

Treasury Committee

Oral evidence: [Work of the Financial Ombudsman Service](#), HC 968

Monday 9 November 2020

Ordered by the House of Commons to be published on 9 November 2020.

[Watch the meeting](#)

Members present: Mel Stride (Chair); Rushanara Ali; Mr Steve Baker; Anthony Browne; Felicity Buchan; Ms Angela Eagle; Julie Marson.

Questions 1 - 68

Witness

I: Caroline Wayman, Chief Ombudsman and CEO, Financial Ombudsman Service.



Examination of Witness

Witness: Caroline Wayman.

Q1 Chair: Good afternoon and welcome to the Treasury Select Committee evidence session with the Financial Ombudsman Service. I am very pleased to have our single panellist before us this afternoon, Caroline Wayman. Caroline, just for the public record, could you very briefly introduce yourself to the Committee, please?

Caroline Wayman: Good afternoon. I am Caroline Wayman, the chief executive and chief ombudsman from the Financial Ombudsman Service.

Q2 Chair: Welcome to the Committee. A lot of the postbag that we get is from those whom you require to pay fees to the FOS who complain about the level of those fees. Sometimes there is an uncertainty as to exactly what level of charges they are going to face. Times are very difficult. Could you start with an opening statement about how the fees arrangements work and, in particular, why there have been these increases? In December 2019, you proposed to increase the levy to £106 million, an increase of over £60 million on the previous year. Despite reducing the proposed levy increase due to Covid-19, you are still charging an extra £39 million, which is an awful lot of money. What is your take on that, please?

Caroline Wayman: It would be worth saying, as a precursor, that our income is a combination of case fees and levy. Every case that we receive that we take on to investigate becomes a chargeable case but, within that, we have, for a number of years, operated a charging basis on which firms do not pay for the first 25 cases. That means that a very large number of small businesses never pay a case fee at all.

Then the other part of our income, as you say, comes from our levy. Over the last few years, we have been preparing for a world without payment protection insurance. It is a day that will finally come, we hope, next year. It has been something of a moveable feast and something that has kept us very busy. Primarily as a result of PPI, our income has become rather skewed towards case fees. In the original thinking, it was imagined that it would be more like 50:50 as between case fee and levy. Last year, and for some time building up to that, we spoke to stakeholders and consulted quite extensively around changes to our funding model, and proposed rebalancing that towards the levy. It is about the proportion of our income that we take from levy versus income from case fees. By the end of the year, we were planning to bring in a levy that would have been a much higher proportion of our income.

As you mentioned at the outset, we, in discussion with the FCA, agreed to take slightly less income, in reflection of the challenges that financial businesses were facing in relation to the pandemic and the impact that that was having and would have on businesses. That means that our budget for this year is based on an assumption of a deficit in the region



of just over £50 million. We are funding that from our reserve, which we have deliberately built up to see us through to the other side of PPI. In the longer term, we need to be able to recover the income that we need to run the service.

The important context is that our overall balance of caseload is shifting quite considerably from one absolutely dominated by payment protection insurance to a diet of much more individualised complaints.

Q3 Chair: As I understand it, you are projecting a deficit. How do you fund those deficits? How does that work?

Caroline Wayman: We have deliberately built up our reserves over a number of years. We always knew that we needed to have sufficient reserves, and we have held them higher than we would ordinarily in order to be able to see through PPI and, indeed, the exit of PPI. As I mentioned, that has been something of a moveable feast. We might have all thought it would be over by now. It is almost there, but that has meant that we have needed to hold those reserves for a period of time. Having those reserves has enabled us to call upon them and to be able to deplete those reserves.

We consulted on six months, broadly, as the level of operating expenditure that we would expect to have in our reserves. We will potentially have a bit less than that by the end of this year. We will, of course, be consulting again in December of this year, as we do annually, when we will need to set out our thoughts around what we think we will need in terms of income and the balance between case fee and levy. A massive driver of that is what we think is going to happen next in terms of complaint volumes to us.

Q4 Chair: I cannot overlay the number of approaches I have had through correspondence and from fellow Members of Parliament who have businesses that really are struggling. They have the FSCS, the FCA and yourselves. They have all these fees. They are under a lot of pressure at the moment. What is your message to them?

Caroline Wayman: I absolutely recognise that, and it is a really important element as we approach our funding cycle for this year. One of the things that the FCA did in discussion with us was to hold the minimum levy at last year's amount. One of the things that we will want to think about in our proposals for this year and beyond is the balance of where the income comes from. For the smallest businesses, where we know that the costs are particularly material—they are material to everybody, but they can have a significant impact here even for a small number of complaints—we have always looked to make sure that we are, obviously, applying our funding fairly and that, wherever possible, it insulates the smallest businesses from costs that are an undue burden. As I mentioned, that is why we have long had an approach that means that a very large proportion of firms will never pay a case fee.



Q5 **Chair:** What would your assessment be of the increase in costs for those smaller firms over the last three years from the FOS, the levy and the case fees?

Caroline Wayman: It depends on the firm in terms of the impact. Our own part of the levy is the smallest part of it. That is not to underplay it in any sense; it is obviously still a cost on the industry, and we take that very seriously. Overall, we need to try to recover the income that we need to be able to run the service, obviously as efficiently as we possibly can and delivering fair outcomes for everybody. We have done an awful lot to try to recognise the very real challenges that the smaller businesses face.

Q6 **Chair:** Some of the work that you are carrying out is to try to prevent complaints in the first place, which of course is an ideal situation because that can save costs, but you are not directly remunerated for that as such, compared with, say, the cases where you are on a case-by-case basis. Can you tell us a bit about that work, what you are doing in that area, how successful you have been and what further progress there could be in terms of prevention of cases?

Caroline Wayman: I would be very happy to. It is a really important part of our strategy, particularly as we look to next year. There are areas where I can certainly foresee risks in terms of potential future complaints, and the Committee may want to speak about some of those later in the session. It is obviously in everyone's interests, including financial businesses, consumers and small businesses who bring complaints to us, to get people fair outcomes without the need to go through a complaints process. I run a rather large complaints process for a living, but that does not mean that I do not recognise what a challenge it is to go through a complaints process. It is not a thing that anyone ever particularly relishes.

Q7 **Chair:** We can agree that it is totally unsatisfactory to have more complaints than necessary, if that is the right expression. My question was really about what actions you are taking to get those levels of complaints down, your assessment of how successful you have been and what scope there is for progress going forward.

Caroline Wayman: Yes, there is definitely scope for more, and our intention is to work further with the industry to look for further opportunities to prevent complaints. We have decent success already in being able to do so. In talking to stakeholders, it is something that everybody welcomes. Packaged bank accounts is a good example from recent years, where, for a time, everybody wondered whether that was the next PPI. I get asked quite a lot, "What is the next PPI?" We did see some issues in terms of how those accounts have been sold and how people had come to get them, but we worked to try to get our approach clear and established. The banks took that on board and applied it at the front end. We were then able to take a very robust approach with claims management companies that would otherwise have sought to send a



HOUSE OF COMMONS

large number of complaints to us. That is a good example of where we can step in and be clear about our approach, which prevents complaints.

We do it in a very real everyday way all the time. When we make decisions, financial businesses are required to take account of those in their own complaints handling. I can think of more one-off everyday examples. It might have been last year, or even the year before, in the ISA season, where we made a decision and spotted some issues with someone's online procedures. As a result, they changed those and that prevented complaints. It is the sort of thing we will be doing all the time. Measuring the impact of that, the counterfactual, is harder and that is one of the things that we will be working on and talking to stakeholders about in terms of the best way of demonstrating that impact.

Chair: It would be very helpful, on that particular question, if you were able to write to the Committee with some follow-up. There is quite a lot in there, so I do not want to tie you down with that now.

Caroline Wayman: I am very happy to.

Q8 **Chair:** If these firms get involved in having to pay a case fee, so they are over the threshold of the free number that they get, and it is, say, £600 or whatever it may be, is it your experience that there are consumers who would basically say to that firm, "Look, you might as well pay me my £300, £400 or £500 because, in the event this goes to the financial ombudsman, it is going to cost you more than that anyway. Pay up"? Is that an issue?

Caroline Wayman: That is not something you see a lot of among consumers, but it is certainly something you would see from claims management companies. It is something that I have heard over the many years in which I have been doing this sort of work. What I always say to financial businesses is that I would very much not advise them to give in to those sorts of requests or points, because that rather encourages the behaviour. If businesses have done the right thing, they should stand behind that and be very clear in that. It actually feeds that problem if you give in to that. The free cases is part of insulating smaller businesses from that sort of risk as well.

Chair: I would love to discuss that a bit further but I am out of time.

Q9 **Julie Marson:** I would like to turn to how the FOS deals with complaints against itself. I have looked at the independent assessor's report from 2018-19. The complaints against yourself as a proportion of actual complaints is pretty low; it is just over 1% in those figures. The level of complaints has increased by 54%, and complaints to the assessor by 29%. What do you feel is driving that increase in actual complaints?

Caroline Wayman: Just for the Committee's information, we will be publishing this year's report quite soon. After it has been received by our board, I would be very happy to send a link or a copy when it is published. Complaints to the assessor, just for the Committee's



HOUSE OF COMMONS

information, are very slightly up this year compared with last year, by about 50. It is not a big increase, but it is a small increase.

What do I think is driving that? It is a range of things. Undoubtedly, over the last few years, we have had a very large increase in complaints ourselves, so the net number of complaints to us on activity is up. That creates some challenges in terms of timeliness, as in how quickly we get back to people, and that is always a driver of complaints.

As well as the independent assessor providing that very important mechanism, we very much seek to learn from her findings and to make sure they are part of our continuous improvement in terms of the recommendations that she makes as well as the learning points that she would draw to our attention. That has been an important part of our approach for some time.

To a large part, it is volume and probably a bit of the impact of having some wait times that are not where we want them to be.

Q10 Julie Marson: What about communications? Some 74% of the complaints that were found to be unsatisfactory were about communications. What does that tell you about what your communications are like, how they work and what you might be able to do to improve them?

Caroline Wayman: We put a huge amount of emphasis on communication and trying to improve it. Some of that is related to the first part of my answer, which is that one of the things we have needed to improve, and have sought to do so, is around communicating with people when they are waiting for something to happen. That is where those two things come together, in a way.

There is always more we can do to learn from and to continue to improve how we communicate with people who are often in a very difficult situation when they come to us. It is, as I said, something that we put a lot of emphasis on. As an organisation, we have made massive improvements over the years in how we communicate. In our training and the ways in which we induct our people, we put a massive amount of time into emphasising the importance of people feeling listened to and seeing that as a really core part of their role. As ever, there is more to do and we absolutely take on board the feedback that has been given.

Q11 Julie Marson: The independent assessor has said that the FOS's implementation of recommendations is slow. Who, at executive level, is responsible for complaints about the FOS and for overseeing the implementation of the recommendations?

Caroline Wayman: It is ultimately me, because I am responsible for everything in the end. The buck stops with me. Her recommendations are technically to the chief ombudsman so, in a very real way, it is me. My quality director meets the independent assessor on a quarterly basis to discuss any themes and issues. I want to assure the Committee that, in



HOUSE OF COMMONS

terms of those learnings, it is not in any sense a lack of desire or anything like that. I do not think that that is a theme that is repeated this year. We obviously have some challenges in terms of workload at times and we have to prioritise things, but we certainly take seriously the recommendations she makes.

Q12 Julie Marson: One of her recommendations was that you should implement service level agreements and indicative timescales around that. It feeds into customer expectations, as you intimated before. Have you done that? Have you made progress on doing that?

Caroline Wayman: Yes, indeed we have. On our website we have a fairly regularly updated indication for people about how long it is likely to take before their complaint is going to be allocated. I think that has really helped. We rolled out service standards across our investigative team some time ago now. I think that is acknowledged in the soon to be published report as something that we have done. I am sure the Committee will want to read the new report with interest as well but, yes, it is something that we have taken forward.

Q13 Julie Marson: Would you be able to give us a feel for the kind of service levels and what kinds of things you have incorporated into those?

Caroline Wayman: Again, I am happy to give you further detail but it is the usual things you would expect around how quickly we respond to correspondence and how quickly we move things along. I should say that some of those things have, of course, come under some pressure over the last few months as we have grappled with the operational impacts of the pandemic. I would be very happy to share further detail on that if that would be of interest.

Q14 Julie Marson: Another thing that the assessor noted was that failures in 60% of 63 complaints involved vulnerable customers. How do you feel about that? Would that be acceptable?

Caroline Wayman: No. I am deeply disappointed. Again, we put a huge emphasis on the importance of supporting vulnerable customers. We have continued to evolve how we do that. We, along with everyone else, continue to learn about what vulnerability is. We very much recognise that it is not a tick-box. We have been very clear about that with our people. We very much try to equip them with what they need and then ask them to use their judgment around what the best support is for people. We have provided quite a lot of support to our people around that.

We have additional measures now in terms of support for really vulnerable customers and people who might need extra support. We have put in place additional things during the year that have really bolstered that. It is something we do a huge amount of work on as an organisation, but one person for whom we have not done what we need to do is too many for me, and we will constantly look to improve that.



Q15 **Julie Marson:** You say you have put things in place to help vulnerable customers. What kinds of things have you put in place?

Caroline Wayman: We have worked with charities to give our people some additional support and guidance. Our staff vote on and agree a charity partner every two years. At the moment it is Papyrus, which is a charity that some people may be familiar with, which supports young people on suicide prevention. We have worked with them, for example, to get additional support for our people. That would be a good example of where, as well as building up our own expertise, we draw on external partners to try to make sure we are doing absolutely the best that we can.

Q16 **Julie Marson:** Finally, about 16% of complaints to the assessor related to fairness and impartiality of the ombudsman service. I presume that that is an important area for you as well. Do you have a comment on those kinds of complaints and how you might be addressing them?

Caroline Wayman: It is absolutely at the heart of everything that we do. I say to our new starters that, if there is one word that I want them to remember through the whole induction—I hope they will remember a bit more than this—it is “fairness”. That is absolutely at the core of what we do. We consistently demonstrate that that is at the heart of everything that we do and that we are free from bias. My postbag is a combination often of people who are unhappy, often from different sides of the argument, as well as people who tell us what a difference we have made in their lives. Like the other areas of the assessor’s workload, albeit recognising it is a relatively small proportion of our overall caseload, it is still really important feedback and so we take that on board. I do not think there is anything I particularly call to mind in terms of what we have needed to do additionally, but it is absolutely at the heart of everything we do.

Q17 **Mr Baker:** I want to continue talking about the independent assessor, especially thinking about that point about fairness. The terms of reference for the independent assessor are clear that she can consider complaints about the practical handling of a case but not disagreements about its outcome. Your comments about fairness struck a chord there. Surely it is the case that, if a particular customer is handled badly—if there are problems with the processing, of handling of evidence or long delays—that could have a material impact on the outcome of a case and lead the complainant to feel that they have been unfairly dealt with.

Caroline Wayman: What you are referring to there really goes to procedural fairness. That is obviously, again, something we take very seriously. It is important to recognise that the check and balance that is in place there is judicial review. Delay is a ground that can be, and is, taken in challenges to us in judicial review proceedings. You are absolutely right to point to that. It is an important tenet of our process in trying to ensure fairness, and procedural fairness is at the heart of that.



It is absolutely right that the mechanism by which that can be, and is, challenged is judicial review.

Q18 Mr Baker: Judicial review seems to be quite a big thing for a customer. Should it not be the case that the independent assessor can direct that a case be reopened if she felt that the process had not served a just outcome? It seems to me that process is absolutely at the heart of justice. If the independent assessor found that something about the process had not served the customer in the way that they ought to have been served, should it not be the case that the complaint can be looked at again?

Caroline Wayman: That is not currently the way in which it works. What you are describing becomes more akin to an appeal to a decision. There are instances where, if I or a senior ombudsman identified a concern around procedural fairness, we may very well take steps to see if we could re-examine that. Presently, Parliament has decided the powers and the framework under which we operate, and that includes finality once it is an ombudsman's determination.

It is very important, though, to emphasise that that is only the case once it is a final determination by an ombudsman. Once that has been concluded, the present situation is that we are out of powers. I was going to start using Latin at that point but I will resist the temptation. We are no longer able to take any further steps. Neither I nor the independent assessor would have any powers in that regard. That is enshrined in the Financial Services and Markets Act. My own view is that finality is a good feature of alternative dispute resolution and that, overall, it benefits the parties and everyone much more than having extended processes.

I certainly do not hear a lot of pushback from stakeholders on this point. It is not up to me. Ultimately, it is up to Parliament. We try to listen to everything that our independent assessor has to say. Of course, if we identified a problem, we would look to do everything we could within our powers to put it right.

Q19 Mr Baker: Without wishing to get into an argument about our constitution, the reality, as I am sure you know, is that the Government control the business of the House of Commons and it is very much in the hands of Government to decide what Parliament is asked to vote on. Of course, you are right that Parliament has decided, but I would encourage the public watching this to think about or have a look at how it actually works.

To come back to the public themselves, they write to us to complain about how things have been handled. That is something that staff have briefed us on. How would you reflect on complaints to the independent assessor and the process? What more could you do to ensure that complainants receive a fair outcome?

Caroline Wayman: Again, there is a difference between process and outcome, although I accept your earlier point that procedural fairness is



part of that. We work very hard to ensure that people get fair outcomes. Although you rightly say that judicial review—I cannot remember exactly how you put it—is not an everyday activity for people and can be expensive, it is something that is exercised and we do face challenges every year and we learn from those as well.

We can always do more. Partly, again, it comes back, as I was responding earlier, to communication. Part of people feeling satisfied from a complaints process like our own is feeling listened to. We recognise, of course, that, in any dispute that we deal with, there are two sides to the argument and we risk disappointing one side or the other. That is inherent in what we do. Again, we really emphasise this with all of our people, and they take this really seriously and do some really great work to try to help people feel listened to so that they can move on. Some of the best feedback I get is actually the feedback that is about, “I did not get what I wanted but I felt listened to and I could move on.” That is brilliant. That is really us doing a fantastic job. It is obviously much harder for people to feel satisfied when they have not had the outcome they were seeking, but it is still our duty to try to make that the case wherever possible, and we will continue to do that.

Q20 Mr Baker: I should say at this point that it is not through any lack of thanks that we are asking you all these questions. We are grateful for everything that you and your staff do. I need to ask you another tricky one, though. If the independent assessor decides that the ombudsman service has not met its service standards, she can recommend to you that the FOS should pay compensation equivalent to what a firm should pay. How much has the FOS paid out in compensation for poor service in the last year?

Caroline Wayman: I do not have the figure to hand. I would be very happy to follow up with that. The individual amounts tend to be at the more modest end of the spectrum, as indeed do our own, for distress and inconvenience. They are in the low-hundreds territory. I am afraid I do not have the absolute total to hand, but I would be very happy to share that after the session.

Q21 Mr Baker: I would be grateful, thank you. You have given us an idea of the order of magnitude of most sums paid out. Could you just give us an idea of the order of magnitude of the number of complaints of that character that would result in payments?

Caroline Wayman: The recommendations were made in just less than a quarter of cases. That was 550 last year, and just around 600 this year. That gives you a sense.

Q22 Mr Baker: It is something of that ballpark. Okay, that is completely fine. The FOS recently appointed Dame Gillian Guy as the ombudsman service’s new independent assessor for complaints about FOS. Why do you think that Dame Gillian is particularly qualified to review complaints about FOS’s level of service?



Caroline Wayman: First, it is important to say that there was a competitive process through which Dame Gillian Guy applied. She went through a rigorous selection process and was then appointed. Obviously, she comes to us with a wealth of experience in her most recent roles. She has already started, very recently, and I think she will be very effective in asking us the difficult questions and holding us to account. I am sure she will bring new ideas to how that role is performed. She is a very high-calibre appointment. I am delighted that it is a role she wanted to apply for. As I said, she was appointed after a rigorous selection process and I am sure she will do a very important job for us.

Q23 **Mr Baker:** Could you tell us why it was that you allowed a three-month interregnum after the end of Ms Somal's term?

Caroline Wayman: I am not sure if that is the exact timing, but it was just the practicalities of completing the process during lockdown. We were slightly delayed, like many people. There were a couple of things that, when first going into lockdown, we thought, "We will try to do those when we are back in the physical real world," and then, quite quickly, you realise that you are just going to have to get on with everything. The whole process was done through this sort of mechanism, actually very effectively. We have all learned to be able to conduct our business in this way. Yes, practicalities is the answer.

Q24 **Mr Baker:** Finally, on that point of practicality, what has happened to relevant complaints in the meantime, during that interregnum?

Caroline Wayman: They will be awaiting Dame Gillian to crack on. She will have a small backlog to get through on arrival. I am sure she will seek to do so as soon as possible.

Mr Baker: I am sure we all wish her well as she sets about doing that.

Q25 **Rushanara Ali:** Hello, Caroline. I am going to start off with some questions around concerns raised by whistleblowers and then go on to the impact of Covid on your work. In December 2019, an anonymous senior FOS staff member alleged that a disastrous management reorganisation, in which the call centre and specialist adjudicators were replaced with generalist investigators, has left the service in disarray, with the public waiting as long as two years to get justice. Can you talk us through what you have done since then to improve management practices and case resolution rates?

Caroline Wayman: I would not necessarily recognise, and certainly would not agree with, a number of those assertions. The article you refer to, as I recall, refers back to changes that were agreed in 2015 and introduced in 2016. Those are matters—you will recall this, but most of the rest of the Committee will not—on which we had quite extensive engagement with the Committee in previous sessions, but obviously it is still important to recap. In 2018 we had an independent review conducted by Richard Lloyd. Richard Lloyd did a very extensive review of the service and, overall, found it to be effective and essential.



Picking up on some of the specifics, one of the things that he advocated and recommended was that we should take a fresh look at case resolutions and set realistic goals, which is obviously something that we always seek to do. We did a piece of work in early 2019 where we looked across our casework and the sorts of issues we were dealing with, and we looked at what we thought was an appropriate objective in terms of case resolutions and set some objectives based on that. Of course, that is only part of the objectives that we set our investigators. It is really important to say that we have a balanced set of measures that we set people, and it can be easy just to focus on individual case resolutions, but I think it would be quite wrong and would lead to all sorts of wrong incentives if we were just focused on that number.

Q26 Rushanara Ali: Caroline, can I just follow up on that? I am focusing my questions on whistleblowers for the time being. You will have the opportunity to talk more about the change and the improvements you have made. You have already referred to some. The whistleblower alleged that the changes meant that only 1.7 cases per week were resolved, rather than 4.5. Each case resolution now exceeds £1,100. Who is ultimately responsible for the case resolution rate, and does this increase in costs put the financial stability of the FOS in doubt, given the case fee of £650? Are these claims that you completely dispute?

Caroline Wayman: Let me try to explain. There are a number of things being referred to there. As I mentioned, 4.5 is quite a historical reference to what we might have been thinking about back in 2015 based on whatever caseload we were anticipating. That is obviously five years ago. Subsequently, as we do all the time in every year, as part of the Lloyd recommendations we have specifically looked at what is a plausible objective to set individuals. We did some work looking both at what people were achieving and at what sort of workload we anticipated. Off the back of that, our standard expectation would be more around 3 to 3.5 cases per week.

Q27 Rushanara Ali: How is that coming along? Are you meeting that?

Caroline Wayman: I was going to come on to that. That is based on the other bit that comes into it as well, which is the balance of the caseload. I am trying to explain this without talking too long. We have a model that has a broadly 70:30 approach in terms of the casework: 70% of what we do is such that all of our investigators should be able to deal with it, and then 30% is stuff that requires a more specialist depth of knowledge. All of our investigators have a 30%, and they have a different 30%. In a steady state, we would hope that all investigators have a caseload that is broadly 70:30 or even edging towards 80:20. At the moment, we have spikes in certain areas that mean some of our investigators would be dealing with a much higher proportion of the 30%. For example, in our pensions teams, it is probably more the other way around at the moment, so they are more like 70% pensions and 30% other things. Our targets on this one measure—and I should emphasise that it is just one measure in an overall basket—are such that we flex them. You start with



a core expectation and then you say, “What is realistic based on your caseload?” and that will vary. In our higher-volume cases, it would be higher. It is a reflection of the kind of workload that people have.

Q28 Rushanara Ali: That makes sense. I completely understand that, if you are dealing with complex cases, the average is going to be different. Would you be able to give us a bit more granularity in writing on some of the different types of cases? As you say, there will be some areas where the number of cases that people and teams are able to resolve is much higher. That would be really helpful in terms of assuring us that things have genuinely moved on since that period, which I appreciate was a tricky period.

I have one last question on this segment. Again, by all means, please dispute it if these assertions are not ones you agree with. The evidence given at the March 2018 employment tribunal case acknowledged that the reorganisation was a mistake. Of course, lots of things have changed in the subsequent years, but are former specialist adjudicators still working on the so-called transition pods? Could you explain that to us?

Caroline Wayman: Again, this is going back in time a little. We commenced a reorganisation back in 2015. We created new roles of investigators, and that was quite different in a range of ways, including, going back to something we were talking about earlier in the session, in that we placed yet more emphasis on the importance of empathy and listening skills. Those have always been important, but that is something we have continued to place further emphasis on. We created those roles. We set out a clear expectation that those were the roles for the future. Over time—we have been doing it on a phased basis—we have moved to those being the predominant roles.

We no longer have adjudicators in our transition area, but we do still have adjudicators in what we refer to as our “mass claims area,” which is effectively payment protection insurance and a couple of other things at the moment. We still have that role, and it does still exist, but we do not have adjudicators in that area anymore.

Q29 Rushanara Ali: You are in a borough that is very diverse. How did this transition period affect the way you treat your staff and the way the organisation has managed diversity, change and so on? Whenever there are structural changes, it can affect women, minorities and those at the bottom of the organisation. Those who hold power tend to do better. We have seen that during the Covid crisis in the way that the NHS has had lots of challenges, for instance, in terms of those who particularly suffered. How do you handle change? What are the lessons from the change management process that the organisation has done well in terms of managing all of that and in terms of the people who work in your organisation and how they are treated, as well as what lessons can be learned from that experience? Let us be frank: it was not all entirely pretty. You were the subject of a *Panorama* investigation as well.



Caroline Wayman: It seems like splitting hairs to say it was *Dispatches*. Yes, it is certainly true to say that it was a very difficult period. It was incredibly challenging. I think, though, that we made some very important changes that were the right ones to move the organisation forward, but that in no way detracts from the fact that it was very difficult, and particularly difficult for our people. I and we learned a lot from that. The Lloyd review was obviously looking at the allegations that were made, and that were not found to be fair accusations in the main. It is easy when you are being criticised to just hunker down and defend, and we tried not to do that. We quite deliberately said, “No, we are going to open up. We are going to listen, we are going to learn and we are going to get better.” That is what we have done.

One of the big things—everyone says it but, having lived it, it is so true—is internal communication. You can never communicate enough. All of those change management experts who tell you that are right. We have really improved our internal communication function, and that has been a big feature. It is ongoing change. We are still in the midst. Like in any organisation, it is not a case of, “Okay, good. Done change. Move on.” We are constantly changing. One of the things we have really tried to do is to make sure that our people are much more part of that and that we are hearing their voices. Our service levels have really improved.

Q30 **Rushanara Ali:** If you could, it would be really helpful—it may already be out in the public domain—to get some breakdown of numbers on what the organisation now looks like in terms of the makeup of your teams and so on. It may be another thing to follow up on if you can.

Caroline Wayman: Yes, by all means. That is mostly published, but I am very happy to draw that to your attention.

Q31 **Rushanara Ali:** I am going to move on to the impact of Covid. You have had all of the stuff to deal with in terms of PPI and reorganisation. I do not think anyone envies you. Of course, it goes without saying that FOS, as you have pointed out, deals with a lot of complaints. We hear about the negatives but, credit where it is due, you have resolved a lot of people’s concerns and problems. We then face Covid. We have not seen you in recent months. What impact has Covid-19 had on FOS’s ability to undertake the core mandate, which is to investigate and decide consumer and small business complaints against financial services firms? Could you then reflect on how you have addressed it? On your website you have talked about not being able to get back to people for many weeks. Could you talk us through how all of this has impacted your ability to deliver the core mandate?

Caroline Wayman: I can start from the immediate response and lead into where we are now. We had a bit of home-working, but we were a largely office-based operation and, like everyone else, we had to move from that to being almost entirely home-based pretty much overnight. I am enormously proud of the way in which our people have been able to do that. We responded very well and very quickly. Some of our



HOUSE OF COMMONS

ombudsman colleagues in other sectors have needed to effectively close the doors for a period and not take any new cases. We did not do that. We have not needed to do that.

We faced some practical challenges. The one thing you cannot do completely remotely is the physical post. After a short hiatus, we had a number of colleagues going in every week to scan in the physical post so that we can then process it. We have worked very well on the practical challenges. We had to close the phone lines for a day or so, but we very quickly got that back up and running. Inevitably there is an impact, but we have been able to operate our service effectively throughout lockdown.

Q32 Rushanara Ali: You have received more complaints. You have had 3,500 complaints, so obviously that is huge pressure on the team. How has it impacted on the length of time within which you are able to resolve complaints?

Caroline Wayman: We were making some very good progress on reducing wait times. That will come under further pressure. Over the summer and over the last few months, we have seen a really significant increase in new complaints. We have published some information today setting out some of that. The other very important impact I should mention is that, for a time, financial businesses in some cases had to suspend their complaint handling, which had a material impact on their ability to respond to us. That was particularly the case in PPI but in other areas as well.

Q33 Rushanara Ali: What has happened in the insurance sector? A quarter of your complaints come from there. Does that suggest they have not been treating their customers fairly during this period?

Caroline Wayman: It would be fair to say that there has been a lot of activity. Travel insurance is one of the areas that has really gone up. Event insurance is the other thing that is notable. Business interruption insurance is another area that I am sure the Committee will be familiar with.

In terms of outcomes, some of those are still being investigated, so time will tell. My sense of it is that, as ever, it is a bit of a mixed bag. There are some cases where we need to explain to customers why, unfortunately, they do not have cover in the circumstances.

Q34 Rushanara Ali: How long, on average, are the complaints in specific terms and in the time it takes to deal with them? You have already had a lot to deal with, and then you overlay Covid on top of that with thousands more complaints on the points you are raising. How does that affect your overall ability to deliver your mandate and try to deal with complaints in a timely manner? What can you do? What support do you need to try to address that?



Caroline Wayman: A big part of the answer to that question is our preparation and plans for next year, which we are in the midst of drawing together and will be beginning consultation on. We have been recruiting quite extensively. After, again, a brief pause, we have been able to recruit throughout the lockdown and the ongoing period of home-working. By the end of the year, we will have added about another 400 investigators into the service, which is by no means trivial.

We are also looking at the nature of the complaints we are seeing, and looking at where there are opportunities to resolve them as a group or in different ways. The other important part of my answer has to be where we began with the Chair's questions, which is about prevention. There are some specific areas where we would be very much looking to work in partnership with the FCA and with the industry itself to try to prevent those future complaints. That is a big part of the answer, because it is about doing the cases we have but also preventing cases.

Q35 **Rushanara Ali:** Do you feel that you are being assertive enough in telling the other agencies what they need to do, as well as telling the Government Departments where they can play a role, to do that prevention? This may be an unfair caricature, but it has come across like you have been dumped on over recent years, whether it is PPI or SMEs and the post-GRG fallout, in terms of what you have been expected to deliver on the complaints without adequate resource and backing. Do you have a big enough voice in the community of organisations to deal with the prevention? If not, what do you need to get that message across?

My final point is related to business interruption loans and so on. How do you see that as being different from what you have been dealing with in the past? Should we be concerned about how consumers or SMEs are exposed to the big emerging challenges vis-à-vis this pandemic, as we saw belatedly after the financial crisis with the GRG scandal and the impact on SMEs?

Caroline Wayman: Going back to the beginning of your question, yes. The question that underpins it is about the proper policy response when there is an issue or detriment that affects a large number of people. The question that I have asked and continue to ask in different situations is, "Is a complaint-led response the right one?" PPI is the biggest example of that, but there are others. We are discussing this with the FCA. There is a question in my mind about when a complaints-led approach is the right one and when it is not. The FSA, in its day, decided on a complaints-led process against the advice that we gave at the time to consider alternatives, and the rest, as they say, is history, with 2 million cases and counting. I have to hope that we would all take some lessons from that.

Business interruption insurance is an example of where the FCA has stepped in and sought an alternative approach. Had it not instituted the test case approach, the natural order of things would have been that that just resulted in a very large number of complaints to the ombudsman service or to the courts, which would perhaps have been even more



HOUSE OF COMMONS

disorderly in a way. We very much welcome the steps that the FCA took there, which ought to lead to redress for people on a bigger scale without the need to complain. There is obviously a theme there.

Notwithstanding that, we still have some complaints. We have just over 1,000 complaints at the moment, some of which we are able to progress but most of which are impacted by the test case, on which we will need to await the outcome.

We have also seen complaints around the Government-backed loan schemes, albeit a relatively small number compared with the number of loans that have been advanced. We have been able to play a really important role there in stepping in early and getting people the outcome before it becomes a long-blown thing. We have quite a number of instances. I had a very nice "thank you" in my inbox the other day from a small business owner who was struggling to access the funds; there was a bit of a hold-up and a bit of an issue. We stepped in and we spoke to the business. The business looked at it, got the situation ironed out and got his funds to him. We always envisaged, when we took on the SME jurisdiction, that, as well as some of the more complex and detailed decisions that we would need to take, it would also very much be about trying to facilitate early resolution, and I am pleased to say that is something we have been able to do.

Q36 Chair: I want to come back on something that cropped up in the questioning you have just had from Rushanara, which is the cost of cases. The annual accounts state that the cost of a case is £960, which is clearly significantly higher than the fee you are charging. What specifically is the FOS doing to address that given that, ultimately, those costs are being passed on to firms?

Caroline Wayman: As with everything, we are very focused on our efficiency overall. As discussed earlier, our income is a combination of case fee and levy. That cost-per-case calculation is a pretty blunt instrument, but it basically divides the total number of cases by the cost.

Chair: It may be blunt but it is significantly higher than the cost—

Caroline Wayman: I agree.

Q37 Chair: If I was running an organisation and I saw that, knowing that the amount I was charging those who are funding me is an area of considerable concern, I would be trying to get those numbers down. What specifically is the FOS doing to try to get those numbers down?

Caroline Wayman: I will have to manage some expectations here and say that one of the biggest drivers of our cost per case is the case mix that we have. One of the main reasons that you have seen increases, although not the only one, is the shift away from payment protection insurance complaints to everything else and an inherent shift towards complexity. We have been very clear with stakeholders that, as we go through that transition and a much smaller proportion of our caseload is



HOUSE OF COMMONS

from payment protection insurance, the overall case unit cost will potentially increase. It will not increase materially, but it will continue to come under pressure. That is not to say, though, that we are not extremely focused on trying to reduce our costs.

Q38 Chair: That is my point. I am sorry to press this. I accept there are things that can change in the circumstances of an organisation's day-to-day activities that mean that costs might rise, and you have cited one, but that does not mean to say that you do not try to bear down on those. What is it that you are specifically doing to try to keep that as under control as possible?

Caroline Wayman: Sorry, Chair. I am very happy to say more about that, and thank you for the opportunity to do so. Our costs are primarily people. We are a people business. We will obviously need to be the right size for the sorts of cases that we will see. We have already taken some steps this year. Having seen fewer PPI cases than we anticipated, we have quite significantly reduced our contractor headcount, which has brought down our cost base. That is an important component.

Another area I would point to is our property portfolio. We have quite deliberately structured our leases such that we have terms that allow us the opportunity to take breaks in those leases at points in time that it was hoped would coincide—obviously it has been an uncertain pathway—with PPI coming to a conclusion. That is another area where we will make significant savings.

We have also invested in our smarter working programme, which has been a great investment in the current situation because it enables people to work from home and also enables us to continue to bear down on those property costs.

We have taken a very close look at our service in every element. We look at every line of spend and we take really seriously that this is not our money and that we have to spend it wisely. Of course, it is very important that we are properly resourced to deal with the complaints that we receive. Absolutely, we continue to bear down on costs wherever we can.

Q39 Anthony Browne: I should declare from the outset that I worked very closely with FOS for around five years when I was the chief executive of the British Bankers Association, including on PPI.

I have two sets of questions. One is about the increase in the maximum cap and the maximum compensation award you can make from £150,000 to £355,000. The second is on the future of FOS, which is a slightly bigger subject. On the increase in the cap on compensation, you increased it last year. What has been the impact of that?

Caroline Wayman: It has been relatively minimal so far. The number of cases that are above the £355,000 mark is really quite small in number. We do not necessarily always calculate compensation. We will often make



HOUSE OF COMMONS

an award that sets out the formula for that. We obviously seek to know whether it is in the ballpark or not. The number of cases affected would be fewer than 50. It is quite a small impact.

Q40 Anthony Browne: Is that less than 50 given compensation of over £150,000, or between £150,000 and £355,000?

Caroline Wayman: That would encapsulate not over £350,000 but between the new and the old cap.

Anthony Browne: Yes, between the old cap of £150,000 and the new one of £355,000.

Caroline Wayman: Yes, exactly, which, in the scheme of the number of cases we deal with, is relatively modest. I am not very surprised by that. We always knew that it is relatively unusual. It is particular areas of our casework where that might come about.

Q41 Anthony Browne: What sort of areas of casework is that? Presumably, it is business cases.

Caroline Wayman: I am trying to think off the top of my head. It would probably be income protection, some of our protection policies, critical illness and that side of things, possibly. Fraud and scams is probably the area where it is more prevalent. That has been a very busy area for us in the last couple of years. It is an area I am sure you will be familiar with. We see instances where the losses can exceed the old cap in those cases.

Q42 Anthony Browne: It is individual consumers rather than SME complainants.

Caroline Wayman: Some of the fraud and scam stuff is potentially SMEs as well. It has not been something that is problematic in our SME jurisdiction. Our SME jurisdiction now encapsulates and means that 99% of small businesses can now complain to us, which is great. We always envisaged that quite a lot of what we see would be about the everyday banking relationships that small businesses have. I have no doubt there will come a day when we will need every part of that limit, and indeed potentially a day when it will be insufficient for some cases.

There are pension cases as well where that limit potentially is lower than the losses that people have suffered, particularly in DB-DC transfer territory. It is a relatively small proportion of our cases; obviously, it is very important for the parties involved.

Q43 Anthony Browne: The increase in the compensation limit caused quite a lot of concern to a lot of businesses, particularly financial advisers who were worried about their increase in professional indemnity insurance, which resulted from that. If there are only 50 cases over £150,000, do you think it is actually worthwhile doing, if it is so small?

Caroline Wayman: Again, it is not up to me. It is something the FCA sets, and it consulted quite extensively before deciding on that. It is the



right move. It had been at its previous level for a number of years and for those cases where it is something that bites it is good that it exists, but our awards are to put people back where they would have been, had they not been mis-sold or mistreated in whatever way. That is the broad principle that we apply in deciding fair compensation. In retail, in the financial services disputes that we deal with, most of the time the amounts do not get near the award limit. For those that do, obviously it really matters that we have the powers we need.

Q44 Anthony Browne: Do you think it changes the nature of FOS when you are dealing with those large sums of money? Clearly at FOS you are not bound by law; you have to do what is fair and reasonable in the circumstances. The losers, if they are businesses, have to abide by your decision. They cannot then take it on to court. Compared to courts, it is a quick, relatively cheap and easy way of resolving disputes, which is fine if it is small amounts of money. If you are dealing with £250,000 or more, is there not a question about whether it is still right to have that more flexible system? Should you be more like a court, where there is more certainty?

Caroline Wayman: There are a number of things I would want to say. You are right to say we are an important alternative to the courts. It is also important to say that we have procedures that make sure there are absolutely the right procedural opportunities, to go back to a line of questioning from earlier in the session. The parties get a clear opportunity to respond to our outline findings before anything is finalised. In those higher-value cases, and particularly those ones touching the new award limit, our ombudsmen often seek input from our legal team and we make sure we have the appropriate governance around that.

It is a balance, and there would be a point at which things change. You are right to identify the spectrum. Within our service, we obviously do deal with disputes that go quite widely across that spectrum. There are ones still where we would say, "Do you know what? That is better dealt with in court." The main reason for that would be where we think the evidence cannot safely and properly be tested in our more informal procedures. We might say that, actually, it is better dealt with in court and we do, on occasion, decide that.

The other thing that I want to say very clearly is that, although we are not bound only to follow the law, the law is a very important part of our consideration of any complaint. You will know this very well, but some firms, particularly smaller businesses perhaps, which do not interact with us very much, rather fear that "fair and reasonable" means "fairness" in the abstract. Actually, "fair and reasonable" is specified as including taking account of a list of things. The law is at the very top of that list, together with regulatory rules, guidance, codes of practice and, overall, what we think is good industry practice. That framework has proven very effective to deal with the range of different issues that have arisen in financial services over many years.



Q45 **Anthony Browne:** Finally on this particular sector, as I mentioned earlier, when the cap was increased to £350,000, there was quite a lot of concern among financial advisers in particular that this would push up their professional indemnity insurance and make them unviable. Is that something you have noticed? Has it priced good companies out of the market as a result of increased insurance?

Caroline Wayman: It is not information I am directly party to. It certainly comes up in conversation with independent financial advisers. I chaired a roundtable. I ordinarily do those all around the country. The last one I did was in Newport in south Wales, just before lockdown. I did a virtual one, which was going to be Manchester but turned out to be more UK-wide. It came up there as a concern. We have tried to provide whatever reassurance we can.

It is perhaps similar to some of the concerns people have in relation to the absence of a 15-year longstop, which was looked at in the context of FAMR. In that context, we were able to say, "Look, it is an incredibly small proportion of our overall workload." The perception of the risk is greater than the risk itself. That would be my perception. Obviously, we only see what we see. We do not have the visibility of the entirety of the market.

Q46 **Anthony Browne:** The point you made about it being mainly individual consumers who end up with these big awards for things like pensions certainly justifies having a higher limit.

My next set of questions is about the future of FOS. The Government have obviously launched their Financial Services Future Regulatory Framework Review, looking at the whole regulation of financial services. You are not actually mentioned in there, but the Government are looking at everything. As we have been speaking, the Chancellor has been in the Chamber of the House of Commons, setting out his future direction for financial services regulation. If there was a review of FOS, are there particular activities you think should be included in FOS that are currently excluded? Is there anything that you would want to see changed?

Caroline Wayman: There are not massive areas that are not covered that I would point to. It is always difficult, in terms of the issues that are just the other side of the perimeter. I will point to that as an ongoing difficult area. There will always be some kind of perimeter, wherever you draw that line.

One area I would draw to the Committee's attention is we are hearing from people. It is not huge numbers, but we have about 150 people who have approached us relatively recently around the buy-now-pay-later products, which presently are not covered by us. They are excluded as restricted credit. That is an area. That is probably the most recent example I can think of where people are coming to us seeking our help. All we can really do at the moment is signpost them to debt advice



HOUSE OF COMMONS

agencies, but there is no complaint-handling mechanism for them. That is something I would highlight.

Q47 **Anthony Browne:** Currently, people can only come to the FOS within a certain time limit. I think it is six years from when something took place, or within six months of their complaint being rejected. Do you think there is an argument to change those time limits?

Caroline Wayman: Broadly, the time limits work reasonably effectively. The other bit of the time limits that is important is that there is a three-year limb to that as well. It is six years from the event or three years from when you knew or ought to have known. That creates a fairness element. That is obviously fairly analogous to the way that the Limitation Act works as well. Again, inevitably those who we are unable to help because they fall on the wrong side of those time limits are very disappointed, and it is very difficult for those individuals. It is right to have time limits, because it is a balance of fairness to both sides, to everybody involved. Some sense of there needing to be a time limit is right.

Q48 **Anthony Browne:** You touched earlier on your relationship with the law. You are required to make decisions that are fair and reasonable in all the circumstances. You publish your own case decisions, which you refer to as your own precedents, as it were. I remember that, when you started doing that, it caused a lot of interest among the banks. You are not required to follow the precedents of courts. You give reference to what the actual law of the land is. Do you think that relationship between your decision-making process and the law of the land is the right relationship? Do you think it should be altered in some way?

Caroline Wayman: It is the right one. As I was saying earlier, the law is a very important part of our consideration and some of our casework, particularly in some areas where our jurisdiction really only arises from the legal position, such as section 75. The law and what the finding of the law would be is absolutely central and that is right. This is a principles-based, outcomes-based regulatory framework, and the law in some areas has, in the past, not been as up to date.

A good example of that would be general insurance. The law around non-disclosure, until a few years ago, was the law as per the Marine Insurance Act from 1906 or something. That was rather out of date. At the ombudsman service we have developed quite a lot of what is akin to precedent, although, as you say, we do not necessarily call it precedent. That subsequently has been, in large part, adopted into law. There is a cycle there, which seems right to me.

Particularly in the uncertain, difficult circumstances that consumers, small businesses and financial businesses face, a purely legalistic approach would remove the ability to have that level of informality and pragmatism. That is not what you want from informal dispute resolution. You have the courts. That is what courts are for.



Also, the differences between our outcomes and the law are quite overstated. The courts have shown themselves to be pretty interested in fairness as a central consideration. Perhaps the gap that people might have thought there would be a number of years ago would be less now anyway.

Q49 Anthony Browne: You were questioned about your case fees earlier. The businesses have to pay the fee whether they win or lose. There are some who might see that as a bit unfair. Do you think that is the right approach? It is mixed with the levy, obviously, but they have to pay the actual case fee whether they win or lose.

Caroline Wayman: It is very important that our funding is in no way tied to the outcome of the complaints. That is the case for pretty much every ombudsman scheme in the world. That is a central expectation, as is it being free to consumers. That is very important.

Q50 Ms Eagle: I was just looking at some of the results of the work you do. The successful complaint or uphold rate, where consumer complaints are actually vindicated, for the first half of this year was very high for guarantor loans, at 85%, and home credit, at 86%. Can you tell us what is going on there?

Caroline Wayman: Yes, those are very high uphold rates. Across the consumer credit market, and particularly the high-cost credit market, we have seen a number of concerns, including in the two products you mentioned but also in payday and instalment loans. Drawing together the central themes of those complaints and the concerns we have found, they have been around the affordability of the lending and, more specifically, about the sustainability of the borrowing, so the extent to which people are actually able to service that debt over time. We have seen some really quite significant issues.

Q51 Ms Eagle: Is that coming about because people are being misled about the sustainability of the loans they are taking on, or simply because they are so desperate to have money up front that they do not pay enough attention?

Caroline Wayman: As ever, it is a bit of a mixture. What we often see is that we feel there has not been sufficient attention paid to some of the answers people have given. Some of the businesses will say, "We did all these checks and we asked them these questions," but if you do not necessarily apply what you have found to whether you lend them the money or not, then that is a problem. We and the FCA have expressed our concerns in this area. Obviously we have published a number of decisions ourselves, and the FCA has been quite clear in its own concerns around re-lending as a particular feature of some of this.

What we quite often see is that some of the initial lending might be okay, in the model that perhaps imagines a world where somebody has an emergency need, they borrow some money and then they pay it back. That is good, and there is nothing inherently wrong with that at all. I



want to emphasise that. Where it gets problematic is where people are borrowing time and time again, over quite a long period, and those amounts are often increasing. It is just not a sustainable position for them. Those are the sorts of features we see.

Q52 Ms Eagle: When you see this kind of pattern, clearly, with uphold rates of that level, something is not working and there is exploitation going on, which is causing these complaints. Do you think the feedback loop you have with the FCA where you go and say, "We are seeing this problem," is good enough? Is it strong enough? Is there a fast enough response from the FCA, or does that get put on a backburner somewhere for another few years as well?

Caroline Wayman: No, the FCA is very responsive to the feedback we give. It very much recognises that the insight we can provide from our casework is a really important feed in to it in terms of where it can focus its supervisory activity and, ultimately, sometimes its enforcement activity. Obviously, the action it takes in relation to particular businesses is a matter for it, but we absolutely give that feedback and work very closely with it in our respective roles. That works effectively.

Q53 Ms Eagle: That is good to hear. Obviously, as the Financial Ombudsman Service, you can only really get involved after the complaints process has been through the firms themselves. Have you seen many complaints from the era of Covid disruption where firms just do not respond to customers within the eight weeks and it holds everything up? Is that being used as a tactic at the moment? If so, what can you do about it?

Caroline Wayman: I would not describe it as a tactic, but we have seen some of that. As I was describing earlier, particularly in the earlier part of the lockdown and perhaps for some understandable reasons, the complaints departments of some financial businesses were just not up and running. They just did not have the capability to operate them from home straightaway.

Yes, in the spike we have seen over the last few months, which we are looking at how to respond to in terms of our plans for next year, there is a definite increase in some of that in terms of the numbers where the firm has not yet given a response. In one month it was almost double the normal rate. Ordinarily, it is between 10% and 15%, or something like that, where they do not have a final response from the business. It has been a lot higher than that at points in time.

Q54 Ms Eagle: What can you do about it, other than wait for this process to play itself out?

Caroline Wayman: It is something in which we will expect to see improvements. It is something that we are feeding back on, and will feed back on, to the FCA, and we monitor to ensure that we are seeing those improvements. If we identify particular businesses that are not, that is something we will very clearly highlight to the FCA. Generally, the FCA



does take seriously its oversight in terms of complaint handling and complaint-handling rules, particularly so for non-payment of awards.

Q55 **Ms Eagle:** I was just going to get on to that. If firms do not comply with their payment of awards, what realistic recourse do customers have except the courts?

Caroline Wayman: For the most part, the recourse is that the FCA takes that very seriously. People come back to us if their awards have not been met. We do not have enforcement powers. Again, that is a choice that was made by Parliament. Some ombudsman schemes do. It is not something that, in my experience, we have felt over the years that we need or that has become more acute.

If we saw evidence of that, we would highlight it, but for the most part the fact is that financial businesses wish to carry on being in business. It is a pretty serious breach of your regulatory obligations not to meet awards. For people still in business, there is a very clear pathway, which is that we can and do report businesses that are not paying awards to the FCA, and they take action.

Q56 **Ms Eagle:** What about those that are not? At the more dodgy end, businesses can come and go and awards can be outstanding, et cetera. What do you do about that?

Caroline Wayman: Where that has probably been most prevalent and most difficult is, again, in payday and high-cost credit, where there have been some significant exits from the market. Certainly, we have no powers at that point. There is no FSCS coverage in that sort of situation.

Q57 **Ms Eagle:** Would you like to have powers at that point? There is quite a lot of stuff going through Parliament to do with financial services. Do you think that perhaps giving you a little bit of enforcement power at that end would be a good thing, or do you not want to touch it with a bargepole?

Caroline Wayman: I am not sure if the power would get at the harm you are pointing to. The other area where there has been a lot of work is around the phoenixing of firms. Again, the FCA has demonstrated its willingness to really clamp down on that, and that is really important. That is an area that needs ongoing attention. We have not seen particular instances where enforcement powers, per se, would get us there. Even if we could enforce our awards, if the business is no longer in existence we probably would not get you very far. I am not sure it is about more powers for us, but obviously it is very difficult for those individuals who have not been able to receive compensation.

Q58 **Ms Eagle:** As a Committee, we have received quite a lot of emails directly from consumers setting out that they have had to wait unreasonable times for case resolutions from you. Do you think it is acceptable that consumers should have to wait sometimes 18 months or longer before their case can even make progress? What do you do to try to minimise those waiting times and backlogs?



Caroline Wayman: We are incredibly focused on trying to reduce waiting times and absolutely want to get people their fair answer as soon as we reasonably can. We have and are making progress on that, albeit we have now received another avalanche of cases over the last few months. What can we do? We can do a range of things. We can and have increased our own capacity in terms of the numbers of investigators. As I mentioned earlier, we have recruited an additional 400 members of staff. We can build our capacity and capability.

Q59 **Ms Eagle:** Do you have the capacity to talk to people who have complained, to give them a basic timescale as to when they can expect some kind of response, or to give them an update, so it does not just disappear into an FOS blackhole?

Caroline Wayman: As we touched on at the beginning of the session, this is an area that we are very focused on: trying to make sure that, even where people are having to wait, we are keeping them updated. The other thing I should emphasise is that we absolutely look to prioritise people who have a particularly pressing need. We have to make those difficult choices sometimes when we are incredibly busy.

It also comes back to the points that were made earlier in the session about the extent to which this should always be a complaints-led response. Absolutely, we must play our part and do everything in our power to make sure that we have highly skilled people ready to deal with those complaints. We have absolutely fantastic people at our service who are doing great work in doing so. A big part of this, as we look into the rest of this year and the next, will be about prevention and how we can encourage financial businesses, working with the FCA, not to allow things just to come to pass as being complaints and try to make sure that there is not an ongoing demand for the ombudsman.

This goes to the balance of time and resource you spend on redress as opposed to prevention. In the last 10 years since the financial crisis, the balance has been quite significantly skewed towards redress, which we probably all agree is not the way you would want it to be if you were designing something from scratch. As I said, we will do everything in our power, but it is also about how we work in partnership with others.

Q60 **Felicity Buchan:** You will be happy to hear that I am the last person. My questions are on SMEs. You have already touched, to an extent, on business interruption insurance, CBILS and bounce back loans. I will go into more detail on those. Can I just start by asking a general question? What are the key areas of complaints that you receive from SMEs?

Caroline Wayman: I am very happy to talk about it. I am very pleased that our extended jurisdiction has been up and running for over 18 months now and is going very well. We have published some information quite recently. I published a blog a week or so ago, just outlining some of what we have seen. In keeping with what we see in our microenterprise caseloads, the vast majority are about banks. There is a little bit of



insurance, and a bit more insurance at the moment because of business interruption, which I am sure we will come on to.

Actually, the vast majority are about banking issues. Again, rather in keeping with what we see in general, they are a bit of a mixture. Quite a lot are just very everyday things that can go wrong and miscommunications, potentially, in people's relationships with their banks. We see at times some particular difficulties where accounts are frozen, where there is a suspension of access to accounts or where accounts are closed. It is not huge numbers. I would not want to overstate it, but that is something we have seen and it can be very difficult, because we are very cognisant of the fact that, for smaller businesses, those sorts of interventions can have quite a big impact on their livelihoods. Broadly, it is general banking issues, a bit of insurance and an occasional pension issue. That is the main territory.

Q61 Felicity Buchan: You have an SME advisory group, which I believe meets twice a year. What concerns and challenges have they brought up lately, and what are you doing to address those?

Caroline Wayman: It has been a really valuable group. It is at least twice a year. I cannot remember if we added an extra one, because of course there is so much happening in this space at the moment. The attendees are a mixture of people from some of the major trade associations, as well as the Federation of Small Businesses, the British Chambers of Commerce and a wide range of people. There is some really great experience around the table. We have talked quite a lot about fraud and scams. I hope the group—it is certainly my perception—has been quite reassured by the progress they have seen in what we have been able to do in establishing the jurisdiction and providing help to people.

More recently, we have talked quite a lot about the current situation, the pandemic and the impact it is having on smaller businesses. In that context, the two areas that you have already touched on have come up quite a bit. Those are the Government-backed loan schemes and business interruption insurance.

Q62 Felicity Buchan: You also have an expert panel, which supports your small business team. Is there a risk that that leads to your decisions being skewed in favour of small businesses?

Caroline Wayman: I do not think so. To date, the way we have operated it is that, via one of the consultancy firms, we have access to experts of a range of different sorts. We are, at the moment, looking to see whether we can get some more individuals who would be available. If you have any recommendations, by the way, we are very happy to hear them.

We are really clear that the expert panel is not about supplanting or replacing the ombudsman's decision. This is about us, where we need to, seeking sometimes quite technical advice. Whether we will need it, time



will tell, but in the context of business interruption insurance, for example, the calculation of quantum in the policies is quite complex. I can envisage that we might need to access loss-adjustor-type expertise, and potentially actuarial. It is more in that territory. It does not in any sense shift the balance of our favouring one side or the other. We remain furiously impartial in that regard.

Q63 **Felicity Buchan:** That is good to hear. Let us talk in more detail about business interruption insurance. Can I take it that everything is on hold at the moment, in terms of dealing with complaints, until you get clarity from the Supreme Court?

Caroline Wayman: Not quite everything is, because there are some cases that are not impacted by the test case. I have to say that, so far, what we have seen there, unsurprisingly, are cases where there very clearly is not cover. The test case has gathered together pretty much all of the arguable areas, as far as anyone could identify. There are some cases where there just was not cover. There is not a clause to debate. There simply was not cover. We have been able to progress those, but that is very much the smaller proportion. The other thing I would say is that we have stayed in contact with the parties and tried to keep them updated.

It is appropriate and more orderly for us to await the outcome of the Supreme Court decision. Then insurers will need to apply that in the first instance to their own policies, and then we will need to see what that means. I still think there may very well be some follow-on casework here and that it could be quite complex. Obviously, it is an excellent judgment, but it is quite a complex one. I am sure the Supreme Court will deliver a very clear judgment too, but it will inevitably wrestle with some really quite complex areas. In terms of the extent to which that decides everything, it will almost certainly still require us to apply that judgment to individual facts and circumstances.

Q64 **Felicity Buchan:** What is your experience not of cases that are subject to the judgment but of more clear-cut cases? Are you actually seeing insurance companies paying out?

Caroline Wayman: The ones we see, inevitably, are the ones where they are not. Occasionally, there are ones where they have paid out, but the argument is about quantum. I do not have figures. The ABI has put some stuff out about the amount of money that has been paid, so clearly some claims are being met. The people who come to us are the ones whose claims have not been met. For us, that is the vast majority of what we are seeing.

Q65 **Felicity Buchan:** Let us talk about the various Government schemes. Are you seeing many complaints from small businesses in terms of their access to Government-guaranteed loans?

Caroline Wayman: We have about 700 cases at the moment. The vast majority, which is probably 90% or more, are bounce back rather than



CBILS, but that is what you would expect. In the grand scheme of the scale of the activity and the amount of money that is being lent, it is a relatively modest number. I am pleased that, in a number of instances, we have been able to assist those small businesses and the lender to iron things out and get people their funds. Actually, that has resolved the complaint for a number of people. For the most part, the sorts of things we are seeing at the moment are delays, access to funds and those sorts of issues. Those are the main sorts of things we are hearing.

Q66 Felicity Buchan: In terms of the complaints on bounce back loans, are a lot of them coming from SMEs who do not have existing relationships with the banks?

Caroline Wayman: We are seeing some of that. Obviously, that creates a slightly different complication, as it were. Yes, there is some of that in the caseload. It is what steps they need to take in order to access the loan and that side of things. As I said, in the grand scheme of the number of loans out there, it is relatively modest, but that is a feature.

Q67 Felicity Buchan: Clearly, we are looking at an SME sector that has a lot more indebtedness as a result of a lot of these Government schemes. Are you beginning to project forward, and are you getting concerned about how, if SMEs default on these loans, they will be treated by financial companies?

Caroline Wayman: It is, dare I say, an excellent example of where our preventive agenda would very much want to come into its own. There is a limit to what we can do in that territory, but we are very keen to share our insight and to help to do everything possible to try to prevent that becoming a big complaint issue. That means people being treated in the right way and appropriate mechanisms being put in place. There is an awful lot of work going on at the moment in that territory.

It is certainly on our radar as an area to be watchful of, and one where we will want to stay in close touch with the FCA and other stakeholders, to try to do everything the whole system can do to try to help small business to transition from those arrangements in ways that they are able to do and that do not lead to them needing to make complaints.

Q68 Felicity Buchan: Is there anything specific that you would like the FCA to be doing in advance of these potential defaults?

Caroline Wayman: There is a lot of activity at the moment to think about what that recovery process looks like. The consistency of it is very important. If people get very different treatment at different institutions, obviously that has some risks. That is not to say that everything has to be and must be identical, but equally there is an equality of treatment needed and, dare I say, clear communication. That will be really important.

These are all things that the FCA is very focused on, as well as getting ahead of that, sometime in advance of when those loans start to become



HOUSE OF COMMONS

due for repayment to begin. You would not want that to be last-minute for anybody. Surprises will not be helpful in this or probably any territory. I know there is a lot of work going on in that regard, and we will continue to contribute to that.

Chair: That brings us to the end of this session. Caroline, thank you very much for appearing before us. You have given us a very good sense of the vast amount that you have on your plate as an organisation. You have had the PPI situation, which obviously now is calming down somewhat, but none the less you have Covid to handle and put up with.

It is fair to say that a number of concerns have been raised with you in this session, for example around the kind of cost that firms are picking up in terms of the levy, and the speed of response to complaints, including people who are basically waiting for something to happen and know what the progress of their case may be. We have also touched on vulnerable customers as being something of an issue. There is also the slow implementation of recommendations. As the Committee sees the FOS, it is an organisation that has a number of areas that it needs to focus on fairly robustly in order to move forward.

In the questions, you have certainly recognised those problems and you have spoken about taking on board concerns and being serious about tackling some of these issues. What would be very helpful to the Committee is to get more specific information on what recognising, seriously taking on board and acting means in some of the areas that we have raised.

You have very kindly said that you will write to the Committee on a number of areas. I am grateful for that and the Committee is grateful for that. Probably after this session, it would be appropriate for us perhaps to write to you, just to set out some of those areas where certainly I felt—I have not had a chance to discuss it with the Committee—there might have been more specific information provided about how you are getting on top of some of these and gripping what are very serious challenges for your organisation.

Having said all that, can I thank you hugely? To be the only person on a panel in front of a Committee like this for in excess of two hours is quite an ordeal. You have handled it with great grace and dignity. Thank you very much indeed for that, and thank you for your time today.