

Rt Hon Mel Stride MP
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from **Caroline Wayman**
Chief ombudsman &
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write to **Financial Ombudsman Service**
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10 December 2020

Dear Mr Stride

Thank you for your letter of 20 November 2020. I was very grateful to have been given the opportunity to provide evidence to the Committee on the work of the Financial Ombudsman Service – and I'm happy to provide the additional information you have asked for below.

Our approach to casework

- *Do consumers have a dedicated case handler, and if not, how does management ensure that consumers are kept appropriately updated on progress?*
- *How have you approached complaints in relation to the Bounce Back Loan Scheme (BBLs) and the Coronavirus Business Interruption Loan Scheme (CBILs), and how does this differ from your normal approach?*

Our dispute-resolution process has two distinct stages. This involves an initial assessment by one of our case handlers who will carefully weigh up all the evidence and arguments before sharing their findings with both sides. We're able to resolve most cases informally at this stage, but if either side disagrees with this initial assessment, they can ask for an ombudsman to review everything afresh and make a determination – which we call a final decision. The case handler provides a dedicated point of contact for both sides until the case is resolved and they are responsible for providing updates on progress throughout. During our investigation, both sides are provided with direct contact details for the case handler – including a phone number and email address – should they need to make contact with us at any point.

The rules on our jurisdiction and complaint-handling procedures are set out in the FCA's Handbook in the section called [Dispute Resolution: Complaints \(DISP\)](#). These say that the ombudsman must determine the complaint by reference to what is, in their opinion, fair and reasonable in all the circumstances of the case. In doing so, our rules say we must take account of relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what we consider to have been good industry practice at the relevant time. The same rules apply to complaints involving the Bounce Back Loan Scheme (BBLs) and the Coronavirus Business Interruption Loan Scheme (CBILs). However, I would like to reassure you that we do recognise the different regulatory arrangements for BBLs and approaches to creditworthiness assessments in CBILs – and our rules, as I have described, require us to take this into account. Indeed, I [confirmed this to the FCA](#) when they [wrote to me in May 2020](#).

Following the extension of our remit in April 2019 to cover complaints from more SME customers, we do have in place a dedicated team to handle complaints from small businesses – including those that involve BBLs and CBILs. There is more information on [the service we provide to small businesses](#) on our dedicated website.

Complexity of our cases

- *Given the foreseeable shift away from PPI cases towards more complex cases, why did the FOS move towards non-specialist investigator resourcing in 2016-17, and how will this be reversed to deal with more complex cases?*
- *More granularity on the different types of cases and how these are dealt with across different teams (including caseloads, case resolution rates and team specialisms).*

Importantly, a case's complexity isn't always to do with the particular product or service involved – some products may be inherently complicated, but the substance of complaints may not. While we do resolve complaints involving complex products – like those about self-invested personal pensions (SIPPs) and the suitability of pension transfer advice – the general complexity of a complaint tends to be more about the circumstances of the customer or business involved, as well as external factors such as questions of policy, regulation or law. Additionally, financial pressures on both consumers and businesses responding to complaints – or where cases involve significant sums of money, like those about fraud and scams – mean that disputes are increasingly hard-fought, with little room for compromise.

We receive a very broad range of complaints and – through a combination of core investigation skills, training and access to knowledge management tools – a large proportion of our caseload can be handled by any of our investigators, once they have completed their six-month academy training. This flexibility also enables our case handlers to specialise in particular areas where greater in-depth knowledge is required, including: banking fraud; pensions; investments; legal expenses; medical insurance; Section 75; or subsidence. So, while we haven't moved away from our people having 'specialist' or 'technical' knowledge, our approach also provides for a more flexible workforce, able to deal with more types of complaints and the ability to respond quickly to changing consumer demands, without the need for constant redeployment. Specialist practice groups remain at the heart of our casework – supporting our investigation teams with case handling, providing online technical resources and forums for discussion, as well as gathering and sharing insight on trends and any new issues we're seeing.

Our case handlers are set objectives which flow from our overall service commitments and these focus on quality, productivity and timeliness. The average caseload across all our casework is around 30 and we expect resolutions for a mixed caseload to be 3 cases per week for a level 1 investigator, 3.25 cases per week for a level 2 investigator and 3.5 cases per week for a level 3 investigator. We agreed these targets following engagement with our case handlers and managers, though they will, of course, be adjusted locally to reflect individual circumstances, including where a case handler is handling more complex or specialist casework. To help track and manage performance, we have dedicated business information reports, which also support our appraisal and promotion processes.

Service complaints and the independent assessor

- *A copy of the most recent independent assessor's report and how you intend to take forward her recommendations.*
- *What action have you taken to ensure quick and effective implementation of the Independent Assessor's recommendations?*
- *How much the FOS has paid out in compensation for poor service.*
- *S.228(5) of the Financial Services & Markets Act 2000 ('the Act') sets out that "if a complainant accepts an ombudsman determination, it is binding on the respondent and complainant and final". Can you set out how the Act prohibits the FOS from amending the Independent Assessor's terms of reference to ensure she can request that an ombudsman reviews a case outcome where the complainant has not accepted an ombudsman determination and the decision-making process was flawed?*

We aim to maintain a high level of quality in how we handle all complaints. Our case handlers work closely with our ombudsmen, who support them with specialist knowledge and experience of finding fair answers to complaints. And, as I have mentioned, our ombudsmen work together in professional practice groups to make sure they're consistent in their thinking and approach. Our managers and ombudsmen check the day-to-day quality of our casework and they review our contact with customers and businesses – which includes making sure we *listened and cared; got to grips with the issues and used common sense; and were clear and honest*. We use these checks to give feedback to our casework teams, and to measure how well we're performing as a service. We also carry out quarterly reviews of our casework, identifying any recurrent issues and trends so that we can learn and improve.

As a service which resolved nearly 300,000 cases in the last financial year, regrettably there will be times when we fall short of the high standards we aim for. While service complaints are a small proportion of our overall caseload (1.6%) – with the Independent Assessor reviewing 602 of those service complaints (0.2% of our overall caseload) – we recognise that they nevertheless provide a unique and important opportunity to learn from what customers tell us about the level of service we've provided. And where we have fallen short, we take the same approach to putting things right as we expect from financial businesses. In 2019/20, we made payments of compensation to put right any service failings on our part in 980 cases, totalling £151,995 – that included 954 payments in the moderate band (under £500) and 26 payments in our substantial band (£500 to £2,000). The Independent Assessor directed us to make 120 of those payments, totalling £14,525.

The Independent Assessor is appointed by our Board and her role was established in 2001 to consider complaints about the standard of service provided by our service. It is not a statutory role and any consideration of the merits of a decision is excluded from the IA's terms of reference. We have recently published the [Independent Assessor's Annual Report 2019/20](#), which is available on our website. We have accepted all of her recommendations and welcomed the learning points identified. We set out the detail of the action we have taken and the progress we have made this year in our [Management Response](#) which is also published on our website. This covers the top three themes raised by the Independent Assessor – communication, timeliness, and fairness and impartiality – which I cover in more detail later.

While the Independent Assessor can, in exceptional circumstances, tell us to put an ongoing investigation on hold while she looks into the service complaint, you've asked how FSMA prevents her from directing us to reopen a case if we have already made a final decision. I think it is helpful to start by summarising the provisions in FSMA for the determination of complaints. Section 228(2) of FSMA provides that a complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case. When an ombudsman has determined a complaint, they must give a written statement of the determination to both parties, setting out the reasons for the

decision and the date by which the complainant must accept or reject it (sections 228(3) and (4)). If the complainant notifies the ombudsman that they accept the determination, it is binding on the respondent and the complainant and final (section 228(5)). If the complainant does not notify the ombudsman of their acceptance of the determination by the specified date, the complainant is treated as having rejected the determination (section 228(6)).

There is no identifiable power in FSMA for the ombudsman service to re-open a complaint if the determination has been rejected by the complainant. Once the ombudsman has performed their function of making a final determination on a complaint, their powers are extinguished and they do not have the power to re-examine the determination. This was confirmed in *Re Walker's Application for Judicial Review* [2013] NIQB 12:

"Once the [ombudsman] has made his decision on the merits, then he is functus officio. He does not have any power to change his decision and the only relief available to a disappointed complainant is to apply to the court to quash his decision by way of judicial review."

"Clearly the [ombudsman] was functus officio when he made his Final Decision. It was certainly not unreasonable or unlawful for him to have refused to reopen the complaint because the applicant had obtained another expert's report. Indeed, for the reasons previously given, if the [ombudsman] had reopened the Final Decision, then the Bank would have cause to complain that he had acted unlawfully."

I would also add that finality is an important part of the ombudsman process, not least to help both sides move on. But there is also the public interest in the finality of litigation, which the Court of Appeal has described as a powerful consideration¹, with the *absence* of finality potentially introducing unfairness to the other party to the complaint if they have to deal with the same complaint twice – with the attendant costs, time and ongoing uncertainty. The courts have recognised that, when weighing up evidence, different judges can legitimately differ – the same is true of ombudsmen.

Oversight by the Courts

- *How many consumers have launched judicial review cases against the FOS in the last two years, and how effective a measure is it to change how cases are handled?*

Our statutory scheme was designed so that final oversight was through the courts on judicial review on the application of either party. In the financial years 2018/19 and 2019/20, we received a total of 15 judicial review claims from consumers – and a further 13 from financial businesses. So far this financial year, we have received two claims from consumers and three from financial businesses. The courts can consider whether the ombudsman has made a decision which is rationale, legitimate, and consistent with fair process (these being the traditional grounds for legal challenge). This mechanism provides robust and welcome challenge – and enhances good ombudsman decision making.

Our ombudsmen understand the statutory nature of their role and that this comes with judicial oversight. We provide training for them on the principles of judicial review. This includes training on the importance of following fair process – for example, making sure the parties have had a fair opportunity to make representations. It also covers rationality – our ombudsmen must reason their decisions and support them with evidence. And, of course, we must get the law right – including, for example, how we interpret our jurisdiction rules.

¹ *Clark v In Focus Asset Management & Tax Solutions Ltd* [2014] EWCA Civ 118

We learn lessons from each stage of the judicial review process – from the initial pre-action letters, to the judges’ reflections at the permission stage and, if matters proceed further, to the substantive judicial review hearing and judgment. Judgments themselves are an immensely valuable tool in measuring how we are performing in carrying out our core statutory function. The lessons we learn from judicial review are fed back to ombudsman colleagues and often help inform our approach to issues in cases going forward, as well as providing clarity on whether we have jurisdiction to deal with particular types of complaint.

Waiting times

- *Please provide numbers on the current backlog of cases: a) received over 8 weeks ago but yet to be opened; b) opened more than 6 months ago but not yet resolved; c) opened more than 2 years ago but not yet resolved; and your strategy and timeframe to speedily resolve these cases.*
- *What the implemented service level agreements and the indicative timescales are for staff dealing with consumer cases; and how these are monitored to ensure staff comply with them.*

In 2019/20, we resolved nearly a quarter of complaints within 45 days – and nine in ten within 12 months. Bringing down the time that people have to wait for our answers across the different areas of our work is a key priority for us – and we continue to invest in our casework capacity and develop our technology, as well as to work with businesses and CMCs to address the issues that are at the root of challenges in moving things forward. But, of course, our ability to bring down waiting times isn’t only a factor of our own resourcing and efficiency, it depends heavily on the quality of financial businesses’ own customer service, complaints-handling and engagement with us; the activity of CMCs and the way they engage with us; regulatory action; and wider developments in our landscape. We manage expectations about [how long it takes](#) by providing upfront information on a dedicated page on our website. This also links to typical timescales for specific types of [complaints we can help with](#).

In answer to your specific questions about numbers, as at 26 November 2020, we have 37,689 cases which we took on over eight weeks ago but have yet to be allocated to a case handler. We have 56,348 open cases which are more than six months old. And we have 23,625 open cases which are more than two years old, which we will continue to focus on, in line with our existing plans and service commitments. That said, I should probably highlight that nearly 80% (or over 18,600) of cases over two years old are PPI cases that relate to an ongoing issue with a single claims management company (CMC). These cases have been impacted by an unsuccessful legal challenge by this CMC, and we expect to have resolved the majority of these cases by the end of this financial year. The number of our oldest cases also include highly complex and high-value SIPP due diligence cases (these focus on whether the SIPP provider should have checked whether the investment the consumer made was appropriate to be held within the SIPP), many of which have been delayed due to having been the subject of legal action.

At the start of this financial year, we launched a number of communication standards which we’re currently embedding across our investigations teams and are monitored using our normal quality assurances processes. These are standards investigators have to meet while they investigate a case, which include: making an introduction to both sides within two working days (and no longer than five working days) of being allocated the case; providing regular updates at intervals which are agreed with the parties, though no less than once a month; acknowledgement of any contact within two working days of receipt; and proactively making contact once every two months while the case is awaiting a decision, should this be necessary.

Supporting vulnerable customers

- *What proactive action is being taken to ensure that cases against firms that fall into your remit and complaints against the FOS brought by vulnerable customers are treated appropriately, and how is this monitored by senior management?*

We are committed to supporting vulnerable customers, recognising that vulnerability can be transient and not always visible – and we continue to give priority to those who need their cases considered urgently. In September 2019, we launched our additional support team. Led by a dedicated ombudsman, this team handles complaints from people in the most vulnerable circumstances, ensuring we respond effectively to people’s needs and situations, which may be complex and sensitive. A likely ongoing consequence of the Covid-19 pandemic may be an increased number of consumers in vulnerable circumstances and so our continued investment in this area is as important as ever.

In terms of our handling of complaints about financial businesses, we also have a dedicated ‘Supporting our Customers’ practice group which continues to understand and implement best practice in supporting customers in vulnerable and challenging situations, as well as handling specific kinds of complaints that may involve different types of vulnerability – like economic and domestic abuse, problem gambling or serious mental health conditions. A recent example of our supporting those in difficult circumstances was providing a specific email contact for NHS workers to get in touch with us, should they need to do so urgently. We’ve received over 500 contacts so far, which have been handled by a dedicated team who are able to work around the shift patterns of key workers.

As I have already mentioned, we have robust quality and feedback mechanisms in place, which feed into our overall strategic commitments. We report publicly on our progress against these commitments in our [Annual report and accounts](#).

Our diversity and inclusion

- *A breakdown of the makeup of your teams, including the number of women and ethnic minorities at every level.*

We recognise that having a diverse workforce helps us better understand the context of the different complaints that we see, and the wider issues they raise. And this is why we’re always looking for ways to make the most of the range of individual experience, knowledge and backgrounds that our employees have. Every year we publish information on various aspects of our diversity – gender, gender identity, age, ethnicity, sexual orientation, disability and religion – at each level in our organisation. Our most recent [Diversity, inclusion and wellbeing report](#) for 2019/20 is available on our website and I have provided the information you have asked for below. We will share our report for 2020/21 when we publish it early in the new year.

Gender	Our board and executive team	Our senior managers	Our managers	All our other employees	Our ombudsman panel	All of our employees
Male	31%	59%	48%	41%	50%	44%
Female	69%	41%	52%	59%	50%	56%

Ethnicity	Our board and executive team	Our senior managers	Our managers	All our other employees	Our ombudsman panel	All of our employees
Asian	8%	5%	11%	26%	7%	21%
Black	0%	6%	5%	14%	2%	12%
Mixed background	0%	3%	4%	5%	3%	4%
White	77%	80%	74%	46%	82%	55%
Other	0%	2%	1%	2%	1%	2%
Prefer not to say	0%	3%	4%	4%	4%	4%
Not stated	15%	2%	1%	3%	1%	3%

Our funding

- *Can you provide more detail as to why the FOS aims to change to a 50/50 levy and case fee funding model, and how you will mitigate the impact on the smallest firms from the steep rise in the levy this will entail?*
- *How has the FOS Board challenged the proposed budget and funding proposals, and what alternatives have been discussed?*
- *Will the FOS be retaining the additional ‘Group Account case fees’ for the largest firms, and if so, how can this be justified given the proposed higher levy?*
- *Cost per case is currently £960, what action are you taking to improve case handling times and reduce costs closer toward the £650 case fee?*

Since we were set up, the costs of our service have been met through a mixture of a levy on financial businesses collected by the FCA, and case fees for individual complaints referred to us (originally around a 50-50 split). For two years from April 2012, we also charged an upfront “supplementary” case fee for new PPI complaints, which helped us scale up to respond to demand. The reserves we built up have helped us manage the challenge of PPI over a number of years – and most recently so we can manage PPI to an orderly conclusion, deal with the costs of winding down our operations, and make the investments we need for the future. Since 2013/14, we’ve also had a “group-account fee” arrangement, which provides for the payment of group case fees by way of an annual fee, charged quarterly. This fee is based on our assumptions about the proportion of our work that will relate to each group and is in place of our charging for each case individually – it’s not, therefore, an additional charge. We propose to continue with the group-account fee arrangement – on the basis that it provides a more efficient and stable way for the largest financial business groups to pay case fees.

As we near the end of PPI, we’ve continued to talk to stakeholders about the challenges we expect to see in the future, and what that means for how we’re funded. Rebalancing the proportion of our income we get from our levy at the start of the year, compared with the income we get from case fees at the end of our handling of a complaint, provides for more certainty and stability in our funding. It ensures we can respond to the complexity and volatility in our casework – as well as reflecting the wider role and value of our service in preventing complaints and encouraging confidence in financial services. There is more detail on this in our [consultation on our future funding model](#) from July 2019, together with the [feedback statement](#) we provided November 2019. This also provides more information on the different funding models we have explored with stakeholders, including options that rely exclusively on funding from the levy; those which depend on the complexity of each case; as well as those involving alternative risk-based models.

Nevertheless, the conversation and engagement around our funding is ongoing – and, while governance arrangements enable our Board to provide close scrutiny of our plans and budget and funding arrangements, importantly, we consult publicly at the start of each financial year on the amount of money we think we’ll need to collect through the levy and case fees – subject to approval by the FCA Board. In this current budget cycle, our Board most recently scrutinised our plans for 2021/22 at its November meetings and we will be publishing our next consultation later this month, at which point I will share it with the Committee. The FCA also consults separately on the levies it collects from all the businesses it regulates – including levies for our service, the Financial Services Compensation Scheme, the Money and Pensions Service and the FCA itself. Broadly, allocating the levy relating to the relevant proportion of the costs of our service involves dividing the total levy among industry blocks, and then dividing the levy for each industry block among businesses in that block according to a tariff rate to ensure fees are proportionate and fair, particularly when it comes to smaller businesses. The levy ranges from around £45 a year for a small financial advice business to over £1 million for

a high-street bank. Financial businesses can use the [FCA's fee calculator](#) to see how much the levy will be.

Like many ombudsman schemes, we publish a “unit cost” measure as part of considering our performance. It's calculated by dividing our total running costs – not including financing costs and bad debts (and, for 2020/21, it excludes the one-off costs associated with bringing PPI to a conclusion) – by the total number of complaints we resolve during the year. In 2019/20, our unit cost was £920, compared with £713 in 2018/19. As we highlight in our [Annual report and accounts 2019/20](#), our unit cost is not an accurate measure of our efficiency, and doesn't in itself provide the insight we need to fairly assess our performance. This is because, in focusing narrowly on casework, it doesn't account for the wider value ombudsman schemes add to the sectors they cover – importantly, the work we do to prevent complaints and unfairness arising. Our unit cost is also affected by factors outside our control, including the parties' cooperation with us, legal and regulatory developments, and complexities in groups of complaints or individual cases. As part of the work we are doing around our future strategy, we're exploring additional indicators that would better capture our performance and value.

Following an unprecedented initial response to the FCA's PPI complaint deadline, the volume of cases that has ultimately reached us is far lower than we'd anticipated – and we expect to have resolved the majority of our remaining PPI cases by halfway through 2021/22. As PPI reduces as a proportion of our workload, there will be fewer opportunities to realise the same types of economies of scale – which have been possible due to the well-established nature of our approach, and the fact PPI complaints are typically less time and cost intensive than many other areas of our work. Indeed, having already significantly reduced our flexible contractor resource in line with our plans, we recently informed colleagues that it seems likely that we'll need to reduce our number of permanent case handlers in this area through redundancies during the next financial year.

We expect that this, together with the growing complexity we're already seeing in our casework, will continue to put upward pressure on our cost per case. Nevertheless, we remain committed to driving further efficiencies where possible, at the same time as mitigating the impact on the smallest businesses we cover. Currently, businesses outside the group-account fee arrangement aren't charged a fee for the first 25 cases each year. I would also mention that although in 2020/21 we'd initially proposed to reduce this threshold to ten cases, we decided to maintain the current allowance, as well as freeze the minimum levy, in view of the challenges presented by Covid-19 – even though this will reduce our reserves and will need to be covered in future. It will mean that around nine in ten financial businesses whose customers use our service won't pay any case fees this year, and this will be of particular benefit to smaller financial businesses. We plan to consult on retaining the allowance of 25 free cases and leave the minimum levy unchanged in 2021/22.

Preventing complaints and unfairness arising

- *What actions are you taking to get the level of complaints down, your assessment of how successful you have been, and what scope there is for progress going forward.*

Ultimately, to reduce the cost of our service, financial businesses need to reduce the number of complaints being referred to us. But, as I have already mentioned, that isn't just about handling complaints well – the key is for them to prevent problems and unfairness arising in the first place. And we are committed to playing our part in that too – with this forming one of [our three strategic priorities](#) that we published earlier in the year. However, we already do a significant amount of work in this area.

Our technical desk provides free, informal support for people working to resolve complaints, helping to prevent cases needing to be referred to us at all. During 2019/20, we answered more than 17,000 queries from nearly 2,000 separate organisations – from high street banks and professional claims managers through to sole traders and volunteer consumer advisers. Our ombudsmen also spoke at a number of events around the country, helping to share our approach to complaints and prevent unfairness arising. For example, last year we ran workshops for motor finance and high-cost credit providers where our ombudsmen talked in depth about our approach to the complaints we typically see in their sectors – including affordability and irresponsible lending.

We regularly publish [data and insight](#) on the complaints we handle – including [quarterly data](#) on the financial services people have complained about and [half-yearly data](#) on the number and outcomes of complaints by individual financial businesses. We also engage with those stakeholders who together represent and shape the sectors we cover, which includes sharing insight with the FCA. One of the many issues we have worked with them on over the last year has been in relation to preventing financial services businesses from “phoenixing” (where an insolvent company’s business, but not its debts, is transferred to a new similar company). We also maintain regular operational contact with financial businesses and claims management companies to help them learn from our work, as well as organisations representing consumer interests.

Another way we prevent unfairness arising is through our commitment to working openly and transparently. For example, in the last year we have published an annual review of complaints, two sets of data about individual businesses and four sets of quarterly product-based data, which we highlight in our regular newsletter, Ombudsman News. In particular, we have recently shared insight into issues such as misrepresentation in insurance and fraud and scams. We also regularly engage with the media and other stakeholders to give our insight the widest possible reach and impact. And we continue to publish our ombudsmen’s final decisions on our online database, helping other people learn from the problems of the past to prevent the same things happening in the future.

The coming year is likely to highlight the importance of our work in this area. History tells us that an economic downturn will likely result in more complaints coming to us. And, as various pandemic support mechanisms come to an end for both consumers and small businesses, the way in which financial businesses treat their customers – and what action the FCA takes – is likely to have a significant influence on how many complaints we receive. It is, therefore, critical that we continue to work together to ensure that we do not receive unnecessary complaints.

I do hope this additional information – together with the documents I have provided – are helpful. Please do let me know if you require anything else, or if you would like to discuss anything in more detail. I would be delighted for the Committee to come and see our work first hand as soon as circumstances allow, if that would be of interest.

Yours sincerely



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