Work and Pensions Committee

Oral evidence: Appointment of Pensions Ombudsman, HC 465

Wednesday 13 July 2022

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Watch the meeting

Members present: Sir Stephen Timms (Chair); Debbie Abrahams; Neil Coyle; Steve McCabe; Nigel Mills; Selaine Saxby; Dr Ben Spencer; Chris Stephens; Sir Desmond Swayne.

Questions 1 - 64

Witness

I: Dominic Harris, Government's preferred candidate for Pensions Ombudsman.

Examination of witness

Witness: Dominic Harris.

Q1 **Chair:** Welcome, everybody, to this meeting of the Work and Pensions Select Committee. A particularly warm welcome to Dominic Harris, who is the Government's preferred appointment for the role of Pensions Ombudsman. Dominic, would you briefly introduce yourself to start?

Dominic Harris: Thank you for the invite to be here. I am Dominic Harris. I am currently a partner in the pensions team at CMS. I have been practising pensions for some 21 years now and absolutely delighted to be the Government's preferred candidate.

Q2 **Chair:** Thank you very much for coming to speak to us this morning. Could you set out for us why you would like to have this job and what you will bring to it?

Dominic Harris: Absolutely. From my perspective, I think the Pensions Ombudsman is a great institution and, in fact, I think ombudsmen are generally a pretty great institution. Even though I am a lawyer, I would never advise an individual to go through litigation with the cost risks that come with it and so forth. I think ombudsmen level the playing field and it is a great thing for consumers and for trustees and insurers as well. I have wanted to do something from a public service perspective for a while. As a pensions lawyer, I think being the Pensions Ombudsman is clearly the pinnacle, the thing to aim for. That is my big driver in all of this.

Somewhat less prosaically I have also reached a stage in my career when I have been pondering giving up some of the client side work, taking a more frontline management role or, alternatively, scratching that public service itch by looking at the judiciary. The Ombudsman gets to tick both boxes effectively. I get to be chief executive of a relatively small organisation and get to make determinations in that quasi-judicial role.

Why I want it and what I will bring to the role: if you look at the criteria of what the Government were looking for—and hopefully what I have on my CV—the first is legal experience; again, 21 years. The Ombudsman is making legal determinations based on law and fact. In my opinion, I think it needs someone who can bring that legal rigour to that determination making process, so that is one.

The second is a bit of an extension on that. I am a pensions lawyer as well. As I am sure the Committee will know, pensions is quite complicated, quite difficult and I will, I hope, bring to bear those 21 years of pensions legal experience to the role as well.

Additionally, I have been involved in lots of disputes through my career from lots and lots of internal dispute resolution procedures—hopefully trying to avoid going to the Ombudsman—that are worth £500 maladministration payments all the way through to £500 million claims in the Court of Appeal. From my perspective, I think I can bring that dispute resolution experience as well.

The other things are leadership, management skills. The pensions team at CMS is 80-odd strong. We are a partnership, so we take on different roles within the partnership but I have been moving through to more firm-wide steering groups and so forth. From a management and strategy point of view, you might have spotted on my CV, I went off and did an executive MBA, three or four years ago, juggling it at the same time as my day job. Therefore, I have that theoretical backing to be able to look at strategy and then the practical experience to go out and implement it, as I have been doing in my day job.

Then finally, one of the things I think the Ombudsman does very well at the moment—and I think is very important for whoever the next Ombudsman is as well—is to get out and speak to all the stakeholders in the industry. I have those links already. I am quite happy to go out and speak to anyone. I chair one of the Association of Pension Lawyers committees. I sit on the Joint Industry Forum. I go off and speak to the PLSA and other conferences. I hope I will continue to bring that energy that I have in going out in the industry and speaking to some of those other key stakeholders.

Q3 **Chair:** This is the Government’s second attempt to fill the post. After they did not succeed the first time they dropped the requirement for a legal qualification and then readvertised. I would be interested to know whether you applied the first time. Clearly, you do have the legal qualification that is no longer required, how important do you think that is for this job?

Dominic Harris: Far be it from me to second-guess the Government's decisions on what the criteria should be, but I clearly do think it is important. If you look at the way ombudsmen are set up, they are set up in different ways. Some, like the Financial Ombudsman Service, just make their decision on the basis of what is fair and reasonable. Pensions is a very different world. One of the things you soon discover is that what looked to be relatively small decisions can have enormous financial consequences, measured in the hundreds of millions and billions of pounds.

In my personal opinion—and it is my personal opinion—it is right that you should have a legally trained mind to be able to look at what is going on and make those decisions. Let's not forget as well, there are appeals to the High Court on points of law from the Pensions Ombudsman. If the Ombudsman fails to follow the law, which it must do, it can be appealed. That is costly from the Ombudsman's perspective but it is also pretty awful from the member's perspective. The customer journey is pretty long at the moment as it is. The last thing you want to do is have yet more uncertainty in all of this, yet more appeals, cost risk for members and dragging it out even further so, from a personal perspective, I think it is absolutely vital.

Q4 **Chair:** Did you apply first time?

Dominic Harris: Yes.

Q5 **Chair:** You have made the case for your being well qualified for the job. Are there any gaps, do you think, in your experience that you would like to fill in order to equip you better for the role?

Dominic Harris: I think I am well set for it. I am a big believer in continuous learning and development. Again, trying to desperately do an MBA at the same time as having clients shout at you down the phone that they want their work I hope is an example of that. Frankly, I will take on any knowledge that we can find and the present Ombudsman is going to be a great source of that knowledge.

I think there is. To give you a couple of examples. The Ombudsman's dishonesty unit pilot following the Norton case involved many more oral hearings. That is something that previous ombudsmen—and indeed even Mr Arter—did not do a great deal of in the past. I have experience of being a solicitor and I am a solicitor advocate as well. I have never run an oral hearing. Clearly, that is a gap in my knowledge and I ought to go off and make sure that I am well equipped to deal with that.

I am sure there are plenty of others as well. I have never worked in the public sector; I have been private sector all my career. I am not going to count the summer I spent at Treasury Solicitors as experience of being in the public sector. Again, there are lessons to be learnt there and there will be a transition plan in place with Anthony. I have a fairly long notice period to run and during that, if I get the job, Anthony and I will be talking to each other and I will be putting in place a plan myself to deal with points like that.

Q6 **Chair:** How long is the notice period?

Dominic Harris: Six months.

Q7 **Nigel Mills:** One of the challenges of this appointment is we want somebody who is very experienced in pensions but not utterly conflicted so you cannot do anything. How do you think you will manage any potential conflicts of interest?

Dominic Harris: I hope I am not utterly conflicted but I clearly do have some conflicts, absolutely. The Ombudsman as an institution needs to be seen to be rising above any conflicts. The parties, be they the consumers or the trustees, insurers, whoever it may be, need to have confidence in the decisions that are being made.

Let me just talk you through what I think conflicts are here. I am a solicitor. I do act for seven or eight clients at the moment, fairly big schemes some of them. I am giving them advice. They are making decisions on the basis of that and it is clearly a possibility that in two or three years' time, having gone through the dispute resolution procedure, members may make complaints that may be based on advice that I have given. That is no different to the present Ombudsman who went through the same process. Indeed, he and I had the same clients in some cases. I took them over. I will not be making decisions, determinations on those clients. Similarly, clients who I have acted for but have not given any advice to, there will come a moment over time where I do—again, just like the Ombudsman—but certainly in the short term I would not be intending to make determinations on them.

I also have a conflict in respect of my wife. My wife is an independent trustee. She sits on the board of seven pension schemes and, clearly, I would not be making determinations in respect of those schemes either. I think that is right.

As a general principle, as an Ombudsman where things are coming through to determination, you need to check through every single one carefully. Looking at the guide to judicial conduct, you have to look at every case on its facts. In principle, I have no objection to making determinations, for example, if CMS are acting on behalf of a client and it is a client that I never had any involvement with. I have no objection to that at all. Similarly, as far as I understand it, the guide to judicial conduct takes a similar sort of view. However, there may be occasions where that would be inappropriate. For example, if the determination I was going to give was to be so damaging to CMS that it would bring it down, people may look at it and say, "Is it really proper that Dominic forms a determination on that?" Therefore, I will be looking at each and every one carefully.

Two points on how you actually deal with it. The first one is to say that I am not particularly sure that these are very acute conflicts. As I say, I currently act for about seven or eight schemes. My wife sits on seven boards. As I understand it, having spoken to the Minister as a part of this process, there are approaching 40,000 pension schemes ready to go on to the dashboard. As successful as I like to think I am, I am not looking after 40,000 pension schemes. There are many other law firms. There are many other independent trustees.

The final point to make is that the Ombudsman has a structure in place to deal with conflicts like this, the Deputy Pensions Ombudsman. Whether someone is authorised to take decisions as the deputy or an actual deputy, there is a deputy in place specifically to deal with those conflicts or if the Ombudsman were in some other way indisposed. In my view, there is a structure in place and I hope the experience I will bring to the role outweighs the fact that the deputy will have to look after a few determinations in the future.

Q8 **Nigel Mills:** You have given that some comprehensive thought. I assume in your current role you are inclined to be favouring the trustee or the scheme and helping them not have to find that they have acted wrongly or something. How will you change your mindset? I suppose, what we want from an Ombudsman is to give members a fair hearing and look to find in their favour, where that is right, rather than looking to find ways of not finding in their favour.

Dominic Harris: Yes, I agree with that entirely. The Ombudsman is there to be fair between all the parties and to allow a fair hearing with equality of access to justice. I agree with that entirely. The rather glib comment is that I hope I will be intellectually agile enough to be able to do that.

The other way of looking at it is that, as a lawyer, you do not just dig your heels in and say to your client, "Yes, don't worry I will get your off here. I will sort it out". You look at things afresh. If you think your client is going to lose at the Ombudsman stage you tell them. You do not want the expense of going through two stages of internal dispute resolution, the reputational risk of going through the Ombudsman. The Ombudsman has very wide powers. You want to not get to that stage.

When I have been doing my dispute resolutions, and I did this only two or three weeks ago with one client, you say, "Actually I think you are going to lose here. This is the law. This is what will happen. This is how it will be decided". It is obviously a very interesting mental process because at the time I was going through the application process and I was thinking, "How will I deal with that?" Yes, absolutely, I do not think that is a problem personally.

Q9 **Nigel Mills:** Finally, my guess, without looking up your age, is this will not be your last job. What are you planning on doing as the next career? I assume being the toughest, hardest Ombudsman in history would not get you a job back advising many pension firms, so how do you ensure that your future ambitions don't start to impinge on how you act in this role?

Dominic Harris: I am doing this job now because I think it is the right thing to do and I want to do the public service aspect of it. In an ideal world, I would get a second term and I would do the job well. This is not a stepping stone in my career. I am not as young as I look; I just have a very good moisturising regime.

Where the future takes me, I don't know. As I said, I was eyeing up the judiciary and that would probably have involved a part-time recorder or deputy district judge. That might be the longer-term route. At the end of my tenure as the Ombudsman I might go off and decide to go into the judiciary. I might stay in pensions. It would be a shame to waste the expertise I have. That might be in the form of independent trusteeship, going back into private practice, I genuinely don't know. Equally, academia. I would like to say, "The world is my oyster" but you don't know where the world takes you. This is in no way a stepping stone. I think for any pensions lawyer this is pretty much the pinnacle of their career.

Q10 **Sir Desmond Swayne:** What estimates have you made of the performance of the office over the last few years? What lessons were learnt, what are the key achievements, could you have done it better?

Dominic Harris: I am obviously on the outside looking in as a practitioner here. My own view is that the Ombudsman has done really well. If you look at when the current Ombudsman came in, the backlog of cases he faced, he changed the customer journey, he brought TPAS in at the time, he started to look at remote working. He was then confronted by the Tailored Review. He was confronted by Covid and things like remote working, for example, turned out to be an excellent, prescient decision. On that basis, I think he has done pretty well.

If you step back and look at the annual report and accounts, the corporate plan, they set out metrics through which the Ombudsman can be judged. His target is to close 90% of investigations within a year and I think he gets up to 99%. Deal with 90% of inquiries within a year, again, he gets up to 99%. The one area where there is currently a bit of a blip is that that backlog is back. His aim is to have only 10% that are over 12 months old and he is almost at 30%. There are clearly reasons for that, so I don't think you should necessarily say the Ombudsman has performed badly because of that backlog but, clearly, it is not satisfactory from a customer level because you don't want cases outstanding for that long.

Covid clearly was an issue with that. You could also say—and I think it is important to say—Covid is not just an issue for the Ombudsman's office, when there is a complaint there are other parties involved. If you are dealing with the NHS pension scheme, the last thing you want to do, I suspect as an Ombudsman during Covid, is badger them to come back with responses in the normal timeframe because, frankly, they had other more important and pressing matters to deal with. None the less that is something that he needs to deal with.

He has been innovative. If you look at the Norton Motorcycles case and the dishonesty unit, which is very important. I think it is a really good use of law. The one other area I would just point to as perhaps something that I would be looking to improve, although it is a very difficult area to improve, is customer satisfaction. Since the Tailored Review, he has been out there looking at customer satisfaction. He has been doing surveys and so forth, and I understand it is around 50-something% that the customer satisfaction level is at the moment.

Clearly, there will be a lot of customers who are not satisfied because they are not getting the decision they want. That is just the nature of being an Ombudsman, you cannot satisfy everyone because you are making a decision on the basis of law. However, what we can do is make sure the process is speedy, fair, plain English so they know why they are not getting the decision they want. One thing I will be trying to do is build up that customer satisfaction.

Q11 **Sir Desmond Swayne:** Aside from the backlog and customer satisfaction, are there any other major issues that you are going to have to deal with from where you see it now?

Dominic Harris: I think so, yes. I absolutely think so. If you take a step back at the moment and look at the world we are living in, we are in a position where the public purse strings, I suspect, will be tightened, looking at some of the debate going on yesterday among those who might be Prime Minister next. A wise Ombudsman will plan to have fewer resources in the future.

If you then turn to the supply side, we are in a position where the Ombudsman is going to have to potentially deal with many more complaints. You have economically stressed members who might seek to make a transfer that is pretty inadvisable, and scams and so forth. You have economically stressed members who might seek to access their pension earlier than they would have done. All that stores up regret risk for the future. At the same time, you have employers who are not making the profit they once were.

In the past, when profits were high, if there was an overpayment of pension quite often an employer would say, "Don't worry about that. I'll cover the cost. No need to recover the overpayment from the members". Employers are doing that less now. As you might know, trustees have a general duty to recover overpayments made to members. If that is not being written off members are going to complain, and they are complaining. I see that in my day job at the moment.

Fewer resources, more complaints—I think ultimately that is the big issue that is going to confront the next Ombudsman. Again, if I get the job, looking from the outside, I am hopeful that there are some pretty good structures in place to deal with those going forward.

Q12 **Chair:** You mentioned that you inherited some clients from the current Ombudsman when he took up his role. Does that mean that he worked for the same firm before?

Dominic Harris: No, he was at Eversheds. The nature of clients is that sometimes they decide a change is good and they move from one firm to another. I try to dissuade them of that, not always successfully.

Q13 **Chris Stephens:** To follow on from Sir Desmond's question, Mr Harris, the previous Pensions Ombudsman told us that the overlap in jurisdiction with the Financial Ombudsman Service is very confusing and not very satisfactory. Could you describe to us what the major overlaps are and explain how much of an issue you expect this to be for your role?

Dominic Harris: Absolutely. I have some personal experience of this because, before becoming an independent trustee, my wife was an Ombudsman at FOS. As you can imagine, the conversation at home is very pensions orientated at times.

There are overlaps and there are differences. If you will forgive me, I will start with the differences before getting into the overlap because I think they are important. I mentioned earlier the way in which decisions are made. The Pensions Ombudsman makes decisions on the basis of facts and law. The Financial Ombudsman Service has a little more latitude and can make decisions on the basis of what is fair and reasonable. The Pensions Ombudsman binds everyone. The Financial Ombudsman Service binds the respondent but if the complainant—the member usually—the individual, does not like it they can say, "Tough luck. I am going off to try to find another route to deal with this". Similarly, the awards: what the two organisations can award is very different. The Pensions Ombudsman is unlimited. The Financial Ombudsman Service, I think, at the moment has a £350,000 limit of an award. There are differences but, as you say, there are overlaps as well; notably, in the personal pension world.

The traditional route was that the Financial Ombudsman Service would look after stuff that was FCA authorised, so notably the selling and advice that surrounded personal pension schemes, or indeed in the case of occupational pension schemes as well, the selling and advice around that, which is authorised. Strictly speaking, they can also look at the administration of personal pension schemes as well. Likewise, the

Pensions Ombudsman can look at the administration of personal pension schemes, so SIPPs or GPPs and so forth.

To a consumer that is fairly confusing, I would suspect. To a practitioner like me, who has advised on personal pensions, it was fairly confusing as well when you are trying to tell them what they should signpost in their documentation.

From my point of view, the two things worth saying are, yes, it is confusing and I think it needs to be dealt with. I don't know whether it needs to be dealt with by way of legislation but certainly a good working relationship with the Financial Ombudsman Service, good communication on websites, good communications that are sent to members to make sure that they go to the appropriate body is important. I certainly would be looking to build a relationship with FOS very quickly.

One other point I would say is that personally—and I know it is something that has come up in the Committee before—I think that the powers that the Pensions Ombudsman has is right for the pensions universe: the unlimited awards, making a decision on the basis of facts and law. If you look at some of those figures that the current Ombudsman has dealt with, the Thales case, which was trying to work out whether increases were via RPI or CPI, ran into the 10s of millions. Clearly that is not the sort of the thing that can be dealt with in the Financial Ombudsman Service, I think.

Q14 **Chris Stephens:** You articulated quite well, Mr Harris, what the differences were. The Financial Ombudsman Service decision is subjective, isn't it, because it is based on what is deemed as fair and reasonable, whereas the Pensions Ombudsman is probably more a judicial decision? Is it sensible to maintain those differences? You said in the answer there that legislation might be required to maybe resolve some of those. Could you just expand on that too?

Dominic Harris: As I say, I do think it is right that they are separate. I know in 2019 the DWP looked at the jurisdiction of the Pensions Ombudsman and what additional powers might be put in place, but also I mentioned in passing what it might do about signposting. The Tailored Review looked at whether there ought to be changes and mergers and so forth. As I understand it, it concluded not for any particular reason other than it would not necessarily save any money and would be awfully difficult because the way the legislation is set up at the moment is very different between the FCA and TPR, Financial Ombudsman Service, TPO and likewise the sponsoring departments as well. Clearly, if you did want to bring things closer together, there would have to be legislative changes.

On signposting specifically, I could see an argument for a bit of legislation that made it clear how you would do signposting. At the moment, I think it could be achieved by having a discussion with FOS and setting up a memorandum of understanding that makes it just a little bit clearer.

Q15 **Chris Stephens:** Going back to the differences between FOS and the Pensions Ombudsman, the outcome from a complaint can be largely dependent on which Ombudsman you are taking it to. Is that position equitable and sustainable? Do the public not deserve perhaps better than that?

Dominic Harris: The public deserves better information. Yes, there is a risk that you end up with a different determination. If a member is not armed with all the facts, if there is an inequality of information between some members, then, yes. Perhaps the way of resolving it is to make sure they are armed with the correct information and can make the right decision, at the moment. In the longer term, you look at whether that personal pension complaint ought to sit with one or the other and you look at the jurisdiction in more detail.

If I am honest, I cannot imagine that there is a legislative slot available to make this change in the short term. I think, practically, you make the changes on the basis of information and then look at in a more relaxed way in the slightly longer term.

Q16 **Chris Stephens:** My final question at this stage, you have mentioned the Tailored Review, which recommended the Pensions Ombudsman should work with FOS to commission a transparent and regular feed of case data to both boards to help to reduce the scope for jurisdictional overlaps and gaps. What steps, if any, would you take to fully implement that recommendation?

Dominic Harris: First, I would say that sharing data is important and they are in part doing that. I certainly remember reading in the Tailored Review that it was looking at the number of cases that were being sent in one direction or the other on a regular basis. From my perspective, and clearly I am not in post, what I would like to see is detail on what those cases are, perhaps some test cases to see what the outcome would be if it were carried through the Pensions Ombudsman and what it would be if it were carried through the Financial Ombudsman Service.

That would enable the Committee, as well as DWP and the Treasury, to then get to grips with whether there is a risk that members are losing out because they selected the wrong body to hear their complaint. That takes a bit of time to put in place and takes a bit of time to do that almost mock complaint, that mock determination, but I think it might be worthwhile because I hope it would help the Committee to do the job that you are here to do.

Q17 **Steve McCabe:** Good morning. I want to ask a little bit about your relationship with the Department. I guess the Department is your main Government stakeholder. Would you identify any others?

Dominic Harris: This is all a bit of a learning experience for me. When I first started this process I looked at the Pensions Ombudsman and thought, "It's an arm's length body. I am not going to have an awful lot to do with anyone because they are going to leave me alone". Clearly, having now gone through this process, I have discovered the error of my ways. There are advantages to that as well. Being able to get the support from DWP for HR, IT, whatever help they can give is good.

However, you are right, other bodies within government are important for this as well. Again, when you come into pensions for the first time you realise how important tax is and HMRC. You realise how important the Treasury is and, if I am right, pension freedoms all the way back in 2014-15 was a Treasury-driven policy rather than a DWP-driven policy.

From my perspective, it is only right that all the bodies that are involved in pensions are my stakeholders. If I see issues that stem from the Finance Act rather than the Pensions Act, it may be that I should be speaking to HMRC rather than DWP. The politics of having that discussion is all relatively new to me, so forgive me if I have offended DWP by saying I am going to go off to speak directly to HMRC. Clearly, there are more stakeholders than just DWP. I do not know if you count other arm's-length bodies as being part of the government world.

Q18 **Steve McCabe:** You tell me.

Dominic Harris: To the extent they are, clearly I would be speaking to them as well. TPR has an enormous role to play in the world of scams and lots of different bodies are involved in Project Bloom that are arm's length bodies. Again, I clearly think I ought to be speaking to them as well.

Q19 **Steve McCabe:** You mentioned the Tailored Review. I notice that one of the things that was identified in that as an area for improvement was that the TPO feeds back relatively little information to DWP about the type of complaints it sees, and that this information could be valuable in the creation of pensions policy. Why do you think that is and what would you do about it?

Dominic Harris: We are at the coalface of seeing member complaints. In fact, I will take you back to what I am doing at the moment, because I think it is analogous. We see issues from our clients with pensions legislation. You will be aware of the transfer regulations that were put in place last November, the red and amber flags. You see pretty quickly the issues that arise from that, from our clients, and the most obvious one was the amber flag dealing with overseas investments in the receiving scheme. You soon spot that is an issue. I sit on the Association of Pension Lawyers, and in fact I am Chair of the Association of Pension Lawyers' Investment and DC Committee and we have other committees. When you see that coming through the first thing you do is pick up the phone to whoever your contact is at DWP or the sponsoring Department and you say, "That is causing a bit of a problem here".

Investment and DC was very much my field. I saw lots of tweaky issues with the ESG legislation and again you feed it back as quickly as you can. I would like to continue that with the Ombudsman. If you see a whole tranche of complaints dealing with a particular issue it is only right and proper to the extent you are able to, without revealing specific member issues because let us remember we deal with lots of sensitive data as well, that you feed back as quickly as you can to DWP to enable them to do something about it, or to the Committee, if I am called before you in the future. That is only right and proper and part of the team that government is, and that the arm's-length bodies form a part of.

Q20 **Steve McCabe:** So that is something you will try to address. Why do you think it has not happened before?

Dominic Harris: I do not know, if I am honest. The Ombudsman has grown as an organisation. It is a very busy organisation. It has been dealing with lots of backlogs. I rather suspect that, as with everything, there are lots of priorities and for one reason or another this has been just below the threshold for being a key priority, but I cannot imagine it is deliberate.

Q21 **Steve McCabe:** One of the other things that this Tailored Review picked up on was that oversight of the TPO's finances could be strengthened and they want to seek more regular assurance that the TPO is fully compliant with all aspects of managing public money. Is that a fair criticism of the TPO as it is at the moment?

Dominic Harris: I will be honest and say I do not know. My knowledge of their finances is only gleaned from looking at the annual report, the corporate plan and so forth. To the extent that an organisation is spending public money, as I understand it, it does not come directly from the central government funds, but comes from the general pensions levy, which in turn comes from pension schemes, but nonetheless you are spending other people's money, so it is only right and proper that it is looked after. In principle, yes, that is absolutely what should be happening.

Reading for example the most recent annual report and accounts it is what is happening. There has been a board put in place to provide challenge to the Ombudsman. Since it has grown in size it is no longer just the Ombudsman as Chief Executive and then a group of 30 or 40 people below. It is now an organisation of 100 with a board. As I understand it, the DWP does challenge on a quarterly basis what is going on. Of course, it is an arm's-length body and must produce an annual report and accounts. Within that the Ombudsman is the Accounting Officer. I think the Principal Accounting Officer in the DWP might well be the Permanent Secretary, but I might be wrong there. Looking from outside in, it does look as though there is a pretty robust process to make sure that the accounts are being properly dealt with and that money is only being spent properly.

Q22 **Steve McCabe:** Do you think that has been fixed? Do you think when the review noted this it is talking about the past? Is it going to be a priority for you, or do you feel that the report has highlighted something that has now been fixed?

Dominic Harris: That would be a question I ask, as to whether it has been fixed, if I get the job. Again, there is a lot of support in the Ombudsman now. When the current Ombudsman started there was not the board, there was not a COO. For example, I can go off and ask the Chief Operating Officer, "Has this been dealt with?" and I am more than happy to give you that commitment. That that will be one of the early questions I ask in that first 100 days.

Q23 **Steve McCabe:** Where are we with the corporate plan? It runs until 2024. I presume you have immersed yourself in it. Is the plan right? Does it have the right priorities and performance indicators?

Dominic Harris: I think so. I may end up looking foolish here because, as I understand it, there is a new corporate plan, a new report and accounts coming out tomorrow. Therefore, if I say that everything is perfect and the current Ombudsman has changed it all I am going to look very silly. Yes, in general terms, it is right and it comes back to the Tailored Review and the suggestions made within it.

There are some priorities and strategic goals. We have priorities that are centred around customer service, which I think is exactly the right thing here. We want to satisfy all the stakeholders in the organisation. For example, are we timely and efficient? Are we getting things right? Are we getting regularly appealed? All of that in turn filters back through to whether there is a backlog or not. That is exactly the right thing that the Ombudsman should be looking at, at the moment.

Staff is clearly a key priority. The Ombudsman is a knowledge-based organisation, so we want to make sure that the staff know things, that they are around, that they are being trained appropriately and we want to know that we are doing the right thing with our resources, so are we getting efficiencies out of our resources? Again, that comes back to getting cases turned around as quickly as possible.

I think then there is a separate section on strategic goals, helping out stakeholders and so forth. In short, which that was not, but yes, I think it absolutely is.

Q24 **Steve McCabe:** Are you going to be in a position where you are inheriting somebody else's plan?

Dominic Harris: Yes.

Q25 **Steve McCabe:** Is that okay? We are asking you about a plan that has already been partway through and then you say a new one is coming out and you are going to take over. I am not sure I would feel super comfortable if I was in that predicament.

Dominic Harris: I think it is the nature of the role. It is a four or five-year term. I do not know what the DWP would give me, if I was successful. I think it is only right that you inherit some of the decisions made by your predecessor.

In fact, coming back to whether I thought the previous Ombudsman has had a successful time, I do think he has had a successful time. He has made a lot of changes that I think have worked well. He has had the Tailored Review and he has been going through a process of implementing them. I think the Committee, DWP and the staff at the Ombudsman would be peeved if I came in there and wanted to completely revolutionise everything and tear up everything. The starting point I have in my mind is that I am going to be evolutionary, rather than revolutionary in all of this.

In principle, I will look at what levers I have to pull, but I cannot imagine I am going to tear up what comes out tomorrow and start again.

Q26 **Steve McCabe:** You talked there about strategic goals. One of them is running a pilot to investigate more cases where there is alleged dishonesty by trustees. What can you tell me about the pilot that has been running and is that going to remain part of your goals?

Dominic Harris: Absolutely.

Q27 **Steve McCabe:** What has happened with the pilot so far? Has that identified more cases?

Dominic Harris: This goes back to the Norton Motorcycles case, which I think the Committee has had some interest in, in the past. I will not go into detail but, to give you a summary to guide the conversation, lots of members transferred into three schemes set up by Stuart Garner and things happened to that money. It is under appeal, so I will not talk too much about it. Members lost out.

The current Ombudsman went through a process of looking at what Mr Garner had done as trustee, applied the pensions legislation to it and found that he had breached a raft of pensions legislation, such that he did not benefit from the usual indemnities and exoneration that trustees get if they act properly. Because, after all, you do not want to go after lay trustees if they are doing their best and the legislation and their rules quite often give them protection.

What he had done allowed the Ombudsman to decide that he did not get the benefit of those. He ordered him to give back the money to the scheme that he had taken personally, so that the new independent trustee could distribute it around. At the same time, the finding of dishonesty also made it slightly easier for the PPS for compensation to potentially pay out to these members if there was not a recovery from him as an individual.

Having done that, which I have to say was a creative and proactive use of the legislation, he has quite rightly spotted that there are lots of other schemes in similar situations and that he is in a position to help out with that sort of thing. It is a big departure from what the Ombudsman used to do.

I mentioned my learnings that I needed to do earlier. It involves lots of oral hearings, because it is only right that if you are accusing someone of dishonesty you give them a chance to answer the questions being put to them. To do that and to build the case—and I do not know if you have read the judgment, but it is very long for an Ombudsman judgment—there is a lot of work that goes into it, so he has set up his own unit. I think it consists of members of his legal team, experienced adjudicators, to go off and do that more often, to the benefit of members and to get the money back for members who are in a similar position. I cannot imagine why I would want to stop that. I think it is a great idea.

Q28 **Steve McCabe:** Would you care to speculate how many more cases you think you might want or need to investigate in the coming couple of years?

Dominic Harris: I genuinely do not know. I know he has some other oral hearings planned. How many more there are in the pipeline I do not know.

Q29 **Steve McCabe:** Do you think we are talking double figures here or a handful?

Dominic Harris: I am genuinely speculating, but I imagine it is getting towards double figures. The position I find myself in is that I generally advise big schemes and they are well run. They have very few Ombudsman complaints, let alone ones involving dishonesty. This is very much at the other end of the market.

Q30 **Steve McCabe:** In these strategic goals it also talks about continuing to seek changes to legislation and influencing and shaping policy in the industry. What is the big legislative change you think needs to be made?

Dominic Harris: In respect of the Ombudsman or more generally in pensions?

Q31 **Steve McCabe:** It talks about continuing to seek changes and seeking to influence policy in the industry and with Government. I am assuming that with legislative change we are talking about what the Government are doing and what industry is doing over the delivery of pensions.

Dominic Harris: There are a few ways of dealing with that. The first comes back to the point of dealing with the Department. As an Ombudsman, if I spot things that need changing I will feed back. That will be a hopefully fairly conversational and constant ongoing process with DWP. I am loath to make any political comments at the moment as to what I think should be changed within pensions legislation.

Q32 **Steve McCabe:** Why is that?

Dominic Harris: Because I think the Ombudsman needs to rise above it. Speaking honestly, I am here to implement the law, not to make the law.

Q33 **Steve McCabe:** As somebody who is coming into it, you must see things where you think, "I could do something about that".

Dominic Harris: Yes, for example, I think there are tweaks that could be made to the transfer regulations that would make life easier for consumers while still protecting them. The overseas investment point was I think a good example of that. The regulator has come out and made a statement saying, "The way it should be interpreted is different. As lawyers and schemes making transfers, you should not interpret it as literally as many schemes are".

Let's not forget that pension schemes need to follow the law as well, just as the Ombudsman does. Just having a regulator say, "Please ignore a bit of legislation and the way it looks literally" is difficult legal advice to give to a client. They need to weigh up the risk of doing that. There will absolutely be points like that, that you spot as you go through this.

Q34 **Chris Stephens:** Mr Harris, I think you touched on this earlier, but the number of staff and the expenditure at the Pensions Ombudsman has increased significantly over the last few years. Will this need to continue and how will you ensure value for money?

Dominic Harris: I suspect that we will be resource constrained. On that basis, I rather think that the answer will not be mine to give on whether we get any more staff. Let us be frank about this, if the number of complaints continue to go up, I will be asking for more resource to deal with them, and to the extent that you do not have resource you must find other ways of dealing with that. Are there other ways of dealing with it? I think the answer is possibly yes.

I need to be in there to see what the issues are, but to take two examples. It might be that one of the reasons for the backlog as it currently stands is a new area of law or something like that. We see the pensions dashboard coming in. We have GMP equalisation that is just starting. It might be that delays are not caused by a lack of staff, but a lack of staff training, in which case I will not be coming to DWP to ask for more resources because I need more staff. I rather suspect in that situation I will turn round and say, "Right, let's put a training plan in the organisation to make sure that people know exactly what the issues are and can make good, robust adjudications at the relevant stage".

Similarly—and again if you go back to the Tailored Review, I think it was mentioned in there—the Ombudsman has put in place new caseload management systems. It has put in place new digitisation that allows members to interact with the website and so forth. It might be that those things buy efficiencies that allow us to deal with an increase in complaints going forward.

I will need to get in there and see what the levers are, but clearly asking for more resources for staff will need to be the final option that I ask.

Q35 **Chris Stephens:** Your predecessor said that, so what role do you think you could have? Your predecessor had said unless there was an absolute avalanche of complaints, just as you have said. What role do you think you could have in reducing future complaints by anticipating and pre-empting the causes of them?

Dominic Harris: As a pensions lawyer, I am embedded in the industry so I can see where the complaints might come from. If you look at what is out there now, you have the pensions dashboard and suddenly members are going to be confronted with what their pensions are. It may not meet the expectations that they had. It may not match what they were told when they left a scheme. When they leave the scheme, a member is given a leaving service statement and it will extrapolate what their pension might be at retirement or whatever. In the intervening period you quite often end up with schemes going through a rectification and that number differs. We know that is on the horizon and that it is going to cause complaints.

What is the sort of complaints that arise from that? It is misquotations and misstatements of pension benefits. As an Ombudsman—and it is already pretty high up on the list of complaints that come in anyway, perhaps the top three—you try to train the staff to ensure that they are ready to deal with that sort of point. You would also get out in the industry and say, "This is how we are going to deal with complaints like this when they come in" so that, hopefully, fewer complaints come into us and that the industry, be it trustees or insurers, knows what to do if members start complaining, know when to say, "It's a fair cop and we are going to help you, because we know that the Ombudsman is going to find against us in that respect". Those are the ways that I would deal with that.

Q36 **Chris Stephens:** When your predecessor took over, he discovered that he did not have a quality assurance team to check on the qualitative output and the advice given in the process. What studies would you undertake to ensure that your office followed established norms of similar organisations and did not miss essentials like quality assurance?

Dominic Harris: I think there is a quality assurance place in post now and Mr Arter has put that in place, and it is so important, because you do not want appeals from the Ombudsman. I don't want to be in the position of reviewing every piece of work from every adjudicator because, quite frankly, there are too many. I would bring in the knowledge that I have from the private sector, the way we supervise our juniors' work, the way we train people to make sure they are up to speed. I would bring in my own experience and expertise there.

As I said at the beginning, one of the areas of slight weakness is that I have not worked in the public sector, so again as part of the 100-day plan—for want of a better phrase—I would be going out looking at what the Financial Ombudsman Service does, looking at what similar organisations do, looking at how I can assure you when I next come to speak to you that I am confident that the work being produced by my adjudicators are up to scratch.

Q37 **Chris Stephens:** The 2021-24 corporate plan had a target for staff turnover not to exceed 12%. Do you have any thoughts on the rationale behind that 12% figure and is there a risk of too little turnover?

Dominic Harris: Too little turnover? No, I should not think so. My own view in relation to staff strategy is that the Ombudsman is a knowledge-based organisation. When anyone comes into any knowledge-based organisation, the organisation spends a great deal of time training them up and making sure they are up to speed with what they need to know. The last thing you want as a leader of an organisation is for that investment and time to disappear out the door.

Certainly, from my own role at the moment, a 12% turnover would be bad. We want as little turnover as possible. I want teams that fit in with each other, that know each other, that know what they are doing. To bring it back to value for money again, the more turnover there is the more I must spend on training and the bigger delays there will be with getting up to speed with the decisions they must make. I am not sure of the science behind 12% but I certainly do not think there is a risk of there being too little with 12%.

Q38 **Chris Stephens:** The Pensions Ombudsman introduced flexible working some time before the pandemic. Would you now leave notes on staff desks questioning their absence, or would you defend and maintain flexible working, explaining how important this is for the organisation?

Dominic Harris: I think flexible working is important for the organisation. As I said, earlier on I think it was a great decision to do before lockdown, because the Ombudsman with both flexible and remote working was in a position to flex more easily than we were, for example, when Covid hit. That was clearly a good thing. How it helps in other respects: as I understand it, the Ombudsman has now grown to such an extent that if everyone was coming into work there would not be enough floor space in their current offices to look after them all in the office.

One of the challenges I have as an Ombudsman is that I would very much like to meet all of my staff, and clearly I am not going to be in a position to meet all of my staff on one day. I will have to do it in teams, which is disappointing. Flexible working and remote working, to the extent that they are different, is helpful from the point of view of not having to come back to the DWP to ask for more money to increase office space.

I think it gives other advantages as well. I am now in the public sector. If I am at CMS at the moment and people are grumbling that they are working too hard, I have a lever to pull where I can pay them more money. I clearly will not be able to do that to the same extent as the Ombudsman. One of the ways of giving people satisfaction in their job and making them happy is autonomy. You give people autonomy by allowing them to work in the way they want to work, when they want to work and where they want to work. If that is a lever I can pull to keep the right staff at the Ombudsman then I am going to pull it.

There are some other challenges. How do I embed new people within the team and make sure they are happy? How do I train them up if they are only coming in a couple of days a week or doing hours that do not fit with whoever is doing the training? How do I deal with team bonding? Lots of private sector organisations are doing anchor days, where everyone in a team comes in on the same day and for reasons I just gave that is not going to be an option at the Ombudsman, because everyone cannot fit in the office on the same day. How do you deal with quality assurance when people are working at different times? There must be that element of supervision to make sure things are right.

I don't know how that is dealt with now and that is something that I need to get to grips with. As the Tailored Review said, the Ombudsman has done pretty well with flexible working at the moment, and it is there to be praised, and I am looking forward to getting in there if I am successful to see how he has made such a success of it.

Q39 **Chris Stephens:** My final question—we get asked this question too, Chair; it probably applies to all of us—is: where do you expect to spend most of your own time?

Dominic Harris: I think I will be going into the office as much as I can in the first six months. I think I need to meet everyone and see how things go. Clearly, if I am the only person in the office that is not going to be a particularly successful thing.

I do not know. I suspect I am going to spend, as I say, after the first six months have elapsed, two or three days a week in the office, around that. I think a leader in an organisation needs to be seen in the organisation.

Q40 **Nigel Mills:** After that exchange, all your current staff will be asking for a pay rise when you get back to the office.

Dominic Harris: When I was in the public sector I could do that. I cannot do that anymore.

Q41 **Nigel Mills:** The lever that you will be pulling. I usually like to have a cynical joke that when we look for one of these roles it always goes to the number 2, and yet here we had to do two rounds of advertising to find suitable candidates. How will you try to develop internally some candidates to succeed you if you get the job in your own organisation?

Dominic Harris: Developing internal candidates is important, not just that it is a good thing to do, but it is also something that hopefully keeps turnover low. If you have opportunities in your organisation for growth, which with up to 100 people there should be opportunities for growth in an organisation of that size, it will assist with staff retention and so forth.

When it comes to specifically growing people to apply to be the next Ombudsman, I have a history of doing that sort of thing at CMS, so junior colleagues who have looked at partnership I have given the opportunity and training to bring them through to be a partner. The difference is that there are many more partners at CMS then there are Ombudsmen at the Pensions Ombudsman. I think the same principles hold true and you need to go back to look at what the criteria for the Ombudsman are and provide opportunities to allow them to meet those criteria.

If it is going out to speak to various stakeholders in the industry it should not just be me. It should be colleagues who want to do that type of thing at the Ombudsman, so if there is a member of the legal team or a senior adjudicator they should be going out and doing as much speaking, if they want to. If they want to, they absolutely should. It is an organisation where you can now have different leadership roles, because it is of sufficient size. Again, it is about giving them that leadership. It is about not pigeonholing people to just do one repetitive type of adjudication. I do not want someone who is just doing overpayment cases. I want people to have the interest of going into different complaints and so forth.

I think that is the thing to do, where there is the desire to give people the opportunities that will allow them to come to you in five, seven, 10 years' time and sit in front of you and say, "I have done all of these things. Dominic gave me an opportunity to do all of them. I really enjoyed it and I think I am ready to make that step up now".

Q42 **Selaine Saxby:** Do you think the current balance between complaints resolved by the early resolution service and those through formal adjudication is the right one?

Dominic Harris: Yes. I think that the way to look at it. I might get my figures wrong here, so forgive me if that is the case, but there are about 5,500 complaints in the last annual report, of which about 4,800 were closed and about 1,400 were dealt with by the early resolution team, which is informal, so it is a mediation where they encourage people to say, "Yes, we agree, we will give you £500 and that is enough" or, "Yes, we agree this was not right and we will make it good" and then 762 at adjudicator level, and then that left us with about 280 or so determined by the Ombudsman.

The point to remember is that it is not just the early resolution team that is informal, but the adjudicator opinions are informal as well. An individual or the organisation being complained about has a right to say, "No, I do not agree with that opinion. I would like you to take it up to the

Ombudsman and the Ombudsman make a formal determination that is then binding”. In essence, of those 4,800 complaints that were closed, only 288 were a formal determination. Is that right? I think yes, because ultimately one of the reasons for the backlog before Mr Arter started as the Ombudsman was that too many were going through to the Ombudsman and if you can solve the problem earlier it is to the benefit of the organisation. It is also to the benefit of the consumers, because a very longwinded process that might end up coming up with exactly the same outcome as the Ombudsman might is of no benefit. It just increases the stress on the individual member.

As I said earlier, pensions is complicated. Sometimes you just need someone who understands it and comes at it from a neutral perspective to say, “Terribly sorry but this is how it works”. I will give you one example of that. A member who has been overpaid a pension for a few years and a trustee who then spots that mistake, that trustee is usually dutybound to go back, unless the member has a proper defence, and ask for the overpayment back, unless the employer is going to cover the cost. Members are usually aghast at that, “You told me that I was going to get £5,000 a year and now you are telling me I am only getting £4,000, and even worse, you are recovering money from the past”. It is an awful thing for members, but unfortunately it is quite often what the trustee must do, but it just looks wrong.

Having someone at the early resolution team explain the law, who is neutral, stops the member from going through the horrid process of a complaint process that might take many months and come up with the same outcome. The key challenge is to ensure that the early resolution team or the adjudicator come up with the right answer, so the member does not lose out.

Again, to continue to torture that example, if the member did have a proper defence to paying back the overpayment the early resolution team needs to have told them, “Let us just check you do not have a defence” but if they have not then it is, “I am terribly sorry. You are in a bit of a pickle here. You are going to have to pay the money back”. Yes, I think the sooner you resolve these complaints, as long as the quality is correct, is right.

Q43 **Selaine Saxby:** Volunteers are an important part of the dispute resolution process. Do you think this is sustainable?

Dominic Harris: I hope so, because I think they are a wonderful part of what we do. It is also a very clearly cost-effective part of what we do. Is it sustainable? I think it is difficult. The current Ombudsman is I think thinking through a new volunteer strategy at the moment and I spotted a plea for new volunteers go out in the pensions press only recently.

Frankly, pensions is busy and time-consuming. I will put my hands up and say that it has been on my list of things to do for years and I have never managed to fit it into my day job, so I have never done it and I am in awe to those who do. A TPAS volunteer helped my father when he went through a pensions complaint that went to the Ombudsman 20 years ago. A very lovely chap called Graham Ness and we could not have done it without him. I think it is important.

What do we do to keep them interested? What do we do to keep them trained? As I understand it, there are lots of quality assurance in place already. You must have had 10 years' experience, or five years plus a qualification. The work gets looked at by a full-time member of staff or by a regional manager.

The sustainability point is the tricky one because of the busyness of the pensions' world. We cannot pay them, they are volunteers, we cannot take them out for drinks because, clearly, we are using money from the general pensions levy so what we end up doing is networking with workshops and things like that. It will be high up on my list to continue to make it sustainable and I dearly hope it is.

Q44 **Selaine Saxby:** Have the volunteer numbers changed since the move of the dispute resolutions service in the Pensions Advisory Service, so now part of MoneyHelper, to the Pensions Ombudsman? Are there difficulties in recruitment and retention? You have already touched on retention.

Dominic Harris: I do not know. The current Ombudsman will be better placed to answer that than I can, but what I do know is that there are around 200 now and that quite a few people have been removed from the list who have been listed as volunteers but have not been active. The key thing is to dig in below the numbers and to find out who is doing stuff, rather than just people who have, "I am an early resolution team volunteer" on their CV.

I did see on LinkedIn that one of my colleagues, who sits on the Joint Industry Forum and is a pensions professional, has just signed up only last week, so clearly people still are interested and still want to do it, and I hope that continues.

Q45 **Chair:** You have made the point that the Ombudsman deals with a lot of cases, 100 new cases a week roughly. What do you think is needed for that size of caseload to be managed efficiently and responsively?

Dominic Harris: Essentially, it is a good caseload management system. I think the Ombudsman has been putting in place a new management system to deal with that. I have not seen it yet, but what I hope it would do is from an internal perspective you want it to generate management information, so you want it to say what the complaint is, and then that will enable you to triage it properly. Is it appropriate for early resolution? Is it one that is obviously going to go up somewhere else?

You want the management process to tell you how long things have been in the system for, and where in the system they get stuck. We talk about the backlog. I do not know at what stage in the system the backlog is currently lurking. Is it at the beginning of the pipe or the end? Is it an

Ombudsman issue such that we should be looking at a full-time Deputy Ombudsman, or is it early on in the system? Things like that are important and the caseload management system would help us deal with that.

Caseload management, bearing in mind we now do flexible working and agile working, internally needs to be responsive to that. It needs to allow someone to get the case details digitally and be able to work from home at whatever time they are doing it and needs to also allow for supervision of the work that comes out from that. I think it needs to be a system that works internally.

It is also important that it is a system that works for the external stakeholders. I have talked about what type of complaint it is. What type of a complaint allows us to then go to speak to the Minister or to the Committee or whoever else we need to speak to, to say, "We are receiving an awful lot of complaints on X and we are doing it quickly, we are telling you now and that allows you to respond to it" so if there are lots of scam cases it allows us go to speak to the regulator, to the other parts of Project Bloom, whoever it may be. It needs to be safe externally. We have a lot of sensitive data that we deal with, lots of ill health claims and things like that. If you have a case management system you need to be satisfied and I need to be satisfied as the Chief Executive of the organisation, if I am appointed, that it is not being sent to the wrong people and we are going to have GDPR problems.

It needs to be easy to use from a consumer perspective. The case management system, and I think the Ombudsman is doing this at the moment, with its digitisation project, I do not want adjudicators to be fielding telephone calls from angry members on a weekly basis saying, "When are you going to answer my complaint?" I would much rather that they be spending their time dealing with the complaint and you have a case management system that allows the member to log on and see that it is at stage X of the customer journey. Likewise, ideally whoever the respondent is can use that and can put documents in. That is the modern way of working.

Having said that, I am clearly sitting here with a load of papers in front of me, so I need to practise what I preach and I look at the Committee with all your laptops and I am embarrassed.

Q46 **Chair:** Are you satisfied that making a complaint is sufficiently straightforward at the moment?

Dominic Harris: I look at this from two ways. I have experienced it myself. I mentioned that my father had gone through the process and we had someone from TPAS help us out through that. The Ombudsman at that stage was an efficient process. However, that was 20 years ago and I appreciate different people may have different experiences.

Of course, lots of things have changed since then, signposting, websites, casework reorganisation, all of these things. I am a pensions professional. I know what I am doing and as a lawyer I always try to ask my junior lawyers to look at things through the prism of the client. What is the client going to do with your advice when you have given it to him? I think the same is true from a potential Ombudsman. You need to walk in the shoes of the consumer, not the pensions professional.

Does a consumer think it is easy to make? I find that harder to answer. I know we are doing lots of customer surveys and I hope that is one of the questions that is asked, and I would be looking at it and interrogating it. I would very much like to walk in the shoes of the consumer at some stage. This might be something for me to do during the transition with Anthony, sit with a consumer as they go through the process, look at where the difficulties are, because we know, having discussed it earlier, that one of them is that overlap with FOS and that will give me an opportunity to then make changes based on that real-life customer feedback.

Q47 **Chair:** Sometimes the Ombudsman will get complaints from lots of people about one issue, and I think the Norton case that you referred to was an example of that. To what extent can you consider sample cases and then apply the determination across lots of people?

Dominic Harris: My view is that these need to be dealt with as efficiently as possible. You need to make it as quick for the consumer as possible, you need to offer as much value for money as possible, so you need to deal with it in the way that the Ombudsman did with Norton.

There are some legal difficulties in dealing with things on a group basis at the Ombudsman level. There was a case called Edge many moons ago that looked at this, and as I recall a decision made by the Ombudsman should not take away property rights from other members of the scheme, if those members are not appearing in front of the Ombudsman, because they have a right to be heard. The way the Ombudsman has got round that is with this lead case process that it has done, and the British Steel case was another good example of that.

There were however many numbers of cases, 200 or 300, and the Ombudsman chopped it up into four themes and made decisions on the basis of those four themes and then could extrapolate the decision to other members who fitted those themes. Of course, there were some outliers who were slightly different, and he had to deal with those separately and likewise there could still be some issues when you deal with individual specific compensation. If a member says, “I have lost out because I would have done X” or, “I would have moved into such-and-such a scheme if I had made this transfer” those are very member-specific, and you must deal with them on a member-specific basis. In general terms I feel that I would very much follow that lead case approach, because it is the most efficient thing to do.

Q48 **Chair:** In the most recent year for which we have data, 41% of complaints made to the Ombudsman were upheld. Do you think it should be higher than that?

Dominic Harris: No, not necessarily. I think you judge every complaint on its merits. If 41% of them should have been upheld on their merits, then that is the right answer. I would only be disappointed if a lot of those went to the Court of Appeal and the Court of Appeal said that 60% of them should have been upheld. That I think would be a more awkward statistic for an Ombudsman.

Q49 **Nigel Mills:** We have had some correspondence where people think it is a waste of their and the trustees' time to have to go through the two-stage internal scheme process before you can complain to the Ombudsman, where the trustees made a decision that is not going to change and it is just a few months of formality. Do you think there is any situation for a fast-track process, where you could come to the Ombudsman earlier, would be appropriate?

Dominic Harris: I think it is right that the schemes have the flexibility to use a one-stage process. I will make two points here. The first is—and I might slightly buck the trend here when it comes to one and two-stage processes—I think that a two-stage process can be advantageous to members in some circumstances. I am giving a personal opinion on legislation now, which I promised I would not earlier. I think it would be wrong to go to the mandated one-stage process.

The example of this—and we will go back to overpayments as I have mentioned it once already—a member who has been overpaid and they are seeking to reclaim that overpayment might make a complaint at stage one of the dispute resolution process and just merely make the point.

Do not forget, they are almost always not represented. They are not legally savvy. They are making a complaint. They will go to the trustee and will say, "This is awful. You cannot reclaim it. When you put the pension into payment you told me I will be getting X and you are now giving me Y. What is more, you are asking for the money back. This is a contract" and so on, and the trustee will rightly look at legal principles and will find it not in favour of the member at that stage. However, good trustees, which the vast majority are, will at that point say, "We want to know if you have any defences to repaying that overpayment. Have you changed your position? Did you pay for something that is completely irrecoverable?" That is the thing that will then come out at stage two of the dispute resolution process.

If they do have a proper defence, a good trustee that is well-advised will turn around and say, "That is a fair point. In this particular case, we are not going to seek to recover the overpayment". That will only come out through having gone through that conversation with the scheme, so I do think there are some occasions where it is advantageous to have a two-stage process.

The other point I wanted to make was of course that the early resolution team is there to get involved before, during, after the IDRP process, so members can go to them and have that discussion, in which case it may only need one stage of IDRP, if any, if they have properly conversed with the early resolution team.

This sounds like a criticism, but it is not, even as a practitioner I do not know when the early resolution team should be getting involved, when I should be pushing members in the direction of the early resolution team. If I were appointed, it is important that I go out to make sure that consumers, trustees, practitioners, are aware of when that should be used.

Q50 **Nigel Mills:** Now you have started commenting on the law—

Dominic Harris: Sorry, could I retract that?

Nigel Mills—are there any other powers you think the Ombudsman ought to have that they do not currently have?

Dominic Harris: From a powers perspective, I know the current Ombudsman is very keen to have the power to allow employers to raise complaints against GPP providers. Because in auto-enrolment they are the one who is saying, "We will use such-and-such a scheme".

What got me into pensions originally was the fact that there were so many changes all the time. When I got involved it was DB and then it was DC. We now have collective defined contribution auto-enrolment that came out and so forth. That is what makes it interesting but, because of those changes over time, I think legislation and powers need to move over time. I can see the merits in Mr Arter's view that he should have that power because it is reflecting the change of pensions over time.

Whether there are any more changes, I think in principle, yes, as the world changes, we need to look at what powers we need to protect the consumer. Off the top of my head, I cannot immediately think of any. In my own practice I occasionally deal with something called healthcare trusts, if you have come across them. They are not in the FCA's perimeter, so I do not believe they can be looked at by the Financial Ombudsman Service, and similarly I do not think they get looked at by the Pensions Ombudsman either. I think there is a gap there, so that might be the sort of thing that is looked at. Ultimately it is one of those things for when I get in there.

The final point is the legislation around the Ombudsman is pretty flexible. If you go back to Norton and the way in which the present Ombudsman has used the legislation to do something creative, quite often you find a way of doing what you want to achieve within the boundaries that have already been set. I appreciate you have a busy legislative timetable, so I think a good Ombudsman looks to see what he can do with what he has already, before coming to beg to the Department or the Committee to make changes.

Q51 **Debbie Abrahams:** Good morning. I will backtrack a little bit in terms of what Sir Stephen was saying about case management and case management systems. For example, do you know how many cases each one of your case workers, your adjudicators, has?

Dominic Harris: No, I don't. I obviously will do if I am in post. It is one of the most important things I think the Ombudsman should be doing. When I look at the team that I run at my present firm, if one person is burdened with too many complicated cases or just a sheer volume of too many cases, they have an awful tendency to resign. I would rather that did not happen, so I think managing the workload of your team is one of the things—

Q52 **Debbie Abrahams:** How many cases do each of your junior lawyers have?

Dominic Harris: It varies. If I look at the team that I work with now, I have one particular member of the team who is spending her entire time on just one of my files, because it is incredibly busy. I have others who work across many, because they are less busy or they take on discrete tasks.

Q53 **Debbie Abrahams:** You probably know that last year over half of the complaints that were submitted to the Pensions Ombudsman were rejected because they were over the time limit. In terms of the case management, do you know how that relates to when they are received? Was it that they were not triaged in a timely way? What would your plans be to ensure that that number reduced?

Dominic Harris: As in time limits, the time for bringing the complaint?

Q54 **Debbie Abrahams:** The three years, yes.

Dominic Harris: I am surprised by that number. I may be wrong. As you will appreciate, I have read an awful lot of paper over the last week but I thought it was half of those that were rejected on jurisdiction grounds, rather than half of the total.

Q55 **Debbie Abrahams:** You may be right.

Dominic Harris: Which will probably be a much smaller number, because if it is half the total number of complaints the total number of complaints is 5,000 something. That would seem awful. I would definitely be doing something about that.

Q56 **Debbie Abrahams:** It does not say here, but that would be useful to clarify.

Dominic Harris: Of course I will come back to you on that. The point is still well made, if a complainant has a valid complaint that would succeed and they fail to do so within the time limit they have lost a valuable asset, effectively.

Q57 **Debbie Abrahams:** Absolutely.

Dominic Harris: I am happy to say that the Ombudsman is given quite a lot of flexibility on this. There is a three-year time limit, but that three-year time limit only starts to run from the point that you reasonably ought to have become aware of the problem, which is an important thing in pensions. If you made a transfer from scheme A to scheme B five years ago and you only spot your problem now, you do not want to be scuppered by the three-year time limit if you only discover that problem now. There is flexibility in the legislation to allow for that.

The Ombudsman also has a more general discretion to take things out of time, although that is slightly limited by the courts, which have intervened in the past, to say, "Well, if an individual or a company has a specific defence". You might be aware, for example, that there is a 15-year longstop on limitation in some circumstances.

Q58 **Debbie Abrahams:** I was not but carry on.

Dominic Harris: If someone brings something after 20 years and the Ombudsman says, "Oh, I am going to jump in here" they need to be careful, because if the courts would not allow that it should not be for the Ombudsman to go further than the courts would but, generally speaking, there is a lot of flexibility so that is the first point.

The other point is just to get out there and make sure that people know about it. Again, it comes back to—"marketing" sounds the wrong word for an Ombudsman—effectively getting out there in the world. Don't forget, stakeholders are not just pension schemes but organisations like the APL, PLSA, and stakeholders are also Which? and parliamentarians. We need to make sure that everyone is armed with the information to be able to do what they need to do with the rights that they have.

Q59 **Debbie Abrahams:** Very helpful indeed. In terms of the 28 days in which complainants have an opportunity to challenge any decision of the Pensions Ombudsman, do you think that is long enough? Do you think that allows enough people to mount an effective challenge? Is that something you may want to review?

Dominic Harris: From a personal perspective I do think it is long enough. They are told when they are given a determination that they have 28 days to appeal. Let's not forget, it is not necessarily in the interests of members—let alone anyone else who is involved in the complaints process—to leave justice hanging for a long period. You want finality. You want resolution. If there is a genuine reason to appeal you should be doing so as quickly as you can, I think.

Two years ago—or certainly in the pandemic because it was a virtual appeal—a member appealed against one of the determinations of the

Ombudsman against my trustee client out of time. The judge in that case went through a specific process to decide if it was reasonable to allow them to appeal out of time. It was seven months rather than the 28 days. Again, it is not a hard and fast rule that you cannot, but you must satisfy that case law to say why there is a good reason that you should be allowed to appeal out of time but, generally speaking, no.

Q60 **Debbie Abrahams:** I know we have talked about conflict of interest and you have also been very open that pensions are often spoken about at home with your wife. How will it work practically? I know you said you would recuse yourself from any determination in a trust that may be investigated where your wife is a trustee, but how will that work in practice?

Dominic Harris: I have spoken to Mr Arter about this and how it works, because I am keen to ensure that I am not put in an awkward position and that I can do my job properly. His wife is not in the pensions industry, but he has talked about where he has had points that he has advised on come to the Ombudsman and he has set up Chinese walls. He has not talked about it. He has not talked to the adjudicators who have dealt with it in first instance about it. He has not talked to the deputy when the deputy is making a decision and he has made it quite clear that, whatever decision is reached, is effectively okay by him.

The key practical point is to make sure that the conflicts are picked up early. I have not thought this through entirely, but what I suspect I would do is provide whoever is dealing with the cases at the point they come in, and at the early resolution stage as well, with a list of the clients I have acted on, the boards that my wife sits on, to allow for that to happen before there can be any "cross contamination".

Chair: We have checked and your interpretation of the data on the complaints rejected on timeliness grounds is right. It is about half of those that are only 10% that have been rejected on jurisdiction grounds.

Q61 **Dr Ben Spencer:** Last year we published our report on pension scams and I am fairly certain you will have read it in advance. What role would you say the Pensions Ombudsman has in tackling pension scams? Could you comment on some of the suggestions that we made on the back of that report?

Dominic Harris: I think the Ombudsman has lots of roles, an important role to play in relation to pension scams. I think my thoughts on this may well trigger some memories of your report as I go, as I think this through. There is the traditional role, which is that the Ombudsman is an Ombudsman making determinations and some of those determinations may relate to pension scams.

To give you two examples: the Ombudsman 2017-18 made a determination in relation to the Northumbria Police Authority, I think, where it decided that the authority had not gone through sufficient due diligence when allowing a transfer. The member then went to a vehicle that did not meet his expectations and the Ombudsman ordered that he ought to be reinstated into the original transferring scheme, so that is going out. Also, from a receiving scheme perspective, the Ombudsman—as it did in Norton—makes determinations where, hopefully, he recovers money on behalf of the scheme members from the trustee that has gone off and acted dishonestly. I see that as the traditional role.

I think the Ombudsman also has a role to play—and this comes back to your report—in the way it shares information with the wider industry and other stakeholders who are involved in the industry. This is back to Project Bloom and so forth. If the Ombudsman sees a lot of scams that have particular characteristics it should share details of that with TPR. It should be part of the conversation with Action Fraud and so on, because that is the only way to efficiently ensure that members are protected.

The third way of the Ombudsman getting involved with scams is in a stakeholder industry-wide way. I can point to an example that the present Ombudsman used here. As you might know, many moons ago TPR produced its "Scorpion" leaflet, it calls it, which it asks trustees to send out to members before they make a transfer. It includes details of what to watch out for, to avoid cold calling and all the sorts of points they should be watching out for.

The Ombudsman has been very clear and has set out its expectations of what good industry practice is for trustees. If they were not sending out the "Scorpion" leaflet within a certain period of it being produced, that is bad industry practice and the Ombudsman is liable to find the trustee guilty of maladministration and make a determination on that basis. That is the sort of clear stakeholder management that I like the Ombudsman doing, because it changes behaviours. It is not changing law, but it is changing the behaviours in the industry and is raising industry standards so that they protect members.

Q62 **Dr Ben Spencer:** The previous Pensions Ombudsman said to us that the people who have been scammed should absolutely make complaints to the Pensions Ombudsman. Clearly, there are a host of organisations involved in pension scams and the response to pension scams and supporting people from pension scams. How will you work with these other organisations to support scam victims?

Dominic Harris: If I were to get the role of the Ombudsman it is clearly to be the Ombudsman. We are there in other respects to help them. The early resolution team, for example, is there to discuss points with them and point people in what might be different directions. I can make determinations—like the Norton case—that gets them back cash and so forth. I can discuss things with TPR. I can discuss things with Action Fraud. The early resolution team should be pointing them in those directions.

I think one of the points that is well made, and again comes back to the FOS issue, is there are so many of these organisations. In an ideal world, just as with FOS, you would have one customer journey. You would not be picking up the phone to Action Fraud, reporting it to the regulator, making a complaint to the Pensions Ombudsman. I think that is dreadful from a member perspective.

In an ideal world, I would like to see a single journey for them on that route, but I don't think that will happen for a while. What I can do as the Ombudsman is make sure that they know where they should be going, who they should be speaking to, where the correct support is and then I will make my determinations in accordance with my duties as the Ombudsman. There is no reason we cannot support them and point them in the right direction as they go.

Q63 **Dr Ben Spencer:** Okay, so pass the package, so to speak?

Dominic Harris: Yes, absolutely, which I think is what the Ombudsman is. If you look at the pension protection package, we are a part of FOS as well. Pension Protection Fund, TPR, Money and Pensions Service, all of these are here to help consumers and enhance the standards of the industry generally. We need to work as a team, as far as I can see.

Q64 **Chair:** One of the points we made in our report was that the response to pension scams does seem a very fragmented one. As you say, lots of different organisations and it is not quite clear who is in charge. It is something we think ought to be improved and, by the sound of it, you rather agree with that.

Dominic Harris: I do, yes.

Chair: Thank you. That concludes our questions to you. Thank you very much for joining us this morning and for giving us very full answers to our questions. We will ask you now to leave us and we will reach a conclusion. Thank you for your answers.