Financial Ombudsman Service

Harriett Baldwin MP
Chair of the Treasury Committee

By email

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from **Abby Thomas**
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Dear Ms Baldwin,

Treasury Select Committee, 14 March 2023 — further information

Further to the evidence that Lady Manzoor and I gave to the Treasury Select Committee ('the Committee') on 14 March 2023 about the work of the Financial Ombudsman Service, I am writing to provide clarification of several matters.

The Clerk to the Committee, in exchange of correspondence with my office, has requested that we address three specific matters. For ease of reference, I will use the same numbering as in the official transcript:

1. **Q175 (basis of calculation of CJ levy and VJ levy, in particular why CJ levy is retained at £106m when FOS proposal to cover fixed costs indicate it should be £112m)**
   Anne Marie Morris: *Have you set out that calculation anywhere? If people are looking at it, they might look at this and say, "You set a formula. It then looks like you have not followed the formula." Then, if you can tweak for the future, is there credibility in this formula? If it gets tweaked every time, one begins to wonder whether you are genuinely sticking to a formula. If the point you have made is right, should it not be incorporated in the formula?*
   Abby Thomas: *It is quite a minimal difference overall, but perhaps we could take the opportunity to write to you to lay that out in a little more detail. I would be happy to do that.*

2. **Q181 (details of pay awards granted to staff in 2022/23 and 2023/24 (if available))**
   Chair: *Can I just ask how much of a pay rise you have awarded this year to people staying in the same role?*
   Abby Thomas: *On pay rises this year, I am afraid I do not have that to hand. I would need to take that away and give you that information. I joined after the pay award period, so I would need to check that.*

3. **Q189 (more details of the cases which take more than a year)**
   Rushanara Ali: *Could you write to us with more details on those 13,000?*
   Abby Thomas: *Yes.*

I am pleased to provide the Committee with the following answers to these three questions:

1. Calculation of FOS Levy

The methodology for setting the Compulsory Jurisdiction and Voluntary Jurisdiction levies is set out in full in our 2023/24 Plan & Budget Consultation publication.

In summary, the levies are used to recover our overhead costs, i.e. those costs that do not vary materially with short-to-medium-term changes in case volume. Although we originally planned to increase overhead costs to £112m, we ultimately decided we did not want to raise the levy. Instead, we held the levy flat year-on-year to help firms already struggling with high inflation and decided to challenge ourselves to reduce overhead costs down to the levy amount. In our recently-published final Plan & Budget, we therefore reduced our planned overhead costs to £97.4m for 2023/24 — to deliver sustainable value for money.

As a demand-led service subject to macro-economic pressures, the forecast of overhead costs is, however, not an exact science. Therefore, rather than necessarily changing our levy each year (which is a source of uncertainty for firms in planning their own budgets), we are taking a three-year view on our overhead costs and amending our levy to a level that can be sustained over that period. In addition, we will be considering how we might alternatively manage any under/over recovery of overheads; and will be consulting on any proposals later in 2023/24.

2. Pay Awards

The Committee asked about our annual pay award for 2022/23. This was 2% for all eligible colleagues. We made two additional targeted interventions which added an extra 1.07% to our annual pay award; these arose due to our pay freeze in 2020/21 and challenges we faced in recruitment of some key roles. We increased the minimum salaries for our new-to-role and level-1 investigators; and we addressed some pay disparities where salaries had fallen below the market range in a small number of specialist roles.

Our pay award for 2023/24 has yet to be approved by our Remuneration and People Committee (because our annual pay cycle has always run from 1 July). I will update the Select Committee as soon as I am able.

3. Oldest Cases

The Committee asked for more details about our oldest cases. These continue to be a priority for us and, as of the start of April 2023, we had 11,280 cases which had been with us more than a year (which is a reduction from the c.13,000 open at the time of the hearing).

As we explained at the evidence session, we have some older cases that we need to work as a group, as they raise inter-related issues (sometimes which are impacted by external factors such as a judicial review or regulatory action which means we cannot work them immediately) and we also have cases that we can progress individually.

About 3,752 of our older cases are those which we are free to progress individually. Of our older cases, 864 are with an ombudsman being considered and 1,782 have been referred for a final decision at the request of one of the parties to the complaint and are awaiting allocation to an ombudsman. In other words, 2,646 of our older cases are at the final stage of our process.

Of the 7,528 cases that raise inter-related issues, they fall into groups as follows:

Reasons for age of case	Affected Cases
Paused pending outcome of judicial reviews	
Complaints involving 'fractional ownership' timeshares. Judicial Review ('JR') proceedings were brought by two firms (Shawbrook and Barclays Partner Finance). The hearing took place in mid-March 2023 and we await the court's decision. The cases behind this litigation all involve issues which the court is considering.	2,199
PPI complaints brought against Assurant. Assurant does not accept that it is responsible for responding to such complaints. The court of first instance found for FOS, but Assurant has appealed to the Court of Appeal. The appellate hearing will take place in July 2023.	233
Complaints about a single investment firm (Linear) which sit behind an active JR and involve very similar circumstances to the ombudsman's decision which the firm has judicially reviewed and other smaller 'one off' JRs.	11
SUBTOTAL	***2,443***
Previously affected by litigation but now progressing	
Complaints about the fairness of mortgagee standard variable rates and other historic interest rate changes. These were previously paused pending the outcome of a JR by Co-Op about our jurisdiction to consider them, but we are progressing the complaints now via a series of 'example complaints' so the parties can learn from our approach. We have closed more than 1,000 since the JR in July 2022.	1,739
Complaints about so-called 'Pension Liberation'. They also cover consumers withdrawing pensions money for other high risk or scam investments, which are about the warnings provided by the ceding scheme (the pension provider from which the funds were withdrawn to invest elsewhere). We received a series of pre-action challenges ending in November 2022 and are now starting to progress cases again.	471
SUBTOTAL	***2,210***
Cases we need to work carefully to develop our approach	
Complaints about SIPP providers and the (alleged) failure to carry out adequate due diligence on the proposed investment. We have received a series of legal challenges in relation to these complaints over the years and there remains an active JR by Options UK which will be heard by the Court of Appeal (we are awaiting a confirmed date). We currently continue to work the complaints but the legal risks and potential risk of insolvency to the firms means that we have to progress the complaints through lead cases and follow-on cases in a careful manner.	1,203
Motor finance/secret commission complaints — where our lead decisions are being carefully developed due to the potential wider implications. We have now started issuing provisional decisions on lead cases.	1,032
Investment complaints about the collapse of the Woodford Equity Investment Fund where we are waiting regulatory considerations on linked matters.	433
Complaints about significant premium increases on Whole of Life insurance policies, where we have needed to obtain and review significant volumes of materials; we are now progressing these to decision.	207
SUBTOTAL	***2,875***
TOTAL	**7,528**

I have enclosed as an Annex a table of the remaining over-12 months cases for information.

Other Matters

In addition to the above, I would like to take this opportunity to clarify a few points that arose during the session and appear in the official transcript.

- **Q146: Mr Baron: You have also been modest, because the median waiting times have been reducing as well, from just over six years to just under four, so that is also good news.**

  This should state *months* rather than *years*.

- **Q149: Baroness Manzoor: There is training and development, which is different. We need to make sure that not everything is hybrid working. To put it into context, we have a hub that takes all the inquiries from consumers. That is very much a team and is not hybrid.**

  Our call hub—named ‘Customer Connect’—employs people who work solely in the office during their initial induction and training period (due to the nature of the role). But afterwards, like nearly everyone else at FOS who is able to do so, they are then only required to come into the office for 40% of the time, i.e. four out of ten days per fortnight. Our technology securely facilitates hybrid homeworking.

- **Q163: Dame Angela Eagle: In your budget for 2023-24, you are projecting a net surplus from the year of £5.6 million, compared to a previously budgeted deficit of £48.9 million and a deficit the previous year of £12.4 million.**

  Q164: Dame Angela Eagle: You are projecting a surplus of £8.8 million in the next financial year. Might that turn into a deficit like your deficit turned into a surplus?

  Yes, that was correct from our consultation. Our recently published Plan & Budget for 2023/24 now projects a £9.3m surplus for 2022/23 and a £15.4m surplus for 2023/24. These are accurate projections to the best of our knowledge and belief — but as a demand-led service subject to the same economic circumstances as every other business, such forecasting is not an exact science. We base our projections in part on data from the industry about the volumes of complaints they have received and the likely subsequent referrals to FOS.

- **Q166: Dame Angela Eagle: The average time to resolve a case at the moment is 6.4 months and the target is 4.2 months.**

  That is correct from the annual report as of 2021/22. However, our strategic measure for 2022/23 was *median* resolution times. However, the median will probably end up just below 5 months for the full year because of the impact of the mass closure in June 2022 of about 16,000 cases involving a firm (Amigo) that was subject to a court-approved scheme of arrangement. We were unable to progress or resolve those cases earlier because of the insolvency proceedings, so they had become old by the time of closure. This artificially inflates the annual median waiting time as a measure of our actual performance. At the end of Quarter 3 of 2022/23, it was 3.68 months and had reduced to 3.4 months at the end of Quarter 4.

- **Q190: Rushanara Ali: When a complaint is made, [the firm] will have up to eight weeks to respond. It is not always clear whether you will get a letter—I forget what it is called—so you can take it to the FOS.**

  All regulated firms have a statutory duty to issue complainants with a final response letter—or at least a written explanation as to why this is not yet possible together with referral rights to FOS—within eight weeks (or 15 days for complaints about payment services): see DISP 1.6 of the *Financial Conduct Authority Handbook*. We have seen no evidence that firms are routinely failing to comply with this regulatory requirement, which we expect to see clearly covered in their referral communications to every customer.

- **Q191: Rushanara Ali: What about household insurance? A company will have two or three organisations involved. The insurance company will have the broker, the loss adjuster and the institution that then has to make the payment. They are not taking responsibility, as they are required to, I understand, in terms of what happens in that supply chain, linked to the customer. The customer can have a really bad experience, and it can take months and sometimes well over a year before an organisation will process a complaint.**

  The problems can come at different levels within the sector, but the insurance company will just pass the buck for others to deal with it, not take responsibility and keep sending people back to the loss adjuster or whoever, who can often be part of the problem.

  In law, insurance brokers mostly act as agents for the policyholder, not the insurer. If a complainant is unhappy with their insurance broker, they can usually refer a complaint to us about that because insurance intermediation activities have been regulated since 14 January 2005. Insurers are vicariously liable for their appointed representatives and agents (who do not have to be authorised persons). We have no power to consider complaints directly about unregulated agents; but we do hold regulated firms responsible for the acts or omissions of their representatives and agents, such as loss adjusters or approved repairers. If an agent or representative has acted unfairly or unreasonably, we will hold the regulated firm liable for this — and award compensation commensurate with any resulting harm.

- **Q215: Abby Thomas: We see crypto mentioned most commonly in the area of investment scams. Of all our fraud cases, investment scams are about 6%.**

  6% is the proportion of authorised fraud cases involving investment scams as reported by UK Finance. In the quarterly data published on our website in September 2022, we reported the following: "*We continue to see a high number of complaints from victims of fraud and scams. In Q1 2022/23, scams related to fake investment opportunities made up around a third of the "authorised" scam complaints we received and is the fastest growing issue as a proportion of the complaints we see about these scams. An authorised scam is where a person or business is tricked into sending money to a fraudster posing as a genuine account holder. Typically, investment scams are where consumers are tricked into making a payment to an investment opportunity that does not exist. Other common scams include where a fraudster has impersonated a genuine firm or product. Just over half of the investment scams we have seen involve cryptocurrencies, where consumers were promised an investment that did not materialise or were persuaded to open a cryptocurrency account and inadvertently sent money to a fraudster.*"

This means that in fact about 15% of our banking fraud cases involve payments for cryptoassets (which are currently unregulated in their own right, so beyond our Compulsory Jurisdiction).

- **Q218: Anthony Browne: Earlier you were asked about funeral plans, which is another area for which you have responsibility. You said there have been very low levels of complaints. Are the complaints you do have about the payments for funeral plans or what you get as a result of having paid for it? Is it about the funerals themselves?**

  Abby Thomas: I am afraid I will have to come back to you with a little more detail on those particular cases. It is only about 60 cases so it is quite hard to draw conclusions. I am happy to share what we are seeing so far.

  The number of complaints we have received about funeral plans since our jurisdiction expanded on 29 July 2022 is low relative to our overall volumes. We have had fewer than 200 customer enquiries. Fewer than 100 of these enquiries converted into actual complaints; and around 50 had been investigated at the time of the session on 14 March 2023. Ombudsman Decisions about funeral plans are now published on our website, and we continue to engage positively with the industry and the FSCS about these products. There are still too few complaints to draw many trends at present — but the issues we are seeing mainly involve mis-selling, maladministration, and cancellations of plans.

I trust the Committee will find the above information helpful in understanding the nature and scope of our work — and the challenges we face as a public authority with huge demand for our services but a clear commitment to work at pace and provide value for money.

Please do not hesitate to contact me or my team if there is anything else arising from either our work or answers at the session.

Yours sincerely,

Abby Thomas
Chief Executive and Chief Ombudsman

Annex — Cases Over 12 Months raising individual issues

We have continued to make progress on the timeliness of our cases this year. We have resolved nearly 210,000 cases for our customers and reduced our stock of open cases to under 71,000 – compared to 112,119 at the start of the financial year. As part of this, we have reduced the median time to resolve cases for our customers down to 3.4 months in quarter four, compared to 6.4 months in 2021/22.

Case stage	Banking and Payments	Claims Management	Consumer Credit	Insurance	Investments	Mortgages	Pensions and Annuities	Other	Total
Investigation	664	-	347	74	322	39	145	10	**1,601**
Referred for Ombudsman's Final Decision at request of one party to the complaint	204	1	357	21	160	7	200	-	**950**
With an Ombudsman for Final Decision	290	-	106	47	144	22	154	-	**763**
Ombudsman Decision processed and issued to parties — case about to close	141	-	50	54	81	23	89	-	**438**
Grand Total	***1,299***	***1***	***860***	***196***	***707***	***91***	***588***	***10***	***3,752***