

Treasury Committee

Oral evidence: Independent Review of the Financial Ombudsman Service, HC 1400

Tuesday 22 January 2019

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Members present: Nicky Morgan (Chair); Rushanara Ali; Colin Clark; Mr Simon Clarke; Charlie Elphicke; Stewart Hosie; John Mann; Catherine McKinnell.

Questions 155 - 241

Witnesses

I: Caroline Wayman, Chief Ombudsman and Chief Executive Officer, Financial Ombudsman Service, and Sir Nicholas Montagu KCB, Chairman, Financial Ombudsman Service.

Written evidence from witnesses:

– [Financial Ombudsman Service](#)

Examination of Witnesses

Witnesses: Caroline Wayman and Sir Nicholas Montagu KCB.

Q155 **Chair:** Good morning. Thank you very much indeed for being back before us this morning. I am going to ask you to introduce yourselves for the benefit of those watching online, and then we have a series of questions from our last session and following up from sessions we have had with the FCA.

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

Sir Nicholas Montagu: I am Nick Montagu. I am the non-executive chairman of the Financial Ombudsman Service.

Q156 **Chair:** Lovely. Thank you for being here. I wanted to start by following up on the review that was done by Richard Lloyd and then Carol Brady. The Lloyd review recommended that the FOS should conduct a case review, making sure that decisions made during the early stages of the reorganisation were handled in accordance with the controls and standards put in place at the time. The first stage of the review found that just over 15% of the cases were not handled in accordance with the controls and processes put in place at the time, and I would like your reaction to that figure. That translates into 148 cases not handled in accordance with the correct procedures. Perhaps you can set out what the nature of that failure was.

Caroline Wayman: By way of clarification, we asked our internal auditors to look at whether, as you say, the cases had been handled with the controls and standards put in place at the time. Those were additional guardrails, checks and balances we put in place because this was the launch of our new teams and new ways of working. It is important to emphasise that these were controls in addition to our normal quality assurance processes and other things we would always have in place.

Deloitte found that there were instances—as you say, 148 of those—whereby it was not possible to tell whether they had followed the guidance in place at the time. The guidance, among other things, was about making sure people were seeking the additional support they needed in cases they might be less familiar with, so quite detailed guidance that they needed to follow.

There are some lessons for us to take from the fact that there were cases that fell into that sample. Some of the ways in which we will be improving our technology will really assist. It is important to emphasise, though, that it was about whether you could tell whether people had followed the guidance, and all those cases were subsequently passed to the second stage of the review to see whether there had been any detriment as a result of that.

Q157 **Chair:** What was the result of that? Was there detriment?



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Caroline Wayman: In total, Carol Brady looked at 178 cases. She looked at all of the 148, and then an additional number were selected in order to make sure that she looked at a good sample of complex casework, as we were very keen to meet that need. As her report set out, she found four cases where she felt she could not conclude that there was a safe outcome, so a reasonable ombudsman could not have reached the conclusion. She has set out her findings in the report. I am happy to talk about that further.

Q158 **Chair:** There are findings, but what have you taken from those findings to apply across the whole service?

Caroline Wayman: There are some really helpful lessons for us. Starting with some positives, Carol Brady commented positively in relation to how we deal with vulnerable customers—the sensitivity that our staff show—and reflected the challenging role that we ask our staff to play. That was good to see, but she called out some specific things that we need to work on.

One was around informality. That is a really important point, and it is something we have reminded and will be reminding our case handlers about. We encourage our staff to correspond in a way that is more informal. We try to make our tone more accessible, so it is more engaging, but there are risks with that as well. One of the things it is an important reminder about is writing for the audience and remembering that sometimes that overfamiliarity could be read in the wrong way, so it was a really helpful reminder for us in that.

Q159 **Chair:** She said, “There were also a handful of cases where I took the view that the FOS could have been more critical of the practices and handling of particular issues by respondent businesses”. How is that particular conclusion going to be taken up? You are going to give advice to all the ombudsmen that they need to remember that as a lesson?

Caroline Wayman: Yes, and again it is a really important reminder, is it not? In our casework, we are very focused on the issue at hand that needs to be decided, and sometimes there is room for us to provide a bit more commentary or insight about what we have observed, because that has a broader impact and perhaps can assist in a range of ways. Again, that is something that we are very open to, and something we can listen to and learn from.

Q160 **Chair:** People come to you when there has been a problem and there are always two sides to every case, but would you agree that the FOS has a vital role, not just in sorting out individual cases, but in sending messages to respondent businesses that they have got something wrong? Sometimes those businesses will use what the FOS is saying in order to improve their practices. Is that something that you are aware of?

Caroline Wayman: Yes, 100%. It is a really important part of our role and we are very keen to explore with stakeholders how we can contribute further in that. It is absolutely crucial. We do a lot of work beyond the



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individual cases and we have set out during this year our approach in a number of areas, including fraud and scams. We did a DB to DC pension transfer special in November, which was based on feedback. People said they wanted to hear from us and they wanted case studies. We very much recognise that role and I hope we can continue to provide the Committee with further insight from the casework we see.

Q161 Chair: The Lloyd review covered only a seven-month period, from 1 May to 30 November 2016. Are you considering reviewing other cases at other times? It was particularly related to the time of the reorganisation. Do you think it is worth looking at other time periods as well, just to do sample checks?

Caroline Wayman: We do ongoing checks all the time. The reason Richard Lloyd made the recommendation around that time period was that it was the very beginning of our launch of a very different way of working. As his report reflected and, indeed, Carol Brady's report commented, this was the highest risk. It was when people were brand new to role, and it is important to see the findings in that context. He did not necessarily expect there to be anything amiss, but this was about saying, "You should go and have a look to satisfy yourselves," and we have.

At this stage, I do not necessarily think there are other time periods where we do precisely that, but it is important to emphasise that we do a range of checks, both on an ongoing basis and through deep dives into particular areas of focus. We will look at what our customers have said about how they felt about our cases, compare that with our own quality assurance scores and ask, "How does that match up?"

We are constantly looking at ways in which we can do additional checks to see what we can learn. It is really important to say that our quality assurance framework is all about that. Sometimes these things can be quite tick-box, and ours determinedly is not. It is about helping our case handlers to learn and always do better in the future.

Q162 Chair: Perhaps you can say a bit more about that. How does the quality assurance work? How do you decide how many cases go through that process? What is it that might alert you? Is it the findings of a particular ombudsman or if there is a series of complaints that seem to relate to one person? How does that get triggered?

Caroline Wayman: We have ongoing checks that happen all the time, and it is a combination of our ombudsmen and our managers who will check. They will do a mixture of checking parts of the file and what we call full file checks, where they will look at everything. We will also do deep dives, sometimes based on looking at our MI and saying, "That looks a bit unusual. Let us have a look and see what it is all about."

We have recently, as one of the recommendations set out, brought together the whole of our framework. I would be happy to share that with



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the Committee, if that would assist, in setting that out in full. We have a model that is about checks by managers. It is very important that quality is owned by everyone; it is not done remotely over here.

Crucially, our ombudsmen are in the heart of our teams. That was one of the big changes we wanted to make, to make that ever more so. We have been moving to that over time, over the years, so that, rather than ombudsmen being at the end of the process, they were in the heart of the teams helping people. It is also about having separate QA teams of experts who can do independent checks, checking the checker, and make sure we are consistent. The way in which we approach all that is to ask ourselves the same things we ask our customers. It is about whether we got to grips with things. It is about whether people felt listened to.

Crucially, in our role, as you rightly said earlier, part of what we are doing is making sure we have got people fair answers, but we also put a lot of stock in trying to make sure that people have felt listened to through that process. That is very challenging and there are always ways in which we can continue to improve that.

Q163 Chair: On the four cases highlighted by Carol Brady, all four of them were found to be in the investigator stage. Are you finding that there are more likely to be issues around the investigator stage than the ombudsman stage? Given all four are at the investigator stage, has that made you look at the investigator stage again and how it is working?

Caroline Wayman: In some senses, it is of some comfort that the findings are at the investigator stage, because our ombudsmen are statutory decision-makers. Their decisions are final. They are human beings making individual case judgments, but it is of some comfort that there were no cases where our ombudsmen had not made safe conclusions and reached safe outcomes.

As the Committee will be aware, we have a two-stage process. The investigators do an initial investigation. They set out their findings, but either party, if they are unhappy with those findings, can come back to us and ask for a further stage review by our ombudsmen. Our ombudsmen are in effect our inbuilt appeal stage.

As I have said already, it gives us cause to look at, overall, what else we can do to help our people. The particular cases were in areas where we have already done quite a lot of work. Section 75 is a growing area of our casework. We have done a lot on the technical guidance we give to people. We see some quite interesting and at times creative ways in which businesses are structuring arrangements, such that it becomes quite difficult to see whether that link can be established—the debtor-creditor-supplier link—so it is quite a technical area. We had already done quite a lot of work already, but we bolstered some of the notes on our discovery tool.



Broadly speaking, it is what you would expect: that our informal stage is the first stage. It is not to be diminished, but it was a relatively small number, which is of some comfort, but I would rather it was zero.

Q164 **Chair:** The difficulty with that, though, is that you are relying on people coming back to make a complaint so that it goes on to the ombudsman stage. If you think, or Carol Brady's conclusion is, that there is a problem at the first investigator stage, does that not tell you that more needs to be done to improve quality at that investigator stage?

Caroline Wayman: I do not disagree with the premise in a sense, but our QA function is not just directed at the ombudsmen. It focuses much more on the volume, which is at the investigator stage, so we are not simply relying on that two-stage process. I was just trying to explain that, ultimately, the ombudsman makes the decision, the decision is final and there is no more that can be done. They are our statutory decision-makers. Absolutely, it gives us further pause for thought in terms of what we can listen and learn from. Inherently, we are making human judgments in difficult cases.

Q165 **Chair:** In correspondence with the Committee, you sent us an email address. We received correspondence from consumers who said that they thought the FOS had failed to act on information they passed on after our initial correspondence with you. You gave us the universal address, which we forwarded on to consumers, so that if they had raised complaints to us they could then pass those details on to you. Can you give us an update about what has happened in relation to complaints that have been sent to that email address?

Caroline Wayman: Yes. We have heard from 27 or 28 of the individuals who had been in touch with you. In a small number of them, we were unable to find details of their case from what they provided, which may be because they are from some time ago, but we have gone back to them to seek that information. There is a range of outcomes. Quite a large number of them had exhausted our process, in that they had had a final decision. In every instance, we have looked at the stage the case got to and looked to see whether there is anything more we can do within our powers in terms of the individual disputes.

In some instances, they have raised service complaint issues that had not been previously addressed, so we put those through our own processes. In some instances, we are still corresponding to get to the bottom of those things. There are instances where we will have to say, "I am afraid there really is no more we can do because we have reached the end of our processes."

There might be something else that we could helpfully explain. Sometimes the answer is the answer, but I can think of one instance that I was talking to the team about the other day, where we were explaining something about the specific merits of the case. It did not change the outcome, but we were trying to help correct a misunderstanding. We



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have tried to be as helpful as we possibly can, recognising that there are limits once we have exhausted our powers.

Q166 **Rushanara Ali:** Richard Lloyd told us that consumers were waiting longer for a decision than they were waiting before the 2016 restructure. Can you confirm if that is still the case?

Caroline Wayman: Yes. That is probably the answer in the broadest sense, but there is a lot of complexity within that, if it is helpful for me to unpick it a bit. This year, we have seen really quite significant increases in demand for our service. Over the last three or four years, when discussing our budget, we would have looked at our case forecasts, and our underlying casework, which we refer to as general casework, was relatively stable. We would expect it to settle at around the 100,000 a year mark. The volatility was all in PPI, which has been extremely volatile.

Now we are seeing quite unprecedented growth across a number of areas. Short-term lending has been particularly acute. I may have mentioned it when we were here in the summer, but we set out this year with the expectation of 20,000 new short-term lending cases. We now forecast that that will be at least 50,000. It would have been more had Wonga not gone into administration. That is quite a dramatic increase, as you can see. If you go back two or three years, we would have been getting maybe 2,000 cases about payday lending in a year.

You can see that that is pretty dramatic, but we are also seeing increases in other areas. In our overall caseload, what we think of as general casework, this year we set out thinking about the 130,000 mark, and it will potentially be closer to 145,000 or 150,000.

Q167 **Rushanara Ali:** Are you getting more technology-related cases?

Caroline Wayman: Across the board, we are not, but we expect to get in the region of 10,000 cases in relation to TSB. When, this time last year, we were thinking about our plans for the year ahead, it was not on the radar.

Chair: It was not on theirs either.

Caroline Wayman: Indeed, and that is the kind of thing that demonstrates the inherent volatility in our caseload.

Q168 **Rushanara Ali:** Are you being resourced adequately to deal with these increases?

Caroline Wayman: Yes. We then have to balance how quickly we can get people in and up to speed, and making sure that people have been trained to the right level and the quality assurance side of things. In a burst of activity like that, we have some well-practised tools and techniques that enable us to respond to what we sometimes call mass claims, for want of a better phrase. We did find, though, that the business was quite slow to recognise that this was not a situation where



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it could operate its normal “next off the pile” way of doing things. It needed to think very differently about that, so we have had to push quite hard on that. There are some lessons from that.

- Q169 **Rushanara Ali:** You have mentioned the increase in awareness and demand. There is the restructure, so lots of pressure in terms of the changes and how you are trying to address them. What is the difference between the average wait time now and before you began the restructure, factoring in these additional demands?

Caroline Wayman: That is a good question. I can give an average, but there is a lot either side of an average.

- Q170 **Rushanara Ali:** You can break it down by investigator, adjudicator, ombudsman, if you want, or you can give us more in-depth answers in writing.

Caroline Wayman: It may be a bit of both, if that is helpful. On average, from when you arrive to getting an investigator to look at your case, it is about two weeks, and that is for our general casework. In short-term lending, it will be less good and I would be happy to follow up with some further detail on that.

In short-term lending, we needed to balance the speed of recruitment, and to some extent the answer there is not about additional case handlers. It is about engagement with the financial businesses and claims management companies to try to get them to apply our approach at the front end. It is not just a binary answer: “Go and buy lots of people.” In payday lending, we need to see claims management companies listening to our approach and payday lenders, crucially, applying our approach properly.

- Q171 **Rushanara Ali:** Leaving to one side the new issues that are coming up—to be fair to you, there are increasing demands—and looking at just the restructure and the changes, what would you say the average waiting time is, pre-restructure and post-restructure? Has it gone up? It has gone up, has it not? What do we take account of, so we are not being unfair to you and we look at the appropriate comparison?

Caroline Wayman: I know; it is about trying to compare like for like. We probably have more people waiting than we had three years ago, but that is a straightforward function of getting a lot more cases. Had we had stable demand, we would not have any wait times as such. We would be just in time, which is where we want the model to be.

Rushanara Ali: But that is not where you are.

Caroline Wayman: It is not where we are, no. As I said, the average is about two weeks to get on a desk, but that will vary across our different areas of casework.

- Q172 **Rushanara Ali:** That makes me want to press you further about the



resource question, because at the moment you are falling short for reasons that are partly beyond your control, in terms of what is happening, the demand and so on. I wanted to draw your attention to a whistle-blower in the organisation, who has written to the Committee to say that the wait time to be allocated a FOS caseworker is now more than 10 times what it was before restructure, with approximately 30,000 cases still waiting to be allocated. In addition, the whistle-blower said that the queue for an ombudsman's decision is now three times what it was before the restructure, with 8,000 cases still to be decided on. Can you confirm whether these figures are correct? Do you not think you should be making a much more vociferous case for being better resourced to deal with the challenges and address this seesaw of demand versus supply and responsiveness?

Caroline Wayman: It is important to draw attention to our strategic plan and budget for the year ahead, which sets out some ambitious plans for bringing in additional resources. As I said, that is not always the only response, and part of what we have to do is to look at how to reduce demand in the right way. Financial business, particularly payday lenders, I have to say, is an acute area at the moment of cases coming to us that should not come to us.

Within the plan and budget, we are looking at significant investment next year. Your figure for ombudsman decisions is about right, yes. About 3,000 of the 8,000 are on an ombudsman's desk, as it were. That is an impact of more people coming at the front end. That feeds through to the tail, which is our ombudsmen's decision-making. It will take some time for that to work through, but that is not because we have become less effective as a result of a restructure. It is because we are busier.

Q173 **Rushanara Ali:** I am not suggesting that, but I would emphasise that when organisations or other players, like the FCA, come and give evidence to this Committee, they often point to the FOS as the answer. You are being lumbered, frankly, with more work. This point about demand management puts the consumer in a position where something is going to have to give. If you are standing by these numbers and there will potentially be more technology failures—we have already seen a number of others—it does not inspire confidence, unless we address where the issues are, recognising that demand is not necessarily going to go down.

Caroline Wayman: You are absolutely right and, therefore, it is a question of prioritisation. One of the things that we were deliberately trying to achieve with our reorganisation was to be more accessible, and for more people to come to us and stay with us. Although my operational teams want to mark it red when we get lots more cases because that is against forecast, it is actually a really good thing. The demand is there.

The question then is about the balance of time that we spend and, importantly, not having that demand just for people not to find justice. I want people to come to us. We then have to be able to sensibly manage



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that and get them answers in a reasonable timescale. To give you some assurance around that, we try to prioritise more vulnerable customers and customers whose need for an answer is more acute, as opposed to some of our disputes where matters have crystallised and that are about events of the past.

Q174 Rushanara Ali: The whistle-blower input that we received suggests that vulnerable customers are waiting a lot longer, so it would be really helpful to get some updates on where you are getting with that, perhaps in writing. Sir Nicholas, I have a final question for you, which is about how much monitoring goes on by the board on these sorts of issues and why the FOS does not publish wait times across all decision levels. Would that not add transparency to what the FOS does?

Sir Nicholas Montagu: We can consider whether it would be helpful to publish more. Do we monitor? Yes, absolutely. The board, while avoiding drilling down into absurd operational detail, gets a report at every meeting, challenges where targets are not being met, talks about particular areas. Your example of vulnerable customers is a good one. If we identify areas where more action is needed, we will want to know by the next meeting what action has been taken and so on. If you like, it is close, but not over-operational.

Q175 Rushanara Ali: What is your view on publishing data and more transparency?

Sir Nicholas Montagu: In principle, I am in favour of that. We are a public organisation and I have a general presumption, if it is helpful, of publishing data. In terms of what level of detail, I want to look to see what would be sensible and what would take us beyond that.

Q176 Colin Clark: Good morning. In your strategic plan for 2019-20, you said that you were strengthening your quality assurance principles. Could you explain to us what that is going to mean in practice?

Caroline Wayman: In response to the Chair, I have set out some of that already. We are putting in place a number of things. We already had a very strong framework in place and the independent review reflected that, but we have looked at ways of strengthening that, including additional deep dives, how we can listen and learn from the more recent reviews, and we are maintaining our independent quality teams. There is a whole host of activity that we brought together into one document, which, as I said, I will happily share with the Committee.

Q177 Colin Clark: When will the policy be finished?

Caroline Wayman: We have published it on our website. We published a document yesterday to staff, as it happens, which we could share. I am really happy to do that.

Chair: That would be helpful. Thank you.

Q178 Colin Clark: On average, how many cases are quality assured at present



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and how many will be quality assured as part of the new principles you are introducing? Will there be a significant increase? How does it work?

Caroline Wayman: We are not necessarily looking at more numbers. We look to ensure that what we check is statistically valid. I am not a statistician, so forgive me, but my QA experts are, and they tell me that to give a 95% confidence ratio is the accepted way of going about these things. That means in practice we did something like 80,000 checks in a year. It may be in the document. We do an awful lot.

Q179 **Colin Clark:** I take it you regularly review the numbers.

Caroline Wayman: Exactly, but the numbers are calibrated according to volume and how much we are doing, such that they remain statistically valid. Looking at additional ways in which we can strengthen is not necessarily about numbers, because it not just about volume. It is about where you target your efforts as well.

Q180 **Colin Clark:** For example, what percentage of closed cases would you review?

Caroline Wayman: I would have to check the percentage figure.

Q181 **Colin Clark:** What we are trying to get at is whether that will increase with your new policy. Will you be doing more closed closes?

Caroline Wayman: No, not necessarily; that is what I am saying. We are satisfied, based on well-established principles for how you make sure that your sample checking is of sufficiently high volume to give you confidence. It is about having a confidence ratio such that it is representative of all the other cases. The review recommendations were not about volume as such, but it is important to continually challenge ourselves as to the different things we might look at and check.

As I was saying earlier, we do that in response to all sorts of things. If we see something that is a slight anomaly in the data, we might think, "That is a bit strange. We will go and have a look at that," so we will get our QA function to do a deep dive. It is not about volume. It is really important that we keep our focus on making sure that our framework is about learning and continuous improvement. It is not tick-box. You can easily satisfy volume checks. It is not hard.

Q182 **Colin Clark:** To go back to the point my colleague made about the whistle-blower, is reviewing closed cases a fallback? Is that a failsafe that you are checking?

Caroline Wayman: Absolutely, we check. As I said earlier, we do partial file checks, where we look at part of the customer journey, and we do full file checks, where we will look at the entire customer journey. We look at that through a number of lenses, including whether we have got to grips with the cases. As I have understood what has been said, it is about wait times. It is not about outcomes necessarily, but I have not seen it, so I do not know. We do an awful lot within our framework, and within the



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additional things we are doing, to try to satisfy ourselves about that and to continually challenge ourselves.

It is not just about saying, "I have done several thousand; that equals good," because that is where we see, dare I say, the sorts of problems arise that come to us as complaints, if you take too much of a tick-box approach to things. It is about something that enables our case handlers to listen and learn. We set deliberately aspirational standards. We ask how proud you were: "Were you proud of this?" We do not ask, "Was it okay?" It is deliberately aspirational, because we want room within the framework not just to say yes or no, but to say, "Here is where we could do better."

Q183 **Colin Clark:** How often following quality assurance would decisions be changed?

Caroline Wayman: I do not know off the top of my head. It is pretty rare, I would imagine. One thing we look at, as I said, is whether we got to grips with the case. If we found an instance where at the first stage we felt the case handler had not, typically we would reopen that and one of our ombudsmen would have a look.

Q184 **Chair:** Could you write to us if there is anything? We have reviews and everything else, but what Colin is getting at is the way the internal quality assurance framework works and how the new one might work. If there are step processes and numbers, that would be really helpful to have.

Caroline Wayman: What we published yesterday will probably fit most of the bill, but I will check it.

Chair: Okay, and see if there is anything above that.

Caroline Wayman: Yes, sure.

Q185 **Colin Clark:** Is quality assurance done before a consumer is told of a decision?

Caroline Wayman: It is a mixture, because we do it at different points of the journey. A lot of it will be once people have had the view of the case handler, but we check different things at different points, so it is a mixture.

Q186 **Colin Clark:** Sir Nicholas, how often is that reported up to the board? Are metrics being reported to the board regarding review of decisions?

Sir Nicholas Montagu: That particular metric is not one that the board gets. We get narrative reports. We get a good deal of statistical evidence from Caroline and her executive, but we do not get review reports.

Q187 **Colin Clark:** I suppose it would indicate whether quality assurance is working and whether the decisions are right in the first place. That is what we are trying to get at, is it not? We are making sure correct



outcomes are achieved.

Sir Nicholas Montagu: It is perhaps worth adding that, as well as the informal board discussion, two of my members sit on what is essentially a quality committee, going into more detail with Caroline and her executive, and getting input from the independent adjudicator on the kinds of cases she has seen. We have quite a few informal checks and balances in place as well.

Caroline Wayman: We also do a regular executive file review, and the board does a file review as well, which is not statistically at a sample level that would be transferrable, but it enables us to have a common language around what good looks like. When we used to do them a few years ago, as an executive, it was ploughing through lots of paper. It is mainly listening to calls now. That is a really valuable way of helping to calibrate, and we get our senior team to do that. We look at our respective scores and see if we are consistent. It is not designed to be statistically meaningful in that sense, but it gives us a common language and an ability to have those really crucial discussions about what good looks like.

Q188 **Colin Clark:** On that point, the independent reviewer found that, when a case is quality assured, the review tends to focus more on the timeliness of the decision than on checking that the right outcome was reached. Will the new quality assurance principles focus on checking that the correct outcome was reached in each case?

Caroline Wayman: I am not sure I fully recognise that. In the framework, what we refer to as getting to grips with the case means looking at whether the answer was right, although it is important to remember that this is not a binary thing. Cases are individual judgments and there is a range of reasonable outcomes in quite a few cases, especially where you are mediating. It is a core principle within the framework that we look at whether the case handler got to grips with the dispute.

Q189 **Colin Clark:** I suppose, if the metric was timeliness, you could say, "We deal with things very timely," as opposed to the right outcome.

Caroline Wayman: Sure, yes, that would be the wrong emphasis. We have a new MI tool called Power BI, which is very good. We have launched it to our ombudsman leaders and we are rolling it out to ombudsman managers. For every pod, which is what we call our departments, every team and every individual investigator, it will give you a view across three key areas. One is output, in terms of how many people and how many customers we have helped. One is timeliness and one is quality. They are each displayed on a dashboard, and that enables our leaders to drill down into each of those different areas, so that we are giving sufficient emphasis to all those things. Timeliness is one of the biggest drivers of our satisfaction rates.

Chair: Or dissatisfaction rates.



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Caroline Wayman: Indeed, yes, quite so. The two biggest drivers are as you would expect: there is a significant shift in accordance with whether the outcome was in favour, and that is common across all ADR schemes, and timeliness, so it is important. Justice delayed is justice denied, as the Committee was rightly asking about earlier. It is an important metric and we should not be apologetic about thinking that it is a really important thing to track and try to improve. Equally, there has to be balance between things.

Q190 **Catherine McKinnell:** It is less than 10 weeks before 210,000 more SMEs will be eligible to bring complaints to the Financial Ombudsman Service. How would you assess your preparedness for what will be a significant increase in workload and responsibilities?

Caroline Wayman: We are very ready. We have robust plans in place. We have set out publicly the different arrangements that we will be putting in place to ensure our readiness. We anticipate that, in terms of case numbers, it will be a relatively slow burn, in the sense that our jurisdiction is not backward looking, so we are unable to help people with issues that have already happened. Our caseload will be about things that happen after 1 April.

We have a very detailed project plan. Everything that is on the critical path, as you do in these things, is completely on track. We have, for example, developed new branding. We are going to have a microsite specifically for this new jurisdiction. We have done some testing with small businesses themselves to see how they responded to different ways of doing that. We got some helpful feedback. We are in good shape.

In terms of case numbers, the upper forecast that the FCA had put together in the context of its consultation was in the region of 1,300 cases in year one. We are out for consultation at the moment on our plan and budget, so we will have the opportunity to hear from stakeholders about whether there are any reasons to think that that would be any different. Yes, we are in good shape.

Q191 **Catherine McKinnell:** As you said, you have put in place ring-fenced specialist teams, a professional practice group, an external expert panel, and additional legal and actuarial support. You told us, in answer to the first question, what you are planning to put in place. What stage are you at in hiring for all these roles and the cost of that?

Caroline Wayman: We have recruited to a number of the roles. The recruitment is ongoing. We could not start some of the recruitment in earnest until we had final decisions about us doing it.

Q192 **Catherine McKinnell:** When did you get those final decisions?

Caroline Wayman: The FCA made final roles in December, just before Christmas. We had proceeded on the basis of the expectation that it would happen from around October time. We were doing some thinking before that, but you cannot hire people.



Q193 **Catherine McKinnell:** When you say “some of the roles”, what do you mean?

Caroline Wayman: We are expecting to fill the roles with a mixture of internal and external, so we are out probably this week to look for internal recruits. About seven of our investigators are already in our academies, so they are in and good to go.

Q194 **Catherine McKinnell:** That is out of how many that you need?

Caroline Wayman: We need 20. We will have close to the 20, if not all 20, by 1 April, but we have that lead-in time to make sure, for example, that our systems will be ready to deal with different sorts of disputes. We need to update some of our leaflets. All those practical things are the real critical-path things for 1 April.

We will be looking to invite interest for the SME advisory panel in the next couple of weeks, so that is on track as well. As I said, the branding work is pretty much done. The IT changes are pretty much there. That is always the thing that you want to make sure is going to deliver on time. We are confident and we will have the opportunity, with the relatively slow burn, to give people additional training and additional learning.

Importantly, I want to emphasise that we are keen, as we start to see cases, to see what insights we can draw from that to give stakeholders, including the Committee, an insight into the experiences of SMEs in this broader jurisdiction today. Much of what stakeholders have seen and talked about has been, quite understandably, about the issues that have gone on in the past. We are very keen to think about ways in which we can share that insight in whichever way is helpful and be as transparent as we can possibly be about that.

Q195 **Catherine McKinnell:** You are obviously working really hard towards being ready for that start date, but the FCA has already had to delay the implementation from the proposed date, which was 1 December. It is now 1 April 2019. It is clearly in the FCA’s gift to delay it again if things do not seem to be ready. Are you absolutely confident that we will be going ahead on 1 April?

Caroline Wayman: I absolutely think so, yes. As I have said before, this is about access to justice and there is no basis on which access to justice for this additional group should be delayed. There is a set of questions about further extensions and Simon Walker’s review, which was also talking about schemes to look at what has happened in the past.

Presently, the past is not something that we are being asked to engage on, so we are very focused on designing something that will be fit for purpose for what is needed today, with the thought in mind that we would like to provide a service that means people can come to us before it becomes a long-running and difficult dispute, such that we can hopefully try to get things back on track for them immediately. One of the difficulties we have seen in the past is that some businesses, by the



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time they have come to any sort of process, are no longer trading and that means we cannot help. We want to make sure our intervention is as early as possible.

Q196 Catherine McKinnell: Would that link back into the policy statement last October, when the FCA said that you would create an SME advisory group with representatives from industry and small business sectors to provide helpful insight and support? It does not appear in your current proposed model. Why not?

Caroline Wayman: It does. I do not know if there is slightly different terminology. We envisage, among other things, two things that are sometimes conflated. We will be inviting people to join, in the next few weeks, an SME advisory panel, which will be about trying to bring together a number of different stakeholders. This is not about the individual cases. This will be about helping us to appreciate the trends that might be arising, to see things from the SME community's perspective. That is one side of the equation.

The other is an expert panel, which is much more about, in the individual cases, being able to get evidence. Where an ombudsman is deciding a case—and we do this presently, in some instances—we envisage a greater need to call upon specialist advice. We would commission a report and say, "I want you, oh SME expert panel person, to provide me with a report, which I will then take into account in my decision-making." We are taking forward both of those things.

Q197 Catherine McKinnell: Will the timing be from 1 April in line with the launch of the wider service?

Caroline Wayman: Yes, that is the plan. We will need the expert panel when we are deciding cases, so it is not quite as critical for 1 April as some things, but we have a proposition. We are looking at the best way of putting in place those arrangements, so it is on track. For the advisory panel, as I said, we are going to be out in the next couple of weeks.

Q198 Catherine McKinnell: From my understanding, it will not have the ability to compel witnesses or insist on disclosure of evidence.

Caroline Wayman: The "it" in that sense will be us, the ombudsman. Remember, the advisory panel is giving us general input on how to think about things from a SME perspective. The expert panel is about commandeering evidence. We, the ombudsman, do not have powers to compel witnesses, but we have powers to require financial businesses to provide us with evidence, and that is within the existing framework. We do not usually need to use those. For the most part, if we see examples where financial businesses are not co-operating with us within the framework, that is something we would talk to the FCA about and the FCA would tackle for us.

Q199 Catherine McKinnell: My broader concern, given the amount of effort going into this, is ensuring that it has the result of giving confidence back



to SMEs that it has the power it needs, it has the resource it needs and it will be able to produce the results that SMEs need to see.

Caroline Wayman: That is absolutely right. As things stand, save for the award limit, which is something else that the FCA is consulting on, at this stage we have not identified the need for a specific additional power, but that is something we should keep under review as we see the cases. If there are instances where we need an additional power in order to access information or decide things fairly, that is something we should keep under review.

Q200 Catherine McKinnell: Another proposal is a further expansion to the remit to cover businesses with a turnover between £6.5 million and £10 million, the thinking being that its natural home would be within the ombudsman service as well. What are your thoughts on whether the FOS should be the home of that scheme?

Caroline Wayman: We are always keen to help and assist if we can. It is the logical thing to do because, if there is to be an additional mechanism in that space from the perspective of SMEs and, for want of a better word, their customer journey, it would be potentially confusing, longer term, to have a separate mechanism that sits between us and the courts. It is important that we focus on getting our current extension up and running, but we are very happy, and indeed are engaged in this, to talk to UK Finance as it develops its proposals for the voluntary scheme and think about how, if that is the will of various policymakers, we could take it on and make it as seamlessly transferrable as possible. That would make sense.

Q201 Catherine McKinnell: The issue, though, is that, as you get larger turnovers, the cases become increasingly complex. As constituency MPs, we have got involved in some of these cases and they are unbelievably complex. That ability to compel witnesses and to have proper powers over disclosure becomes even more necessary and required. I am sure you know the Committee recommended that an independent tribunal service potentially would be one way forward, to make sure that the powers and the proper processes could manage. What are your thoughts on whether this is something that could be handled within FOS or whether perhaps, as it gets more complex, a more independent tribunal service should be considered?

Caroline Wayman: In the event that we are asked to take on that further extension, we should look at whether we would need any additional powers and what that would look like. People have a different concern sometimes. Our decision-making is on the basis of what is fair and reasonable in all the circumstances. It is not a strict legal test. As you get into bigger disputes, there must be a question about that, but that is one of the significant advantages to the ombudsman model. Simon Walker reflected this in his review.



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There is a spectrum of complexity and disputes. There is a point at which we would have to say, "That is what courts or tribunals are for," because we are an informal alternative to the courts. In substance, we deal with some pretty complex stuff already and we have played quite a big role in shaping the response to a number of high-profile issues by setting out in some detail the legal and regulatory considerations. We are quite practised in dealing with complexity, but it is right to ask the question at that next stage up: is that still us, should it be something different, or is it us with different powers?

I come at it straightforwardly: if we can help give people more access to justice and we think we can do a good job, we would be keen to do that. Equally, if we are not the right mechanism and policymakers decide that an alternative is better, we would want to be complementary to that and to make sure, from the user's perspective, that it was seamless and there was consistency across the different casework.

Q202 Catherine McKinnell: Really, it is still open as to whether this is a natural progression of the FOS role, or whether it is more appropriate to develop a halfway house between the ombudsman service that you are providing and the courts, ultimately, or potentially a tribunal.

Caroline Wayman: That is right. Clearly, it is the subject of ongoing debate and discussion, and it is not up to me. We stand ready to assist in whatever way is appropriate and helpful. We will have ever more of a body of information and insight from the cases we are seeing. We are looking at what further research we might commission to look specifically at the needs of the SME community. We are scoping that out at the moment, which might help to inform this. It is very important to recognise the needs of the users in here, and that is what we are most focused on.

Q203 Stewart Hosie: Just to follow on, a specialist team of 20 people, many of whom are not yet recruited, will deal with potentially 200,000-plus eligible SMEs in nine weeks' time, out of a headcount that is moving to 4,500. It does not exactly feel like you are throwing the artillery at what could be a potential problem.

Caroline Wayman: As I tried to explain, we are planning on the basis of the upper limit of the FCA's forecasted new case volumes. We are assuming as well, I should say, that the cases will be inherently more complex. I expect we will have the vast majority, if not all, of the 20 case handlers we are planning to recruit in place in advance of 1 April, but we will not get any cases on 1 April because, while we can deal with complaints about issues that arise after 1 April, people would need to address their complaint in the first instance to the financial business. The financial business has eight weeks to respond, and then people need to come to us. In substance, we will not see cases until it is somewhat warmer outside.

Q204 Stewart Hosie: Potentially, but I know, you know and people watching



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know that you can reopen old cases in light of new information. You have done this in the past. To take the Clydesdale Bank/NAB TBL cases as an example, your own FOI 3273 said there were 404 cases of specific fixed interest rate complaints dealt with by the FOS. Only 13%—that is 53—were upheld. Now this is in place and SMEs can come to you, it is not beyond the realms of possibility that people will be knocking on your door, saying, “By the way, this was not considered properly. Here is some new information.” Your 20 people are going to be swamped, even with your eight-week window for people to go to the financial company first. How is this number of people going to deal with those sorts of cases reopening in light of new information before new stuff hits their desks?

Caroline Wayman: It is important to recognise that we already have people in place who deal with our existing microenterprise jurisdiction. We get about 4,000 microenterprise cases every year. The 20 and 1,300 numbers are about the new jurisdiction. Presently, we do not necessarily anticipate that we will see people coming back, but if that were to happen we would need to respond to it. Most likely, we would not necessarily ask our new team to deal with that, because we want to make sure we are setting up the new jurisdiction in the right way, ready to respond. We have existing teams that would respond to that.

Q205 Stewart Hosie: The reason I conflated those two issues was that many of the companies that come into the Clydesdale Bank TBL-type space are not microbusinesses. They will see your new team as precisely where they should be. That is why I mentioned them in specific regard to this team of 20 people. It seems rather low out of a total headcount approaching 4,500.

Caroline Wayman: It is a relatively straightforward calculation based on the forecast of new cases. For those loans and issues that have happened in the past, if they are not eligible today as microbusinesses, they will not be eligible in the new jurisdiction, because it is about events that happen after 1 April. Often there is a debate and discussion to be had about what the event was, but typically, in the disputes you are referencing, that would be the original lending or original sale, which would have happened way before 1 April.

It is one of the challenges. It is not something that this new jurisdiction is able to solve, but the question about the past is something that Simon Walker has wrestled with. In our new jurisdiction, it is important to emphasise, we will not be able to assist people who have had an issue that happened before 1 April.

Q206 Stewart Hosie: Let us wait and see how the SME community responds to that. Let me move on to something else. In 2016-17, you spent £38.8 million on contractors, £41 million in 2017-18, £62.5 million in 2018-19 and a forecast of £101 million in 2019-20. What work are these contractors undertaking and is that value for money?



Caroline Wayman: The vast majority are case handler contractors. In next year's budget, in the region of 80% of it would probably be for PPI and short-term lending. We have been very public about this in our plans and budgets that we have set out. We have for some time pursued a strategy in relation to our PPI casework of not adding permanent staff, because we have known that there is an end date. There has been discussion about an end date for some time. The end date is next year. Next year, we are planning on the basis of a fairly busy PPI year, but the trend at the moment is that PPI cases are slightly down. It is one of the ways in which we are managing the volatility and protecting existing staff from some of that as well.

Q207 **Stewart Hosie:** In terms of protecting existing staff, why is the contractor salary level higher than the employee salary level, in respect of median remuneration?

Caroline Wayman: Our contractor costs reflect that they are not staff, so they do not get any of our benefits; there is none of that. They are a slightly different market and the rates vary quite a lot according to the work they are doing. It is a huge workforce that works across PPI casework. It is not just our case handlers; most of the financial businesses employ contractor staff. This is quite a big issue when the deadline hits, and there will be a lot of people who will be impacted. We compete sometimes in terms of day rates, therefore, with financial businesses. We probably pay a rate that is lower than they do, but it is fairly sought after to work for us as a contractor and we treat our contractors very well.

Q208 **Stewart Hosie:** Do you have a voluntary redundancy scheme in place for permanent staff?

Caroline Wayman: Yes, we are consulting at the moment in relation to our transition area, which we initially envisaged we would draw to a conclusion at the end of March, but we made some announcements in December that we would be extending that to the end of June. Within that, we set out for our permanent staff members a range of choices, one of which is voluntary redundancy. We have also been clear that, for anybody who would like to, there will be a role within our mass claims teams. Now, that may not suit everybody. We have also said that they can apply for an investigator role and that we will give opportunity for people to try out either the investigator or the adjudicator role. We have worked very hard to treat our staff fairly in that regard.

Q209 **Stewart Hosie:** As a layperson, as a humble observer, how on earth can you have a redundancy scheme for full-time staff when you are planning to spend £101 million on contractors, who are temporary staff? This does not seem to make any sense at face value.

Caroline Wayman: I entirely see the point and we have set this out in detail in the plan and budget. Partly, the answer is about the longevity of some of the need. For example, if there was no deadline and PPI was



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going to continue on forever, we would have a very different strategy. Had there not been a time bar, it would have had a very different profile. Because there is a time bar, it does not make sense for us to hire permanent staff to fulfil those roles, but we need to increase in order to deal with the deadline rush, however big that might be. There are lots of different views about that. The FCA is going to do another burst of the Arnie campaign and that will have some impact, but probably more prevalently, as we get closer to the deadline, claims management companies will ramp up on that. It is about longevity.

Similarly, in short-term lending, we just do not know how long that is going to persist as a major source of casework for us, not least because, as is very public, some of the payday lenders are having difficulties in their own solvency. We have already seen Wonga go into administration. We do not want to have a whole load of stranded costs, hire lots and lots of permanent staff who we then do not need.

Our core investigation teams are structured such that they will be able to respond to the underlying demand about everything else, but we have had to grow that. It is important for us to invest in our modernised ways of working, so we are doing that. We are investing so significantly in contractor staff because we have some immediate needs that are uncertain and we may end up not needing quite as many as that, so we are in the midst of responding to that.

Q210 Stewart Hosie: We will see where that comes out in the wash. Finally, Sir Nicholas, you said earlier that the board challenges where targets have not been met, rightly and absolutely sensibly. Do you challenge where targets are set out? That is what appears, to me, to be an inconsistency: an increase to £100 million-plus in contractor spend at the same time as the cost of a redundancy programme, with the stated intention of raising the full-time equivalent headcount by 1,000. This does not seem to make sense at all. Was the executive challenged on that?

Sir Nicholas Montagu: The answer is that we do, of course. This is an important element of people strategy. That is very much within the board's ambit. We pushed on this and we were persuaded, rightly, by the logic of what Caroline and her HR and executive team directors told us. That is, we have to strike this balance between work that is ephemeral and work that is going to continue. Obviously, there is an element of uncertainty, as the Committee is always emphasising, in all our work.

We thought that this provided the best chance simultaneously of meeting the challenges, accompanied by those uncertainties that face us, while, going back to something that Caroline importantly said, doing the decent thing by our own people, giving them, in other words, a choice between staying on in the mass claims area, leaving the organisation or seeking a career in the continuing work elsewhere in the organisation. The straight answer to your question is that we did indeed challenge. We had an extensive discussion on it.



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Q211 **Chair:** On that figure of £101.1 million, do you have a provisional budget or any figure in mind for the year beyond? Do you expect that figure to fall, given what you said to Mr Hosie about the reason you have that flexibility?

Caroline Wayman: Yes, I think so. Much depends on what the final rush to the finish looks like in terms of PPI. We will need to see what that looks like. We will need to balance how much we invest in clearing that versus how long it takes to clear. In headline terms, my intuitive answer is yes. We forecast further out at a headline level, not at the detailed level, and 80% of it is PPI and short-term lending.

We will need to take a view about where short-term lending is heading in terms of complaint volumes and what other action may be needed there. As I said earlier, at the moment, we are upholding a very high proportion of those cases, which tells you that there are two problems. One is in the original lending, and the main issue is around affordability, and the other is in complaint handling. If it has got to us and we have upheld it, it is both things.

Q212 **Chair:** What I am trying to get to is whether you expect, longer term, to change the balance between permanent staff and contractors.

Caroline Wayman: We definitely do. We probably will look to retain an element, though. Going back to an earlier question, this is about the balance of being able to respond and flexibly able to do so. It is still part of our strategy to retain an element of that, because that is about responding to peaks and troughs. The reason it is such a big number is primarily a focus on PPI and short-term lending, although not exclusively.

Q213 **John Mann:** Precisely and specifically, what more should you be doing, what more should financial institutions be doing and what more should legislators be doing to combat economic crime?

Caroline Wayman: This is quite a broad term and I know the Committee has an inquiry going on at the moment. Probably the main area of what we see is what we would categorise as fraud and scams. That is probably our main activity. We see quite small numbers of cases around potential money laundering or Proceeds of Crime Act issues. That is a very small number and we have some specific procedures to deal with that.

We have seen significant growth over the last year or so in the number of people coming to us in relation to fraud and scams, of a variety of different types. We have needed, again, to increase the number of people we have who are able to deal with those cases. We have also needed to take a look at the evolving nature of those scams. We set out some lead cases and published some material in August in *Ombudsman News*. This is a plug for *Ombudsman News*; it would make my day if any of the Committee would become subscribers today. We set out our approach specifically there around unauthorised payments, where we have shone a light on some ways in which we felt that more needed to be done, and that banks needed to stop being so quick to suggest that people have



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been grossly negligent, which is the test in unauthorised transfer cases. It is quite a complex landscape.

We also get quite a lot of cases about authorised transfers, where the protections for consumers are much less in terms of the tests that apply. We see a vast number in relation to things like disputed transactions, people buying things that turn out not to exist. There is a real variety of issues.

Q214 John Mann: You have answered a third of my question. What more should legislators and financial institutions be doing, precisely and specifically?

Caroline Wayman: From what we see, there is still work to be done to make sure that our approach is consistently applied, so we will continue to share that insight. The significant piece of work ongoing at the moment, which is being consulted on, is the contingent reimbursement model and the discussions there around a voluntary code. We have been engaged in those discussions. We have attended as an observer and we have tried to provide our insight in terms of the cases we see. What that code seeks to do—and it is out for consultation at the moment—is a mixture of thinking about the redress arrangements in different scenarios, but also, quite crucially, what more can be done to prevent harm. There are some steps forward there, but there is an awful lot to do.

It is a pretty complex picture, where there are some clear signs of things that have worked quite well. The banking protocol, for example, from reports, seems to have been quite successful. But there is no doubt that fraudsters continue to evolve how they do it, so there is going to need to be an ongoing focus from a vast array of parties, including us, and we will need to continue to look afresh at what we see.

Q215 John Mann: To summarise precisely what you have just said, there needs to be an ongoing focus from others. That therefore means, as you are not specifically suggesting anything for either legislators or financial institutions, that your role within this becomes crucial in setting the landscape and protecting consumers. One small matter that has been raised before is the definition of “vulnerability” of consumers. Have you enhanced, improved and clarified the definition of “vulnerability”?

Caroline Wayman: We have done a huge amount of work in relation to how we support vulnerable customers, not just in this territory but across all our—

Q216 John Mann: I said “define”. If you have not defined, you cannot support.

Caroline Wayman: We have set a lot of this out in our plans. For example, the Money Advice Trust came and ran training for our case handlers, to give them additional tools. We have a practice group, which works across our different areas to support people. We have a dedicated



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area that provides specific support where people need particular additional adjustments in our casework.

In relation to fraud and scams, although there is no doubt that this is a factor, in addition, one of the features of our casework is that it is not just vulnerable customers who are falling victim to scams. This is sometimes an area of confusion, in that people assume and there is an element of people thinking, "I would not fall for that." Well, our casework suggests that it is all sections of society. They are really very plausible.

Q217 John Mann: My final question is on that, but for my second question I still want a better answer, please.

Caroline Wayman: I will try.

John Mann: You are vulnerable, as an organisation, by not properly defining "vulnerable customers": people with hearing loss; people who have suffered a major trauma; people with mental health issues, which of course can be variable from time to time; people with poor literacy. Your model over the years has presumed a lot in terms of these things. The question still remains about whether someone can be defined as "vulnerable" and whether the defence of vulnerability in determining a case when it comes to economic crime is a fundamental issue. Can a consumer be confident that, if they are failing to understand things because of their hearing or because of their literacy, or they are failing to fully understand what is going on because of the particular moment they are at in terms of mental health and/or trauma, the evidence provided of that will be a significant and major factor in determining whether they will get redress?

Caroline Wayman: Absolutely, yes. There are two things. There is how we adapt our service to meet the needs of individuals, and the approach we take, in keeping with good practice, is as you have rightly outlined. Vulnerability is not a tick-box. There are specific ways in which we provide additional support to people who need us to deal with them in different ways. We have a range of different, additional support that we can give people. There is a point about access to our service, where we have both a standard set of things we can do and we have a specialist team who can provide additional support. We have to be quite creative sometimes. We have some customers with really challenging circumstances, and Carol Brady reflected quite positively on how we respond to vulnerable customers.

In terms of our own service, we put an enormous amount of effort into making sure we make those adjustments. We absolutely recognise the complexities and seek to, and do, follow good practice in this area. We listen to the experts. There is a very active mental wellbeing network which provides additional advice and support.

To your question, is their inherent vulnerability a factor in the decision-making? Of course it is. We look very carefully and, again, not just in this



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situation, but the test that we are asked to apply by Parliament is fair and reasonable in the circumstances of the case, so the circumstances of the individual go squarely to that and we absolutely would take them into consideration in deciding what is fair.

Q218 John Mann: Finally, what about consumers who cannot be described specifically as vulnerable on any defined definition, but who have been hoodwinked, because banks, financial institutions, solicitors, whoever else have failed to keep up with the technology that the fraudsters are managing to be ahead of the game on, where there is clearly a technological deficit and benefit to the criminal? Can we be sure that in those situations your organisation will come down on the side of the consumer who has been hoodwinked, often because the financial institution and sometimes others they work with, such as solicitors—I am thinking, for example, of conveyancing cases—have not managed to keep up with the technology and robust enough systems? Can we and consumers feel assured that, as we go forward, they will be getting redress in those situations, and it will not be the excuses of the banks and financial institutions that we have seen so often over very recent times, when it comes to decision-making by your organisation?

Caroline Wayman: I am trying to think where to begin. We have to apply the law and the regulations as they stand.

Q219 John Mann: But you are not suggesting any improvements, as I asked you in my first question.

Caroline Wayman: I was pointing to a set of discussions that are ongoing in relation to authorised push payment fraud. There is a set of discussions going on about a voluntary code. One of the challenges there is looking at situations where neither the customer nor the bank is to blame. In the existing framework, there is a distinction, in law and in regulation, between cases where you authorise the transaction—and there is a question to be answered about whether it was really authorised, and we would look critically at that—and unauthorised transactions.

In an authorised transaction, as I said earlier, the protections are not as strong in terms of the law and the regulatory rules in relation to who is responsible in that scenario. That is a set of work that is going on at the moment, which we are contributing to. If a code comes into force, depending on the nature and the status of it, that is something we would be able to take into account. In relation to unauthorised transactions, the test is gross negligence, where we have set out quite clearly that banks need to be less free to say that their customers have been grossly negligent.

To the underlying part of your question, do I think that banks hold information, at times, about these frauds and therefore have a responsibility to not allow their customers to pay? Yes, but we obviously have to apply that within the framework that exists. Again, there is quite



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a lot that can and needs to be done in relation to being able to claw back payments. That is a big part of it. One of the real issues, particularly in transfer cases, is that the money moves in seconds so recovery is very difficult. Prevention is the best thing, but with ever-more sophisticated systems to track that. It is not my job to place those regulatory requirements on the institutions, but as we see it in our casework we will be pointing to instances where, if we think the bank could and should have done more, we will hold them to account for that. We are constrained by the existing framework, though, which is under discussion.

Q220 John Mann: If there are things that your organisation believes we should be doing, it is imperative in our democracy that either you or your chair is writing to this Committee, in the near future or in the medium term, on that. What would not be acceptable in the way our democracy works is for you to have concerns or be unable to do your job properly because of what we fail to do and not be precisely informing us. That is vital.

Caroline Wayman: We are very keen to do that.

Q221 Chair: At the end of that series of questions, you came up with something that you are noticing, as a result of your casework, needs to be improved. That has been reflected in evidence that we have also heard in the Committee as part of the economic crime inquiry, about visibility, about following the funds and how quickly they get transferred. John was looking for specific recommendations, which may not be within your remit to do anything about, and you may not be the body that passes the relevant regulations. But you are able to see where there is a lacuna where customers and consumers are missing out, which could be tightened by other authorities. That is where this Committee would welcome hearing from you: "This is where we think more attention is needed."

Caroline Wayman: Yes, I understand.

Q222 Charlie Elphicke: Many of my constituents who I represent in Dover and Deal find that they are ripped off by fraudsters with these payment frauds. They think they are going on to eBay to buy something, a car, and they find it does not exist at all, and then their bank will not reimburse them. What have you been finding, in terms of the attitude of the banks, as we have been shining more of a light on this?

Caroline Wayman: We are seeing some improvement, but there is quite a long way to go, to give a one-sentence answer to that. One of the challenges is that it is quite a complex area and we are getting a growing body of information and casework. As I was saying in response to the previous question, there is probably more we can share and we are very keen to do that, if that is of assistance to the Committee.

The challenge in these cases is that there may be instances where consumers are left out of pocket, but that may not be something that is the responsibility of the bank or can be rightly apportioned to the bank.



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There are also instances where the bank absolutely could and should have done more. We will look at a range of things in assessing that. We obviously have to apply the law and the regulatory framework as they stand.

We are noticing improvements in the alerts. Some of the conceits, if you like, of the frauds are getting more common. Fraudsters will evolve, because they are very sophisticated, but as those things become more commonplace there are things we can now identify as good industry practice, so if the bank does not have that practice we would be able to uphold the complaint against it.

The challenge is that, ultimately, these are crimes. There is a criminal act going on. Our role and responsibility is insofar as the bank or other institution is responsible for those losses. They have definitely increased, based on what we see in cases, and they are ever-more complex.

Q223 Charlie Elphicke: I thought I was buying a car. I have been taken for a ride. I then come to you and it is a voluntary code. Does that not impact the effectiveness of it? This reimbursement model seems to be entirely voluntary. How voluntary is it?

Caroline Wayman: It is not my code and its effectiveness will probably depend on how well subscribed to it is.

Q224 Charlie Elphicke: You are an observer on the steering board, so I want to pin you down a bit more on this than saying, "It is nothing to do with me."

Caroline Wayman: I am not saying it is nothing to do with me, but there are limits. We have provided input in relation to what we see in cases and we are very keen to ensure that the code reflects what we are seeing. Today, if the bank is responsible for people's losses, we will hold it responsible for that.

The particularly challenging scenario is where you have what people are calling a "no blame, no blame" situation. In effect, the consumer has acted reasonably and has not done anything they should not have, as has the bank. In that situation, who should foot the bill is the question. From my understanding of the code's objectives, it is about a range of things. It is about prevention, tracing of money and then redress.

If the code comes into force, it will be a really positive thing, particularly if it is well subscribed to, because that will provide consumers with an additional avenue where these things happen. There are situations at the moment and they are desperately tragic. As you said, you see these with your own constituency, and we see them. There are people losing their life savings sometimes, through not necessarily any fault of their own, but sometimes not any fault of the bank. Therefore, a question arises from that about who should, in that instance, foot the bill.

Q225 Charlie Elphicke: Is it fair to automatically accuse the customer of being



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grossly negligent when a criminal walks off with their money?

Caroline Wayman: No. We have said that very publicly in *Ombudsman News*; that is the second plug. We have set that out very clearly. We have been clear that gross negligence is a pretty high bar. There is not a lot of case law in relation to it in this context, but it is more than carelessness and the frauds are very sophisticated, so it is really important to bear that in mind. The gross negligence test applies in an unauthorised context—that is, where you did not transfer the money yourself. I would be happy to share more on this, but we are starting to see ever-more complex instances. Quite a common issue at the moment is people who are tricked into thinking they are talking to their internet service provider.

Q226 **Charlie Elphicke:** Or the phone company, or the bank's fraud department. In those cases, do you treat that as authorised or unauthorised?

Caroline Wayman: It will depend. Quite often, the conceit is one where you have your computer taken over and the fraudsters carry out the transaction. That would not be authorised. It is important to say that we look critically, as I said earlier, at what amounts to authorisation. It is quite important to make sure that it is proper consent, as it were.

Q227 **Charlie Elphicke:** If someone says they are from my bank's fraud department, is that authorised or unauthorised?

Caroline Wayman: It depends and, again, these are not my rules; this is the existing framework. Looking at the existing broad situation, say you are tricked into giving away your details, which is quite common, in various very clever ways. The internet service provider example is clever stuff. They will have you on the phone for two or two and a half hours. They will walk you through different parts of your computer. They may take you to your Amazon account, then somewhere else. Eventually, they will take you to your online banking screen, and then they will elicit some of the passcodes. This is factual. In that instance, we have to look very carefully at what happened. We have to ask, "Did that amount to gross negligence?" We have some cases we are considering at the moment, but there are most definitely situations where the banks would have said, "Yes, that is gross negligence," and we would say, "No, we do not think it is." It is incredibly convincing. It is also that thing where people are worn down.

The closest comparison I can give you is that, when I listen to the calls, it reminds me of the worst examples of pressure selling. It is exactly the same tactics: you wear away at people; you go away and get a supervisor, all of those things. The particularly nasty part about it is that people often think they are moving their money to safety, so people think they are doing the right thing. They are very sophisticated.

One thing we often talk about publicly is that it is quite surprising, the things that fraudsters can do with relative ease. It is quite



straightforward, for example, for a fraudster to hack your texts. If you have a string of texts from your bank, which you know are legitimate, a fraudster can hack those and have a message appear at the bottom of that chain. That is quite easy for them to do and I do not think most consumers would know that.

That is the sort of thing where it is a blend of prevention and tracing. There is a big piece around trying to help consumers feel confident to come forward. We often hear people say, "I was embarrassed," and "I was ashamed." People do not like to come forward, so it is incumbent on all of us to talk about it and to share those examples. Off the back of the work we did in the summer, I have had people get in touch to say, "I felt able to talk about it." That is really good, but it is one of those things where we cannot talk about it enough, because it is not going away and the fraudsters will continue to evolve.

Q228 Charlie Elphicke: Listening to you, it is clear that these are very complicated, often very sophisticated frauds, where customers are completely bamboozled, and the bank may well turn around and say, "Well, you authorised that payment to be made." Do you not think that, rather than you investigating these cases, which are all variously different, we should simply pass the risk to the banks and say, "It is your problem to make sure your systems are robust. You should trace where this criminal money has gone in the banking system and get it back"?

Caroline Wayman: Most definitely, the banks have a huge role to play in this. As Mr Mann said, they have technology that enables them to trace the payment, so there is a huge responsibility there. Where the bank is not in any way at fault, it is a matter that is subject to debate at the moment as to who should carry the risk. It should not be simply consumers carrying the risk; that is not the right answer. From the cases we see, we are able to shine a light on those practices and make sure those tests are being applied appropriately. We have had to push quite hard on that. That is why we have shared our insight publicly, and we will want to share with the Committee and to publish further insights as we see them.

Q229 Charlie Elphicke: In your *FOS Ombudsman News* of 2018, of which you know the Committee are all avid readers, it says that what is considered grossly negligent will inevitably change over time. Does the Santander case that was reported in the media illustrate a change in the FOS's approach to APP fraud, in that the FOS is now taking this more seriously and holding the banks to a higher test?

Caroline Wayman: It is not a higher test; it is us needing to look at the scams we are seeing today, assessing them against the test that exists and being clear with the banks. What we have not done previously is to set out in very clear terms, in a lead decision, which is the one that you referenced—I cannot remember how many pages long it is, but it is quite a read—all the different factors that go into assessing what the relevant test is. We have done that in order to resolve the individual dispute, but



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also, crucially, to set out our overall approach and to be clear about what gross negligence is and is not. We want to shine a light on the fact that, in the frauds we are now seeing, where consumers have been quite understandably tricked into doing things in a very plausible, convincing, way, it is not right, as you pointed out in your question, to say that that is gross negligence. We have said the banks need to listen to that and we are seeing some encouraging signs in that.

The cases we set out in *Ombudsman News* were primarily around the conceit where you think it is your bank and that end of things. As I was saying earlier, we are now working our way through cases that are more in the internet service provider territory, so we will have further insights to share as we progress our casework.

Q230 **Mr Clarke:** In terms of progressing casework, that is rather timely. I wanted to ask about the fact that, in the strategic plan, you forecast that there are 50,000 complaints against payday lenders in 2018-19 and you forecast 20,000 complaint resolutions. What happens to the balance of the 30,000 that are not resolved in-year?

Caroline Wayman: They will carry forward into next year. We have significant challenges in relation to short-term lending. As I outlined earlier in the session, we need to do a combination of things there. We continue to prioritise vulnerable customers, which is crucial. In addition to increasing the numbers of case handlers who are able to deal with these cases, we are also working to make sure that short-term lenders are applying our approach at the front end. This goes back to what we were saying in the previous discussion. Helpfully, the FCA issued a “dear CEO” letter, which I do not know if you have seen, in the autumn. The FCA drew attention to some lead cases that we had issued in relation to short-term lending and asked short-term lenders to apply those cases. Therefore, we would hope and expect to see—and if we do not, we will be speaking again to the FCA about it—short-term lenders applying those approaches across their casework over time.

One particular feature I want to draw your attention to is that, in our casework, we see a lot of examples of people who have had multiple borrowing; it is not in any way unusual to have 15, 20, 25—in some of our cases, there are 90—successive bits of borrowing. That, to some extent, may surprise some people, because obviously rollovers are banned. Our casework spans the regulatory changes, so some of it goes back in time, but we have some real concerns about the ways in which people have been lent money and the affordability of that. In our casework, it is not uncommon that these are people who are borrowing money to feed the kids. It is people in those desperate situations. That successive borrowing has been a particular feature, so we have issued some lead decisions. We also had to set out some decisions around our jurisdiction, clarifying that. The FCA has now drawn that to the payday lenders’ attention, so we would hope to see some improvement.



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It is always a judgment, for us, the extent to which we need to continue to turn the handle on lots and lots of cases, making the same point, versus establishing some principles and then working constructively with the FCA to say, "These need to be applied." People should not have to come to us to get those answers. They should get them in the first instance.

Q231 Mr Clarke: No, indeed. Of course, this additional burden of work, which is enormous, poses questions about the sustainability of your funding. The fact that you have a consultation in the strategic plan about how you should be funded going forward suggests that you accept your current funding model is, broadly, unsustainable. Is that fair?

Caroline Wayman: We have been talking to stakeholders for some time and setting out publicly that, in a post-PPI world, we need to think significantly differently about how we are funded. The original concept in our funding was that we would be, roughly, 50% levy and 50% case fee. Because of the sheer volume of PPI complaints, that has shifted to more like 90:10, at times. In a post-PPI world, hopefully, all things being equal, we will have fewer net cases, but we will probably have a more complex set of casework. We are keen to explore alternatives for our funding that provide us with a sustainable model into the future and incentivise the right behaviours for financial businesses.

Q232 Mr Clarke: With that in mind, which do you believe of the three options you have outlined in the plan represents the most helpful platform going forward?

Caroline Wayman: I am pretty open at the moment. I do not want to pre-empt the views of stakeholders. There are various different ways in which you can construct our funding. To my mind, pure case fees are a bit of a blunt instrument and, increasingly, a lot of the work we do is in early resolution. People phone us rather than the bank and it is in everyone's interest, particularly in cases where people are in desperate need, that we are able to step in and deal with that straight away. That is not terribly well reflected in our current model, so that is something we need to solve. Probably, at a high level, a rebalancing is the minimum.

There is then a question of trying to still think about how you incentivise the right behaviours and perhaps having an element of the variable costs that are about sheer volume in-year, but predictability of our caseload and income is important as well. When we talk to stakeholders, that is well recognised. It is not particularly in people's interests if we have to keep upping and downing constantly. As I was saying earlier, we need to build our core investigation model so it can deal with the volume we are now seeing, and we do have to adjust our sights on that. We had thought that that would settle down at more like 100,000 cases a year. At the moment, there are not many reasons to think that that is the direction. If you compare on a like-for-like basis, it will be more like 200,000 this year, which is huge. We need a sustainable funding model for the future and it will need to be very different.



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Q233 Mr Clarke: It is not just predictability for you in terms of your funding base; it is also predictability for financial services firms over the fees they could be liable for. Which of the models achieves that to the best degree?

Caroline Wayman: Each has its own features. There are some features within our existing model that have served us quite well and we need to think about how far they should be retained. For example, we give 25 free cases.

Q234 Mr Clarke: Yes, but that is not much good if you are talking about the number of claims that, say, Wonga faces. You get swamped.

Caroline Wayman: Indeed, but it does mean that the vast majority of financial businesses covered by a jurisdiction never pay a case fee. Small businesses may only have one or two cases. We upped it to 25 in the PPI context. It used to be three; it might have been five at one point. It is about trying to apportion the costs in a fair way across all the different people who need to use our service and be complained about. Our stakeholders recognise that there is value for all financial services businesses in having an ombudsman and being able to have an independent person you can direct your customers to in the event that something goes wrong. There is also value in the insight that we can provide to improve things beyond the individual cases, which is something we have had to do much more of in the last few years. I hope the lead case examples that I have been citing illustrate that point, but their impact is far beyond the 20,000 or 50,000 in our caseload. It is about the people who never come to us and making sure they get fairness. That is really important.

Q235 Mr Clarke: In August last year, Wonga, which was the giant in the payday lending sector, went into administration. How many cases were outstanding, at that point, with the FOS and are you still investigating those cases?

Caroline Wayman: No, we are not, because at the point Wonga went into administration we no longer were able to get people redress in that scenario. We had about 10,500.

Q236 Mr Clarke: How do they get redress, then, at this point?

Caroline Wayman: They get whatever the administrators are able to recover. At the moment, and I am not aware of any plans to change this, there is no FSCS coverage in this instance. In other sectors, if a financial business goes into administration, there is the FSCS. That is the more typical thing and that happens not often on scale. In PPI, we have seen a couple of reasonably sized cases, but no huge ones, where they would go to FSCS and get that coverage. Here, there is no coverage. It is something we have highlighted, but that means for the customers in that situation we have no alternative other than to give them over to the administrators, which we have tried to do in as seamless and as helpful a way as we can.



Q237 **Mr Clarke:** Then they will get whatever is retrievable?

Caroline Wayman: Exactly, whatever is decided by the scheme.

Q238 **Mr Clarke:** I am no defender of Wonga at all; I think it was, in many ways, a profoundly bad presence in the market. As a broader point, do you think that the funding structure of the FOS leaves financial services organisations very vulnerable to mass complaints? In Wonga's case that was thoroughly merited, but there is a scenario whereby if, say, a claims management company decides to target one particular operator, and you end up with hundreds or thousands of claims, your liabilities become enormous. Is that a problem, potentially?

Caroline Wayman: It is something the payday lenders are very concerned about, understandably. Yes, claims management companies can target an individual firm and that could lead to them going under. I am not quite sure why that is in their interest, because if they are not there any more there is nothing to recover.

Q239 **Mr Clarke:** Perhaps it is, in some way, an ill-founded claim. In this case it was meritorious, but there may be others that, conceivably, would not be.

Caroline Wayman: No, that is right. We have provision in our existing rules that, if we think a case is frivolous and vexatious, we do not charge for that. To give you an alternative example, in the PPI context, it is much reduced now but there was a time when there were quite a lot of cases where there was no policy at all. At first flush, you might say that is obviously frivolous and vexatious. The counterpoint is that people added it without you knowing, so it is a reasonable customer question to ask, "Did you add that without telling me?" But in instances where there clearly was no policy there is no case to answer, so there are some mechanisms by which we can say where it meets that bar.

I always say to financial businesses, though, that they should not settle claims that are unmeritorious just because they are below our case fee limit, for example, which is the concern. All that does is drive the claims management activity. It sounds really trite, but they should treat their customers fairly and give them a fair answer. If they do that and cases then come to us, we are able to stand behind that. With packaged bank accounts, there was a case where, in seeing a surge of those cases early on, we were upholding 75%, 80% maybe. We worked hard to establish our approach, set it out and make it clear such that the banks applied it at the front end and did some proactive stuff as well, with people who lived abroad and things like that. Then we set out very clearly to the claims management companies the cases that would and would not succeed, so we stopped them at the front door. The activity there diminished fairly quickly. That is the right model, but we cannot possibly say to claims management companies, "Stop sending unmeritorious claims," because a lot of them are meritorious.

Q240 **Mr Clarke:** It is just a defence against speculative claims?



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Caroline Wayman: Completely, and in whatever we construct it is an important thing to have in mind, yes.

Q241 **Chair:** Thank you very much indeed for your time this morning. Sir Nicholas, I understand you are standing down from your role with the Financial Ombudsman Service, so we may not have the pleasure of your company wearing this particular hat before the Committee.

Sir Nicholas Montagu: That would be devastating for me, Chairman.

Chair: But you never know what will happen in the future.

Sir Nicholas Montagu: Absolutely. I was not bargaining on coming back to a TSC in retirement. Life brings nice surprises.

Chair: Thank you both very much indeed for your time this morning. It has been very interesting.