes/ppi/sales-complaints.html

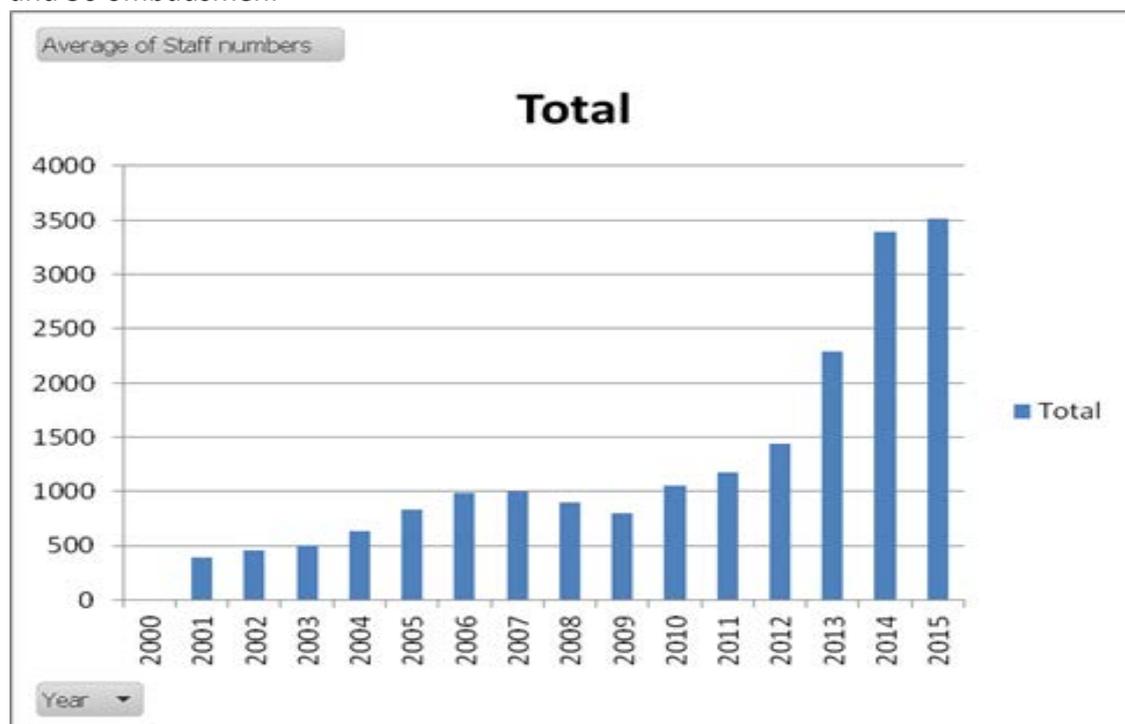
- 3.8 In the months following the judicial review the volume of new cases increased dramatically. The problem was exacerbated by the lack of any viable alternative to a complaints-led strategy for PPI and high levels of attrition among staff working on PPI cases, who were in high demand as banks scaled up their own PPI operations. Unsurprisingly, the service recognised that its existing approaches to recruiting staff and case-working would not enable it to scale up fast enough to keep pace with growing demand. In November 2011 the ombudsman service Board agreed to radical proposals from the Executive to adopt a new operating model for PPI cases that would allow it to recruit and train significant numbers of people quickly and resolve substantially higher volumes of complaints.
- 3.9 This new model – with further major expansion agreed by the Board in October 2012 – involved several key strategic decisions, including:
- PPI volumes should not impact on service levels across the rest of the organisation;
 - the need to cope with the volumes would be achieved without compromising on quality;
 - PPI cases would continue to be handled in-house on a single site, without contracting-out in bulk as some of the firms had chosen; and
 - there would be emphasis on getting ‘first answers’ to consumers as early in the process as possible.
- 3.10 These decisions were influenced by an awareness that the rush by firms and CMCs to industrialise their PPI operations had resulted in generic, poorly investigated complaints, with thousands arriving at the ombudsman service which could and should have been resolved better and earlier in the process.

Increasing capacity

a) Recruiting for rapid expansion

- 3.11 The ombudsman service began to build its new PPI operation in early 2012. This required recruiting and training nearly a thousand new staff – at a time when both financial businesses and CMCs were looking for similar staff – and securing and fitting accommodation for them.
- 3.12 By the time the new operation launched in May 2012, the first 100 staff had been recruited and trained. This was in addition to a project team of 15 staff and the existing PPI division of around 50 people. During the course of 2012 around 800 new staff were recruited and trained at an average of around 75 a month, with a further 840 recruited and trained during 2013. This is a quite remarkable rate of growth for any organisation. By the end of 2013, the ombudsman service had a total of over 2000 people working exclusively on PPI – including 1700 adjudicators

and 50 ombudsmen.



25 **Average staff numbers at the ombudsman service, 2000-2015**

3.13 After pausing its PPI recruitment programme in 2014, the ombudsman service planned to recruit 365 new PPI staff during 2015.

b) Induction and training

3.14 The service developed an in-house training programme for new starters known as the 'Academy'. In 2012 the Academy comprised a four week training programme. This covered an introduction to the ombudsman service, training on PPI as a product, customer service and IT systems. New starters were trained to be able to handle incoming enquiry calls, to review and respond to correspondence and to convert cases (the process by which a case is officially taken on). Accreditation was gained by successfully completing a number of case conversions in line with ombudsman quality standards.

3.15 In 2013 the Academy was expanded to nine weeks to include training on the ombudsman's new case management system, 'Navigator', which is described in more detail below.

"Every Monday morning for several weeks meant the first day of Induction – welcoming anything between 50 and 100 new starters."

ombudsman service representative

²⁵ Figures taken from Financial Ombudsman service annual reviews

c) Funding

- 3.16 In order to pay for the new PPI operation the ombudsman service changed its funding model. From 2000 to 2012, the funding model for all firms, large or small, was based on two components – a levy paid by almost all retail financial businesses and a case fee set and collected on closure of each case.
- 3.17 In order to fund the new PPI operation the ombudsman service introduced a supplementary case fee of £350 for PPI complaints from April 2012 until April 2014. Unlike the standard case fee, this was payable when a case was converted rather than when it was resolved. This provided the service with the upfront income needed to invest in expanding to meet the PPI challenge while ensuring, effectively on a ‘polluter pays’ model, that only the firms generating PPI complaints paid the extra cost.
- 3.18 From April 2013 the service introduced further changes to its funding, although this was not a direct response to PPI. These saw the number of free cases per business increased from three to 25, so that only around 1% of the businesses covered by the ombudsman service would pay case fees. The funding model remained the same for medium size users of the service, although they too would benefit from the additional free cases. For the largest users a new group account arrangement was introduced.
- 3.19 The group account arrangement initially applied to the four biggest banking groups. Rather than pay for individual cases, group-account fees are determined in advance, with a quarterly fee set on the basis of projected case volumes.
- 3.20 This new arrangement has brought significant benefits for both the ombudsman service and the businesses it applies to. For the ombudsman service, it provides income in a timely and more stable way that helps it to adjust resources and respond to volatility in demand. It also significantly reduces the administration associated with paying for individual cases. The group account arrangements have been well received by businesses and from April 2014 had been expanded to include the eight biggest users of the service.

Process efficiencies

a) Structuring teams

- 3.21 Three aspects can be highlighted about the internal structures set up (with some evolutions) to brigade new staff alongside those already in the service.
- 3.22 In line with the strategic decision to give customers an indicative “first answer” at their first point of contact, the service merged two existing roles – that of adjudicator and consumer consultant (call handling staff within the ombudsman’s Customer Contact Division). When a customer contacts the ombudsman service to enquire about a PPI claim, these staff now take them through the so-called “5Qs process” - four (originally five) key questions to give a rough (but non-binding) indication as to whether the consumer has a good chance of having their case upheld if it becomes a formal complaint. The consumer will then be given an

indicative first answer explaining that complaints like theirs are either usually upheld, not upheld or that it is too soon to tell what the likely outcome would be.

- 3.23 Adjudicators and ombudsmen have been largely grouped in teams which allow them to build up a familiarity not only with particular types of PPI product, but also with the same financial firm, with its sales channels and selling methods and with its staff handling PPI complaints. But these are not permanent arrangements - there is a deliberate rotation arrangement so that the various dangers of staleness, complacency or excessive closeness (“agency capture”) are avoided.
- 3.24 More recently a “No-PPI” channel has been created. This team – now over 100 strong – now deals with all cases where the triage stage has identified that the existence of a PPI policy is in dispute. It might be surprising that so many cases reach the ombudsman service where that basic issue has not been resolved – and that, at times, up to 20% of those were decided in favour of the consumer’s claim that there was indeed a PPI sale. This situation appears to arise quite frequently for various reasons – e.g. consumer uncertainty (often stimulated, but left unresolved, by CMC activity), poor bank records, changes of name or address etc.

b) PPIQ and BRF

- 3.25 Two developments have improved the ombudsman service’s ability to get sufficient facts of sufficient quality for each case, as reliably and consistently as possible. Consumers, whether acting for themselves or through a CMC, are encouraged to complete the PPI Questionnaire. And firms are required to complete the Business Response Form (BRF) once the ombudsman service has told them it has formally taken on a PPI complaint. The firm is asked to send its completed BRF along with its file on the complaint²⁶.

c) Navigator

- 3.26 In one absolutely crucial respect, the ombudsman service methodology has been supplemented by an elaboration crafted specially for the surge of PPI complaints.
- 3.27 A key step taken by the ombudsman service to deal with PPI volumes has been the development of a decision-support tool – ‘Navigator’ – to help its adjudicators assess the larger number of cases whilst maintaining both quality and consistency.
- 3.28 Navigator was developed by an in-house team of 15 over a 6-week period and was introduced in May 2012. At its simplest, Navigator – sometimes known internally as “The Ombudsman on your Desk” – is an automated tool which:
- analyses the permutation of circumstances of each individual case;
 - applies the “jurisprudence” of the Financial Ombudsman (as it has developed from previous cases) to that permutation;
 - *suggests* an appropriate response to the adjudicator which can be accepted, rejected or modified – as the individual circumstances of the complaint require; and

²⁶ http://www.financial-ombudsman.org.uk/publications/technical_notes/ppi.html

- generates the appropriate paperwork based on the adjudicator’s decision.
- 3.29 For each case, after identifying the case from the ‘Clipper’ case management system, Navigator prompts the adjudicator to input a series of answers about the individual circumstances of the complaint. These include information from the case-file about the PPI policy (e.g. single or regular premium, benefits and exclusions), the circumstances around the sale of the policy (e.g. type of credit product it was attached to, when it was sold and through what channel) and details about the consumer (e.g. what type of employment, if any, the consumer was in at the time of the sale, pre-existing medical conditions).
- 3.30 To support this process, each adjudicator has access to a wealth of knowledge that the ombudsman service has built up about each of the main firms generating PPI complaints. A series of “synopses” includes details of products, sales processes, the cost and benefits of different policies and any previous regulatory action against that firm. This gives the adjudicator a detailed picture of the individual circumstances behind each sale and guidance on how to answer the questions generated by Navigator. It also assists the adjudicator to exercise sound judgment in deciding whether to accept, reject or modify the suggested response – and to reach outcomes which are consistent with similar cases.
- 3.31 It needs to be stressed that Navigator is **not** an automated system which decides cases. It can do no more than assist and suggest the “right” decision to the trained adjudicator.
- 3.32 Navigator has been absolutely essential to the handling of such high complaint volumes by the ombudsman service.

Influencing demand

a) Engagement with firms

- 3.33 The ombudsman service has put a governance structure in place for its engagement with businesses, not least to keep its PPI messages consistent. In late 2011 an Operational Contact team was created within the PPI operation giving each large business a dedicated Account Manager to give an overview of its operational performance to help the firm identify and escalate any operational or policy issues. The Operational Contact team sends weekly tracker reports and quarterly operational update letters to large firms. These letters cover operational issues, such as incoming volumes and the number of cases resolved, as well as issues of approach and policy, to reinforce in writing the messages conveyed at face-to-face meetings.
- 3.34 Dialogue with businesses takes place at every level of the organisation. On an operational level this comprises regular meetings between case handling teams to discuss operational matters and meetings with ombudsmen to cover more policy-focused issues. PPI is also covered at more senior meetings between the ombudsman service’s senior management team and counterparts at firms, including at Chief Executive and Chair level. These meetings are used to reinforce

messages that may not have been getting through at a lower level. This approach has been well received by businesses and the results have been positive. Since its inception in 2011, the Operational Contact team has assisted in the closure of approximately 200,000 complaints.

- 3.35 In addition to direct engagement with firms, the ombudsman service has created various materials to help the PPI complaints process. These are drawn together in the Technical Resources section of the ombudsman service website. They include:
- the Business Response Form (BRF) which firms are required to complete once the ombudsman service has told them it has formally taken on a PPI complaint;
 - case studies and ombudsman decisions showing its approach for different types of PPI complaint; and
 - documents setting out the ombudsman's approach to specific issues, such as 'alternative redress' and 'No PPI'.

b) Redress calculations

- 3.36 The resolution of PPI complaints necessarily involves liability (e.g. was the product mis-sold?) and redress (how much compensation is payable?).
- 3.37 When the ombudsman service upholds a PPI complaint about mis-selling in favour of the consumer, it will usually direct the financial firm to compensate the consumer by seeking to put him or her in the position they would have been in if they had not taken out the policy in the first place. This may sound fairly simple, but in practice can be remarkably complicated.
- 3.38 The prime responsibility lies with the firm to calculate the amount of redress due to the consumer, but the ombudsman service has been frequently called upon to resolve disputes about redress. Both the FCA and the ombudsman service have published extensive material to help firms calculate how much redress should be paid. The basic factors to be taken into account include the type of PPI policy, how it was paid for and the type of credit product the policy was attached to. Beneath this are a range of factors that will differ for individual consumers that further exacerbate the complexity of redress calculations. The box, with an extract from the ombudsman service online guidance for firms on redress for credit card PPI, illustrates the complexity of redress calculations.

Where a consumer was mis-sold PPI alongside a credit card, and the policy remains in force, we will tell the business to cancel it. The approach we tell the business to take to compensate the consumer fairly will depend on the consumer's circumstances and the current position of the credit card, but compensation will usually involve two steps:

- *A hypothetical reconstruction of the credit card account to find out what the current balance of the credit card account would be if the consumer had paid the same monthly payments, but the PPI policy had not been added to it.*

This will involve the business removing the PPI premiums, any interest that was

charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account.

The business should then pay the consumer the difference between the current balance and what the current balance would have been without PPI.

- *The addition of interest (usually at our normal rate of 8% per year simple) on any credit balance for any periods when the reconstructed account would have been in credit.*

*In some cases we may decide to tell the business to pay compensation for any **distress or inconvenience** caused to the consumer.*

Other approaches taken by businesses

Some businesses take a different approach, or at least present their calculations differently to consumers. Some businesses present their redress calculations as:

- *a refund of the PPI premiums plus interest at the credit card rate; and*
- *interest at 8% per year simple (without identifying what they are adding this interest to).*

An offer set out like this could indicate that the business has calculated compensation using a different approach to the one we would usually expect. But it could be that the business has carried out a full hypothetical reconstruction of the account and simply presented its results in a different way. In our experience, setting an offer out like that is likely to be confusing for the consumer.

- 3.39 A further complicating factor is now known as “comparative” or “alternative” redress. Guidance from the FCA explains that in certain circumstances it might be appropriate to put a consumer back in the position they would have been in had they taken out a regular-premium PPI policy instead of a more expensive single premium policy.
- 3.40 Complexity of redress calculations, and firms’ failure to explain clearly to consumers how redress has been calculated, has resulted in a substantial sub-set of complaints about redress calculations – just over 45,000 since 2011. This repeats the pattern seen with endowment mortgages where the ombudsman service saw a second wave of complaints about the levels of redress.
- 3.41 The ombudsman service has fed back in detail to firms about the importance of communicating clearly to consumers about redress. In 2012 the ombudsman service worked closely with Which?, MoneySavingExpert.com and the British Bankers’ Association (BBA) on proposals for an industry wide redress assurance scheme. While the redress assurance scheme did not in the end come to fruition, a joint leaflet was developed that is now included in offer letters to consumers.

c) Engagement with CMCs

- 3.42 As noted earlier, a large proportion of PPI cases – currently around 80%²⁷ – referred to the ombudsman service, come from consumers who are represented by CMCs. As with financial firms, the ombudsman service recognised that as the scale of PPI escalated, it needed to adopt a more strategic approach to its engagement with the main CMCs.
- 3.43 This has resulted in regular dialogue to feed back on the cases it sees to ensure CMCs are clear on its approach. The Operational Contact team meets regularly with the largest CMCs, and the 15 largest CMCs - which have between them escalated over 400,000 complaints to the service since 2011- are sent quarterly operational updates. These give each CMC a snapshot of their cases with the service, including feedback on the quality of information the CMC provides.
- 3.44 This engagement has seen significant improvements in the quality of cases that CMCs refer to the service. For example, one CMC went through a period of referring 2,000 cases a week until its total number of cases reached 30,000. These were characterised by poor quality, generic files. By engaging with the CMC and educating its senior management about the ombudsman service approach, the CMC agreed to withdraw 15,000 cases.

d) Engagement with regulators

- 3.45 In the same way that the ombudsman service has met regularly with financial firms, it meets regularly at various levels (both formally and informally) with the Financial Conduct Authority. The Financial Services Act 2012 introduced amendments requiring the ombudsman service and FCA to co-operate with each other and requiring the ombudsman service to share information with FCA where that would assist its operational objectives.
- 3.46 The ombudsman also has regular dialogue with the Claims Management Regulator and shares insights into CMC behaviour. This includes contributing to its regular bulletins and making an input to changes to the Code governing CMC conduct. Where the ombudsman service identifies serious failings from CMCs it refers them to the Regulator. Since November 2012 this has happened on 50 occasions. Reasons for referrals include concerns about the quality of submissions, CMCs operating without CMR authorisation, misleading claims being made by CMCs in their marketing and CMCs not being contactable.

²⁷ Financial Ombudsman service 2014/15 annual review

An analysis and assessment of the ombudsman service response

- 4.1 Any assessment must take into account that the ombudsman service's approach evolved over time and in response to unpredictable events which were outside its control. With the benefit of hindsight, this section seeks to assess the success of the steps taken by the ombudsman service and to identify further action that could be taken. The focus is on how the ombudsman service has discharged its principal responsibility in relation to the PPI saga – the handling of individual complaints.

Successes

- 4.2 In common with other ombudsman schemes, and reinforced by its statutory basis, the ombudsman service, uses a distinctive methodology to deal with cases as they progress thorough the service. This involves informality, the absence of lawyers and hearings and an investigatory element which goes wider than an “inquisitorial” style of dispute-resolution. It contrasts even more sharply with the “adversarial” tradition of the English courts and relies upon intelligent adjudicators who are neither “judicial” nor “clerical”. They are expected to elicit details of the claim and the response from both complainant and firm, adopt a “user-friendly” approach, make extensive use of telephone and e-mail and demonstrate a positive willingness to find pragmatic solutions which will be broadly acceptable to (if not necessarily welcomed by) both sides of the dispute. The acceptability of this approach is suggested by the relatively few cases which escalate from adjudicator to ombudsman and the complete absence of PPI cases where a consumer has pursued a case in the courts after dissatisfaction with the ombudsman service outcome.
- 4.3 The ombudsman has a statutory duty to determine what is fair and reasonable in all the circumstances of a case. Its methodology is largely recognised as “justice” and has not been seriously challenged in any quarter. The important point to make in the context of this review is that the same methodology has been used for PPI complaints. The methodology has proved scalable and robust enough to deal with such large volumes. Indeed, it is difficult to conceive that such large volumes could have been resolved with any other methodology.
- 4.4 The bald statistics provide one measure of the success of the ombudsman service model for dealing with PPI cases: the completion of over a million cases – 800,000 since 2012. Last year more than 328,000 cases were closed by 1,924 staff²⁸. When considering these figures we should remember that that the organisation was not originally designed or constituted for anything remotely on this scale.
- 4.5 Despite such high volumes, customer satisfaction has been high. The last three Annual Reviews show that an average of almost 80% of consumers agreed that “We [i.e. the ombudsman service] provide a good dispute-resolution service for consumers”. This is an impressive figure for any complaint-handling organisation, even more so when compared with an overall average of some 71% for all cases,

²⁸ Financial Ombudsman service annual review 2014/15

i.e. including non-PPI. Although it is impossible to disentangle outcome and process within satisfaction rates, the ombudsman service can take some pride in these levels of satisfaction.

- 4.6 It is also widely acknowledged by most stakeholders that the ombudsman service has risen well to the challenge of dealing with such large volumes of cases. Although – as noted below – some frustrations and criticisms have surfaced, the overwhelming impression given in interviews conducted for this report has been one of respect – both for its capacity to get through the numbers and its determination to do so without compromising the integrity of quasi-judicial decision-making. Moreover, most of the negatives relate to earlier years where the ombudsman service was struggling with both volumes and substance.

“They’ve done very well. With these volumes you can’t have shifting views all the time. Where their opinion has changed – whether on general issues or in particular cases – it’s been well explained.....They’ve been pragmatic and try to avoid stalemates and unnecessary pain.... .The liaison person has been straight and direct with us and will take challenge back.....A good job in tough circumstances....”

Banking representative

“There’s much more trust in the relationship these days. There’s openness and we have healthy conversations.....Their perceptions about us are better and the teams genuinely talk to each other.”

Banking representative

“They may have been slow off the mark originally, but they identified the “mass” consumer detriment sooner than others. No-one else spotted the magnitude of the [PPI] issue..... Their adjudications seem to be getting it right. They’ve pushed some boundaries and created precedents.... There’s no doubt they’ve provided a good avenue for redress.”

Consumer representative

- 4.7 The upheaval does not appear to have had any adverse effect on the rest of the ombudsman service caseload. Tables published in the ombudsman service Annual Reviews show that the average time to resolve non-PPI cases has remained consistent across non-PPI cases throughout the period from 2009 to 2014. The 2010 Review shows that 67% of all cases were resolved within 6 months in 2009. Performance improved over the five year period so that 78% of cases, excluding PPI, were resolved within that time in 2014.
- 4.8 To sum up, it appears that (although the levels of demand were under-estimated) the ombudsman service made the right strategic decisions, that these were duly implemented and that the approach to date has been largely vindicated. In particular:
- The ombudsman service geared up successfully – especially in terms of funding, recruitment, training and accommodation.

- It was right to recognise the risks of large-scale out-sourcing and keep its PPI operation in-house.
- The challenges of achieving quality and consistency have been largely fulfilled. These are difficult – if not impossible – aspects to measure, but:
 - there have been high satisfaction rates from consumers; and
 - there have been no significant challenges from firms on the grounds of quality or consistency of decision-making.
- There has been a commitment to innovation and continuous improvement. The rapid development and implementation of Navigator is the outstanding example, but the intelligence captured by the synopses, the introduction of the “No-PPI” division and the new funding model are further illustrations.
- There has been little or no adverse impact on non-PPI caseload.

Weaknesses

- 4.9 Some concerns have surfaced about delays. Isolated concerns (albeit largely historical) have also emerged from firms about the efficiency of case-handling, about sporadic shifts of jurisprudence and about a style occasionally seen as somewhat arrogant.
- 4.10 The worst year for delays was 2012-13 when well over three times more cases (378,000) were received than closed (101,000). In 2013-14, only 48% of *all* cases were closed within 6 months, contrasting with 71% for non-PPI cases. Performance has improved more recently so that in 2014-15 over 120,000 more cases were closed than received.
- 4.11 Any delays and backlogs are unwelcome and uncomfortable for the customers of a complaint-handling organisation, though the high satisfaction rates suggest that consumers have not been unduly concerned. Delays are however neither surprising, nor discreditable, given the volumes of cases flooding into the ombudsman service over the last three years and (in particular) the surge which built up during and immediately after the judicial review moratorium. And of course, it was difficult to scale up the operation until the outcome of the judicial review was known.
- 4.12 Some discontent about delay from consumers did surface as complaints to the ombudsman service and a few (*“40 or 50 over the years”*) were taken to MPs who passed them on to Treasury ministers. It is interesting that banks also registered some unhappiness about delays – mainly because reputational and morale setbacks can arise where reminders of bad (and perhaps indefensible) historical practice arise sometime after the event.

“Operationally it was not their finest hour. They were slow to scale up and there was quite a backlog even before the judicial review. They should have foreseen the flood following that case.”

Consumer representative

“They’ve still got some of our cases going back two years. Most of these are still our customers and I worry about what that’s doing...They’ve been energetic, but I’d like to see even greater urgency in getting through the backlog.”

Banking representative

“They’ve taken most of the low-hanging fruit, but the harder cases are getting pushed to the back of the queue. This makes the uphold figures look worse than they are.”

Banking representative

- 4.13 There is widespread agreement, however, that the steps that the ombudsman service took to mitigate the effects of the delays were sensible, worthwhile and well-executed. These mainly took the form of proactive communications with consumers (typically e-mailed explanations and updates) and regular review exchanges with firm at both senior and operational levels. These steps clearly paid off in terms of a greater understanding of the challenges facing the ombudsman service.
- 4.14 It is difficult to gauge the validity of some criticisms expressed about the handling of cases and the substance of decision-making. They cannot easily be untangled from the inevitable frustrations of dealing with large volumes of cases where past and expensive misconduct is being exposed, often where a firm’s handling of a complaint is overturned. Certainly, it would be quite wrong to exaggerate the extent or the strength of criticisms – and all were treated as largely historical and were qualified in the language of *“things are better now”*. Nevertheless, it is right to include comments – unsurprisingly all from banking representatives – where some negativity was expressed.

“It took them time to find their level. There were inconsistencies ten years ago - for example with chains of re-financed loans, where some adjudicators just took the most recent loan, but others aggregated all the loans.”

“We never really found out why they switched their focus [in 2009] from terms & conditions to selling processes”.

“Sometimes they behave a bit like a consumer champion and we have not always known where they were coming from when dealing with the more complex PPI products.”

“They’ve got better at working with us to identify samples of cases which can all be treated the same way. If they uphold the lead case, we can take the others

back and resolve them. If they agree we got it right with the lead case, we can be confident about our approach.”

“I’d like to see more electronic processing of cases, less paperwork, more integration with our systems and better reconciling of cases.”

Grouping cohorts

- 4.15 With such large volumes of apparently similar cases, this report has probed – particularly with an eye to the future – whether more could or should have been done to group cohorts of cases together and treating them all in identical or very similar fashion.
- 4.16 The issue, and the potential, has been well-recognised, not least for example in the section on PPI complaints on the ombudsman service website:
- If a standardised sales process is found to have been inadequate, it may be difficult to avoid the conclusion that most complaints about sales made under that process should be upheld.*
- 4.17 The previous section described how Navigator and the synopses have already taken the ombudsman service a long way down the “cohort” route. There have, however, been two very understandable barriers to going further down that route – a fundamental commitment to achieving fairness in individual cases and the sheer number and complexity of the variables involved in assessing PPI complaints.
- 4.18 The commitment to fairness and to resolving cases on individual basis has been a *sine qua non* of the ombudsman service from the outset, and indeed is based in statute. It is a commitment which continues to stand out from all the ombudsman service external and internal communications as a core value.

“Considering the individual facts and individual circumstances remains at the heart of our approach.....”

ombudsman service newsletter

- 4.19 Quality, consistency and excellent customer service are all attributes which are vital to the ombudsman service’s reputation, credibility (in the eyes of both firms and consumers) and effectiveness. Excessive standardisation poses an unacceptable risk to these attributes. It has been striking how often the contemptuous language of “commoditisation” or “industrialisation” has been used to express fears about moving too far away from an individualised approach.
- 4.20 The same language has been used, probably more vociferously, to dismiss the approach of many firms to their complaint-handling – an assessment perhaps vindicated by the unprecedented fines recently imposed by the FCA.

4.21 Fears of putting fairness at risk have been compounded by the complexities of the PPI market and the complaints it has generated. Arguably one of the fatal mistakes made by the finance industry was to treat PPI as almost a single product to be sold on a “one size fits all” basis to a mass market. The data which are fed – directly or via Clipper – into the Navigator tool vividly demonstrate the range of variables and permutations which must be established and assessed to resolve each and every PPI complaint.

Variables considered when assessing a PPI case

- Identity of firm
- Type of credit product
- Term of credit product
- Type of PPI product
- Term of PPI product
- Sales channel
- Identity of any intermediary
- Date of transaction
- Identity of consumer
- Employment status of consumer
- “COAS” – assessments of consent, optionality and assumed sale
- Health of consumer
- Pre-existing medical condition?
- Costs of PPI product
- Pressured sale?
- Eligibility
- Benefits of PPI product
- Suitability of product

4.22 Navigator, backed up by the synopses which provide track-record information, has worked very well. The “5Qs” process also shows that some attempts can be successfully made to make “educated guesses” on a tentative, non-binding basis at the early triage. There have also been welcome examples where a firm has worked with the ombudsman service to identify a lead case and has agreed that all other cases in a defined group should be treated the same way.

4.23 Despite any superficial attractions, no evidence has emerged from inside or outside the ombudsman service that there could have been more significant efforts to group cohorts of cases together. Significant downsides and risks would arise with harder-edged attempts to aggregate similar cases and, without proper investigation and assessment, to apply pre-determined conclusions. Decisions which are effectively final cannot be reached without proper investigation and judgement of individual circumstances. No obvious basis has been found on which cases could be grouped into cohorts more effectively or more efficiently than has been achieved by Navigator.

- 4.24 Any crude aggregation could only result in the sort of completely “rough justice” that would be unacceptable to firms and consumers alike. The conclusion has to be that any wholesale attempt to group cases any further into cohorts has not been, and will not be, a viable option.

The case for further expansion

- 4.25 As noted earlier in this report, the ombudsman service expanded its PPI operation rapidly from May 2012 to the end of 2013. During this period the number of staff working on PPI increased from 400 to 1700. By the end of the 2014/15 financial year, the ombudsman service had just under 2,000 staff working exclusively on PPI, with plans to recruit a further 365 staff during 2015/16.
- 4.26 Given the continued volume of new PPI complaints arriving at the service and its existing backlog, which was 200,000 at the time of writing this report, an important question to consider is whether the service could and should have continued to expand. The argument for continued scaling up of the ombudsman’s PPI resource is an obvious one – the more staff you have working cases, the more cases you can resolve. However, there are significant risks to scaling up an operation so quickly and it is clear that the Board was highly sensitive to these risks as it reached decisions about achieving the optimum capacity.
- 4.27 As has been noted in chapter 3, the ombudsman took the strategic decision in 2011 that it would not compromise on quality when scaling up to meet increased demand. The need to maintain quality was a ‘deal breaker’ that ruled out some of the options the service was considering for further expansion of its PPI operations in late 2012, such as outsourcing. Expanding its in-house operations also carried significant risk. Recruiting large numbers of staff carries with it a threat to quality of output and brings with it the danger of management overstretch. In its previous expansions the ombudsman service sought to mitigate these risks by incorporating new staff within existing teams. Continued growth at the rate seen in 2012 and 2013 would have risked overloading teams with inexperienced staff, which would have had both quality and productivity implications.
- 4.28 On the whole, it is hard to see how the service could have further extended the capacity of its PPI operations without compromising on quality. However, decisions about capacity must be re-considered from time to time as the position changes and, if the outcome of the FCA’s consultation on a PPI timebar and Plevin guidance create a significant increase in new complaints, the service should revisit the question of further expansion.

Recommendations for further action

- 5.1 This section of the report considers the scope for making operational improvements to the handling of PPI complaints and makes some recommendations. The analysis and the recommendations seek in particular to reconcile four principles which can pull in competing directions:
- it is right (in economic, political, legal and moral terms) that consumers should be compensated where financial firms have been responsible for PPI mis-selling;
 - the ombudsman service will need to continue handling extremely high volumes of PPI complaints even though it was not established to deal with demands on this scale;
 - to minimise volumes, firms should be encouraged and helped to adopt a “Right First Time” approach with much better complaint-handling arrangements;
 - CMCs should be restrained from putting forward unmeritorious and badly-prepared cases.

Continuous improvement

- 5.2 Whatever the exact numbers, and whatever the implications for adjusting staffing and resources in line with demand, it is inevitable also that the ombudsman service will have to continue discharging its primary function of handling high volumes of PPI cases on an individualised basis. This is the approach that the ombudsman service has successfully deployed for over a million cases. It has proved it can be done and the same approach clearly has to be adopted for the large stock of PPI cases already received by the ombudsman service.
- 5.3 The previous section concluded that any wholesale attempt to group cases any further into cohorts would not be a viable option. This review has, however, suggested that the ombudsman service more generally needs to maintain its appetite for innovation and continuous improvement. The most promising scope for improvement and innovation will be found with forecasting, staff development and retention, triaging, technology (especially prioritising refinements to Navigator and accelerating the development of “all-electronic” case-handling), and improving case management integration and liaison with the firms generating the most complaints. Some of these are examined in more detail below. A marker also needs to be put down that the ombudsman service should develop contingency plans for any sharp downturn (whatever the cause) in PPI complaint volumes.

Recommendation 1: THE OMBUDSMAN SERVICE SHOULD MAINTAIN ITS APPETITE FOR INNOVATION AND CONTINUOUS IMPROVEMENT

Forecasting

- 5.4 Demand forecasts for any complaint-handling body are notoriously difficult and unreliable. The problems and challenges of accurate forecasting for the ombudsman service were comprehensively reviewed in the NAO’s report (January 2012) on the efficient handling of financial services complaints. For the most part,

this gave the ombudsman service a clean bill of health for its approach, but that exercise largely pre-dated the unprecedented surge in PPI complaints. In itself, the failure of all concerned – the banks, FSA, the ombudsman service or the NAO itself – to foresee the full scale of that surge simply reinforces the difficulties of demand forecasting.

- 5.5 The inflow of new complaints to both firms and the ombudsman service appears to have reached its peak and started to slow. Following the 2012 peak of 6 million new complaints to firms, there were just under 3.2 million in 2013 and 2.3 million in 2014²⁹.
- 5.6 204,943 complaints were received by the ombudsman service in 2014/15, a reduction of nearly 50% on the previous year, and a further reduction (around 180,000 complaints) is expected in 2015/16.
- 5.7 Is the worst of the storm is over? The rate of decline is slower than had earlier been predicted, as shown by the number of complaints the ombudsman service is projecting in its 2016/17 plan and budget consultation.

³⁰ Year	Cases
2015-16 (Budget)	180,000
2016-17 (projection)	170,000

- 5.8 On top of the current stock of some 250,000 cases, it is clear that a considerable “tail” – over half a million cases – of PPI claims will continue to make up the bulk of the ombudsman service workload for some years to come. It is also widely agreed that current and future cases are likely to be more complex and take longer to resolve. It would be wrong therefore to conclude that the PPI saga, and its impact on the ombudsman service, has finished.
- 5.9 Nor can a significant upturn in volumes of new cases be ruled out. The ombudsman service is largely dependent for its demand forecasting upon information supplied by firms, consumer organisations and the regulator. Past data has not been robust and the scale of further provisions made by some banks may carry worrying implications. The majority of policies have not resulted in a complaint – less than a third, possibly closer to a quarter. Theoretically there are still some 30 million further complaints (possibly more) waiting to be brought forward to firms with a reasonable prospect of success, with a proportionate share of those passing on to the ombudsman service. In addition, the proposed deadline of spring 2018 for new PPI complaints and the Plevin case decided by the Supreme Court at the end of 2014 (discussed in more detail below) could result in significantly more new cases.
- 5.10 Despite all these considerations, the prospect of a further major surge hitting the ombudsman service does not seem very likely, although it cannot be entirely ruled out. This conclusion reflects:

²⁹ FCA aggregate complaints data.

³⁰ Financial Ombudsman Service 2016/17 plan and budget consultation

- the fact of declining numbers of complaints in recent years;
- evidence that most consumers have some awareness of the possibility of a PPI claim – as high as 95% according to one bank;
- the effect of the existing time limit rules;
- the prospect of FCA guidance on Plevin;
- the increased likelihood of legislative or regulatory intervention if a surge does in fact start to materialise.

5.11 However, effective forecasting is a cornerstone of operational efficiency and the ombudsman service should therefore continue to refine its forecasting capability, engaging with key stakeholders as it does so.

Recommendation 2: THE OMBUDSMAN SERVICE SHOULD CONTINUE TO REFINE ITS FORECASTING CAPABILITY, ENGAGING WITH KEY STAKEHOLDERS AS IT DOES SO

Staffing

5.12 The ombudsman service has invested a significant amount of time and resource in recruiting and developing its PPI staff, with over 2,000 now working exclusively on PPI. It is important that it maximises the growing experience and confidence of staff recruited to handle PPI complaints, particularly in light of the challenges posed by increasingly complex cases relating to older PPI sales; cases resulting from the Plevin judgment; and the impact of the proposed time bar.

5.13 The loss of experienced staff is a risk for any organisation. Many of the 2,000 new staff recruited by the ombudsman since 2012 will have joined the service with relatively little experience. The early recruits now have over three years' experience during which time they have developed valuable expertise and it is natural that some will be ready to move on to further their careers elsewhere. However, it is important that the ombudsman does all it can to minimise the loss of experienced PPI staff.

Recommendation 3: THE OMBUDSMAN SERVICE SHOULD TAKE FULL ADVANTAGE OF THE GROWING EXPERIENCE OF STAFF RECRUITED TO HANDLE PPI CASES AND TAKE PROACTIVE STEPS TO MINIMISE THE POTENTIAL LOSS OF EXPERIENCED CASEWORKING STAFF

Triage and early resolution of cases

5.14 The 5Qs approach has been a useful tool in getting consumers an indicative early answer to their PPI complaint. It has a valuable role to play in preventing cases from unnecessarily going through the formal and lengthy casework process and adding the ombudsman service's already considerable workload. The ombudsman service should therefore find new ways to use the 5Qs triage technique as robustly as possible to speed up the resolution of cases. It should also consider other ways in which it can resolve PPI complaints earlier in the process.

Recommendation 4: THE OMBUDSMAN SERVICE SHOULD CONTINUE TO FOCUS ON THE EARLIEST POSSIBLE RESOLUTION OF COMPLAINTS, EXPLORING NEW WAYS OF USING THE 5Qs TRIAGE TECHNIQUE AND CONSIDERING OTHER METHODS OR TOOLS

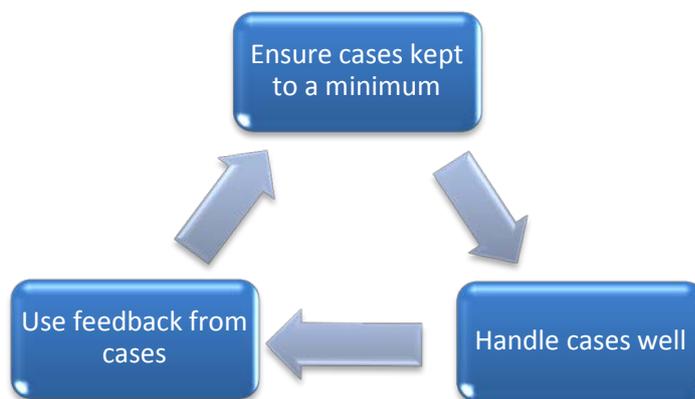
Navigator

- 5.15 As noted above, Navigator digests most of the variables arising from each case and applies the ombudsman service jurisprudence, as it has developed in previous cases, to the relevant permutation, suggesting an outcome for the adjudicator to accept, modify or reject. Alongside this, the adjudicator has access to the Synopsis, containing relevant information about that firm, its products and its track record.
- 5.16 Firms should be trying to reach the same outcome as the ombudsman service adjudicators at an earlier stage. Yet it is notable and perhaps surprising that neither Navigator, nor the relevant synopsis, are shared with the firms and some appear to be unaware of its content, functionality or existence. It seems that, when Navigator was first introduced, consideration was given to making it available to financial firms to help them improve how they dealt with complaints, but this was rejected. The reasons appear to be that dialogue already existed, that the regulator had set out clear rules (DISP App3) in 2010 about the handling of PPI complaints and that use of Navigator would not necessarily result in them assessing cases in line with the ombudsman's approach. For example, a firm might not accept that it had not given enough information to the consumer at the point of sale. The conclusion seems to have been that, even if firms had Navigator, it might not lead to improvements in their complaint handling.
- 5.17 These are not persuasive arguments. Nor is there a Board paper or other evidence of a fully reasoned assessment of the arguments for and against sharing. Safeguards might be needed and Navigator would not be a perfect tool in the hands of firms handling complaints. But there should be considerable scope for the benefits which it has brought to the ombudsman service to be shared with at least the four main banking groups and probably more widely. The case for sharing is even stronger if it further benefits the ombudsman service by reducing the inflow of cases.
- 5.18 In similar vein, sharing of the synopses ought to inform firms better about themselves (especially important within bureaucratic structures or where complaint-handling has been out-sourced). And the ombudsman service should benefit from correction of any factual errors or misunderstandings which the firm discovers.

Recommendation 5: THE OMBUDSMAN SERVICE SHOULD SHARE THE NAVIGATOR TOOL AND INDIVIDUAL SYNOPSES WITH FIRMS UNLESS A FULLY REASONED ASSESSMENT SHOWS THAT (EVEN WITH SAFEGUARDS) THERE IS AN OVERWHELMING CASE AGAINST DOING SO

Providing more assertive feedback

- 5.19 A virtuous circle demonstrates how feedback from casework can and should be used to reduce the number of cases:



5.20 What more can the ombudsman service do to feed back information from cases with the aim of helping firms get it “Right First Time” and thus minimise the volumes of future cases? Discussion starts with a reminder that the ombudsman service holds substantial (and sometimes unique) intelligence arising from the huge casework it handles. This includes information about:

- the nature of commercial misconduct and consumer detriment (which is more illustrative, and often more valuable, than statistical data);
- poor practice with complaint-handling; and
- the ombudsman service’s own “jurisprudence”.

5.21 A two-headed approach (“carrots and sticks”) is called for. Feedback can be constructive and helpful – actively enabling firms to get the right answers sooner. And feedback can also lead critically to more mandated changes in commercial behaviour. The ombudsman service has done much on both fronts, but there may be scope for more.

5.22 There is no doubt that the ombudsman service has provided considerable feedback to firms about the handling of PPI complaints. This is both to help things run smoothly from an operational perspective and to ensure that businesses know the ombudsman’s approach to PPI complaints and can apply this to their complaint handling. The engagement has focused on the larger firms, especially the four banking groups which have generated 58% of all complaints received by the ombudsman service³¹. But a range of resources has also been made available to ensure that firms of all sizes have the information they need to help them deal with PPI complaints.

5.23 The constructive feedback which the ombudsman service has put in place at various levels, both systemic and bilateral, has undoubtedly been appreciated. But there has also been some frustration that more was not done sooner and still an appetite for ‘real-time’ feedback to be provided faster.

³¹ Financial Ombudsman service 2014/15 annual review

“We may have been a bit passive...with too many missed opportunities.”

Ombudsman service representative

“We have certainly learnt from the ombudsman service cases and feedback and have much better levels of trust than before... The chairmen and CEO-level meetings have worked well with a “no surprises” approach.”

Banking representative

“The quality of feedback has improved and we study it more than before. Neither side listened enough and there was some lack of respect. They’ve addressed the arrogance now. And we’ve used the ombudsman service views to increase the pace of our cultural changes. But we’d still like a quicker, more collaborative approach...They could pick up the phone to us more often.”

Banking representative

- 5.24 During 2015, the FCA issued two more large fines for poor PPI complaint-handling. In April Clydesdale Bank was fined £20 million for a series of failures, which included providing false information to the ombudsman service³². A much larger (and record) fine of £117 million was imposed on Lloyds Banking Group in June for systemic failures that resulted in its failing to assess complaints properly³³.
- 5.25 These are significant developments which should place further pressure upon firms to improve their standards of complaint-handling. However, while there is a statutory duty on the ombudsman service to co-operate with the FCA and there has doubtless been “behind-the-scenes” co-operation, it is not apparent how the ombudsman service has contributed to these regulatory outcomes. Although the ombudsman service doubtless assists the FCA with any requests for information, there is little high-visibility evidence of a public commitment that the ombudsman service will volunteer information in appropriate cases to the FCA with a view to supporting regulatory action.
- 5.26 Now that the FCA is taking a stronger line, the ombudsman service needs to respond with a stronger, well-publicised line of its own – making it clear how it is sharing evidence and pressing for appropriate regulatory action in suitable cases.

“They could have been a more visible player sooner....They had the know-how on the chunkiness of banks....The quarterly publication of complaints data and breakdown of uphold rates was fine, but should have been sooner.....But the ombudsman service mind-set has improved”.

Consumer representative

³² <https://www.fca.org.uk/news/clydesdale-bank-fined-for-serious-failings-in-ppi-complaint-handling>

³³ <https://www.fca.org.uk/news/lloyds-banking-group-fined-for-failing-to-handle-ppi-complaints-fairly>

- 5.27 It would be unfair and quite wrong to characterise the feedback from the ombudsman service as weak. Clearly a great deal has been done to engage with both firms and with the FCA, at constructive levels and more critically.
- 5.28 Nevertheless, there remains some sense of ambivalence – or at least insufficient priority for such activity. This is perhaps well-evidenced (at least symbolically) by the ombudsman service Annual Plan published in March 2015. Under the heading of “What we’re here for” the feedback function is listed eighth in a list of eight. This is elaborated in terms of “Providing Insight” on just one page (out of 21).
- 5.29 Any ambivalence may be due to the obvious (and correct) priority which must go to the fair resolution of disputes. If feedback from the ombudsman service has been somewhat muted this may also have arisen from a real fear of being accused of being a “back-door regulator”. This is a charge that has been levelled by the financial services industry against the ombudsman service, at least implicitly, since its establishment. There has also been a risk that the actual Regulator – initially FSA and now FCA – could voice similar concerns.
- 5.30 Even without any suggestion of ambivalence, the opportunity now exists for the ombudsman service to make a clear, visible and suitably prioritised commitment to more assertive feedback.

Recommendation 6: THE OMBUDSMAN SERVICE SHOULD MAKE A CLEAR, VISIBLE AND SUITABLY PRIORITISED COMMITMENT TO MORE ASSERTIVE FEEDBACK WITH THE EXPLICIT AIM OF REDUCING COMPLAINT VOLUMES

Market developments: the Plevin Judgment

- 5.31 In November 2014 the Supreme Court handed down its judgment in the case of *Plevin v Paragon Personal Finance Limited*³⁴. It indicated that, in some circumstances, undisclosed commission could result in an unfair relationship between the lender and consumer under the Consumer Credit Act 1974. In that case, the commission accounted for £4,200 of the £5,780 paid in premiums for the PPI policy.
- 5.32 In November the FCA published a consultation paper on guidance to firms regarding Plevin as well as proposals for a time bar on PPI complaints. If nothing else, Plevin and time bar developments illustrate the challenges faced by the ombudsman service in accurately forecasting volumes and could result in more new cases. It is important that the ombudsman service responds rapidly (both operationally and substantively) to the developing picture and continues to work closely with the regulator if the proposals are implemented.

Recommendation 7: THE OMBUDSMAN SERVICE SHOULD VISIBLY SHARE AS MUCH INTELLIGENCE AS POSSIBLE WITH THE FCA AND WORK CLOSELY WITH THE FCA AS IT

³⁴ <https://www.supremecourt.uk/cases/uksc-2014-0037.html> <https://www.supremecourt.uk/cases/uksc-2014-0037.html>

DEVELOPS ITS PLEVIN GUIDANCE AND CONSIDERS WHETHER AND HOW TO INTRODUCE A COMPLAINTS DEADLINE.

Dealing with Claims Management Companies: engagement with CMCs

- 5.33 Could the ombudsman service do more – in line with the more assertive approach canvassed above – to provide feedback to CMCs and educate them into bringing forward fewer inappropriate or badly prepared complaints?
- 5.34 A possible change would be to share Navigator with CMCs, as has been proposed for financial firms. The principal benefit would be to give CMCs, and their clients, a better and earlier idea of how that case would be treated if it were to reach the ombudsman service. That ought to reduce the number of cases – certainly unmeritorious cases – which CMCs bring to both firms and to the ombudsman service. It ought also to improve the quality of preparation.
- 5.35 However, a much more cautious approach is needed here than with firms. The principal concern about sharing Navigator with CMCs is that they would misuse it. Giving them access to Navigator could lead to them trying to game the system, especially by artificially shoe-horning complaints to improve the prospects of success. CMCs, living in a less onerous regulatory environment, are promoting claims, partly out of self-interest, and they are acting for – and influencing – claimants whose version of events can usually only be challenged by (often non-existent) documentation. The scope for exaggeration and dishonesty, tailored to meet the architecture and the substance of the Navigator questions, may be considerable.
- 5.36 Despite these reservations, there does not appear to have been a fully reasoned assessment of the arguments for and against sharing Navigator with CMCs. It is possible that suitable safeguards could be devised and the benefits of sharing realised.

Recommendation 8: THE OMBUDSMAN SHOULD CONSIDER MAKING NAVIGATOR AVAILABLE TO CMCs

Dealing with Claims Management Companies: engagement with the Claims Management Regulator (CMR)

- 5.37 A more assertive feedback policy also means a tough approach to bringing regulatory pressures on CMCs to abandon unmeritorious cases and improve the quality of their input in terms of how they investigate, check and present cases.
- 5.38 As mentioned above, the ombudsman service already has regular dialogue with the Claims Management Regulator and shares insights into CMC behaviour. It appears however that there is scope to do more, especially where CMCs routinely bring unmeritorious or badly-prepared cases. In most cases, critical letters to CMCs are copied to the Regulator, but it is not clear how hard the ombudsman service pushes for action to be taken. Recent changes which permit the CMR to impose substantial fines can and should be exploited. Since December 2014, penalties of up to 20% of turnover can be imposed on CMCs with a turnover of £500,000 or more. The most

recent CMR Annual report states that the new financial penalties will be imposed for such matters as “submitting speculative claims, gathering data without due diligence and misleading marketing”. With total revenues from PPI as high as indicated above, such turnover-based fines could be taken very seriously, especially if the sanction of removing authorisation also exists. Of course the CMR needs to be adequately resourced to take meaningful enforcement action, but the ombudsman service has a vital role to play.

Recommendation 9: THE OMBUDSMAN SHOULD BE SWIFT TO SHARE EVIDENCE OF UNMERITORIOUS OR BADLY-PREPARED CASES WITH THE CLAIMS MANAGEMENT REGULATOR SO THAT IT CAN TAKE ADVANTAGE OF THE SUBSTANTIALLY INCREASED SANCTIONS NOW AVAILABLE AGAINST CMC MISCONDUCT

Annex A – Extract from Terms of Reference

Independent report commissioned by the Board of the Financial Ombudsman Service



To review the impact of PPI misselling on the Financial Ombudsman Service and make recommendations for mitigating current and future pressures, which take into account the impact on consumers and financial businesses

Terms of reference: June 2015

About the financial ombudsman service

The ombudsman service was set up by Parliament to sort out individual complaints that consumers and financial businesses aren't able to resolve themselves. It is an independent service for settling complaints fairly, reasonably, quickly and informally, which is free to consumers. A business must be given the chance to look into a problem first – and has eight weeks to consider it. If the business does not respond within eight weeks, or does not respond to the consumer's satisfaction, the consumer can come to the ombudsman service.

size of the issue

The PPI misselling scandal has had a huge impact on society, affecting millions of individual consumers and bringing the behaviour of financial services institutions under the spotlight. It is estimated that over 50million PPI policies have been sold, at a value of £50 billion. For some consumers these policies were an appropriate product, however many consumers did not realise they were buying a policy or were sold something that was not suitable for their circumstances. The FCA reports that industry has handled over 14 million complaints, with £18.5bn paid out in redress since January 2011.

The number of people who have asked us to help has been significant – at its height we were receiving 12,000 complaints each week – and we are currently receiving 4,000 a week. In total we have received in excess of 1.25million complaints and resolved more than 1million of these.

why this is important

In its fifteen years, the ombudsman service has dealt with complaints about a wide range of financial services products and has resolved hundreds of thousands of complaints. Demand for the service has continued to grow, partly through greater awareness and easier access – but also as a result of mass claims about Payment Protection Insurance (PPI) misselling.

Although PPI complaint volumes are declining, the organisation is still receiving significant numbers of complaints. Such vast numbers of complaints have had

consequences for the ombudsman service, which has had to rise to the challenge of responding to individual complaints, but on a mass scale. The organisation has grown in size and explored different methods of handling and resolving complaints

Looking to the future, the Board of the ombudsman service wants to ensure that the organisation is doing its best for its customers and remains focussed on continuous improvement.

scope of the report

The Board of the ombudsman service, feels that it is timely to take a step back and consider the effect that PPI has had (and continues to have) on the ombudsman's service.

The report will:

1. provide a broad context for the analysis by describing the circumstances in which the ombudsman service has been operating, including the actions of financial businesses and the regulator's response to PPI misselling;
2. consider what the ombudsman service has seen to date, with an analysis of the volume and types of problems it has been asked to resolve;
3. consider how the service has responded, including the effectiveness of the operational changes it has made and what impact they have had on the rest of the service and its consumers;
4. the number of complaints the service expects to see going forward and its plans for dealing with these;
5. consider whether there are alternative approaches that could be taken to bring the matter to an early conclusion.
6. if relevant, make recommendations for action.