

**Report for the Board of Ombudsman Services  
Annual Report of the Independent Assessor for 2020**

This report updates the OS Board on the work of the Independent Assessor in the calendar year 2020<sup>1</sup>.

**1.0 Independent Assessor Caseload**

Complaints to the IA in 2020 dropped back closer to 2017/18 levels, from a spike last year. The second half of the year was busier than the first, though there were no discernible patterns in my referrals that could be correlated with the course of the pandemic.

<b>Month</b>	<b>Reports 2020</b>	<b>Reports 2019</b>	<b>Reports 2018</b>	<b>Reports 2017</b>
January	6	9	7	8
February	6	3	5	7
March	7	10	3	12
April	7	10	8	10
May	6	16	8	12
June	9	9	9	11
6-month RT	40	57	40	60
July	6	13	7	3
August	10	13	8	8
September	6	4	5	5
October	12	17	3	8
November	11	14	11	7
December	13	11	9	9
6-month RT	58	72	43	40
<b>Annual cases</b>	<b>98</b>	<b>129</b>	<b>83</b>	<b>100</b>

Of these 98 reports, 93 were first reports (usually regarding one OS case but sometimes covering multiples. One report this year covered ten OS cases and several others four or five cases). Five reports were written in response to ‘representations’ about a first report. Customers can challenge only ‘a material error of fact’ that would lead to a different finding, but not a decision or opinion from the IA. In practice that means all customer concerns are presented as material

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<sup>1</sup> Information about the IA role, scope of work and approach is in Appendix A ‘How the Independent Assessor Works’.

error of fact and the representations themselves are often complex (and at times, somewhat metaphysical). My responses often have to be detailed and researching finely argued points in cases some time after the first report was written can be time consuming.

Throughout the rest of this update I refer to my observations from the 93 'first' reports that I produced.

## 2.0 Case Outcomes

I send customers an acceptance letter when I pick up a complaint, and explain that my role is to assess whether OS have followed their own processes as they set them out or not, or if there is no specific process in place whether the action taken has been reasonable. This is the third year in which IA findings have been classified as follows:

- Upheld – an element of complaint that has merit and has not been acknowledged until IA review;
- Not upheld – an element of complaint that the IA considers has no merit;
- Justified – an element of complaint that has merit but has already been acknowledged during the preceding complaints process.

I reach a finding on each specific element of the complaint, if that is how the complaint is structured, or give a more 'narrative' explanation of my findings if an overall review has been requested.

Of the reports I produced this year

- **51 (55%) had at least one element upheld** or one new valid issue (this is a drop from last year, when 68% of reports had at least one upheld finding). Many of these are cases in which there have been new problems since Customer Relations' review, either as a customer has waited to accept their offer and further problems arose or sometimes that an action Customer Relations requested hasn't been fulfilled. These also include though, cases where a service failure hasn't been recognised, and very rarely where the overall recognition of what has gone wrong has fallen short of what I think is needed.
- **10 (11%) were not upheld** – so neither Customer Relations nor I found any merit in what the customer alleged (similar to last year when 10% of cases had no issues of merit). These cases often arise from dissatisfaction with the OS decision and are constructed to focus on a perceived process error that would undermine a provider case decision the customer isn't happy with.
- **32 (34%) were justified** (last year 22%) – so I saw nothing more in my own review than Customer Relations had already acknowledged, and I believed they had done so appropriately.

Overall, these data support my view that Customer Relations' responses are generally of a really excellent standard, with almost half of the complaints I see

having nothing further for me to add; there is generally little that they miss in their final letters, and the goodwill recommendations made are appropriate. Referral to the IA is then from:

- Some customers who are simply looking for a higher (or any) award in cases that have been very fully reviewed and who will use every complaint avenue that is open to them;
- Others who have valid new complaints that arise after Customer Relations sent their final reply to them – often paradoxically from service failings in the very remedies that Customer Relations offered; and
- Other who feel that there are service issues that simply haven't been identified and which have impacted on their case or their experience of using OS.

### **3.0 What are Customers complaining about?**

There haven't been any 'stand out' service problems this year, rather a number of themes with reports frequently having one or more of them. I have described these themes, again with examples, to illustrate the things I see going wrong for customers. I realise OS have operational changes taking place as I write this report, but I have included all my observations here, aware that the solutions to some are already being implemented.

#### **3.1 Communication**

Though I do continue to see simple communication failures (slow or no reply to an email, letter or message, and failures to call back) there were seemingly fewer than in previous years and usually raised as 'another thing' to a larger concern.

There have been apparently more cases this year where service problems have arisen through not meeting a customer's communication preferences. At the most straight forward level a customer might ask for all contact by post; instead messages are sent on CMS and never seen. This error can then continue in relation to SARs, when a customer who engages with OS only by post is sent an electronic SAR.

Things can become more complex when means of communication are specified as reasonable adjustment requirements. A surprising number of the customers whose complaints I review ask for contact only by phone, and I often see cases where messages or letters have then been sent – on occasion to acknowledge a request for contact by phone. Whilst sometimes this is clearly oversight, in one case I saw this year the customer was consistently rude and aggressive, and every call with OS (and the IA) deteriorated and led to a further complaint. After three calls have deteriorated it is genuinely challenging for an IO to deliver an OS decision, if

writing in any means is unacceptable for the customer. (As an aside, such cases also become very time consuming as they rely on listening back to exactly what was said in often numerous calls; they are a challenge for everyone involved).

In February I reviewed a number of cases for a customer who had asked for email contact rather than CMS as a reasonable adjustment for his dyslexia - this was before email was readily available and the request caused significant service issues. In fact, it became apparent that the complainant simply wanted to manage his case from his workplace, and he could do that via his work email address but could not be seen with the CMS webpage on his screen.

I will mention again my concern about cases that progress by post. Whilst I have seen recent efforts to apply extensions more routinely for postal cases, this is still bumpy, and I do keep seeing cases in which postal customers are not getting a comparable service to those using the online system. Aside from the issues of turnaround times for postal replies and delay that I have mentioned in previous years, there are also problems with access to evidence if that is uploaded to the case and isn't accessible to the customer, as the CMS process intended it to be. I have addressed this more fully in Section 3.4 following.

Another issue for postal customers in several cases this year was a failure to alert them to a provider's facilitated resolution proposal, entered on CMS but not posted to the customer, so they were entirely unaware of it - perhaps because that offer is made before an IO is assigned and there is no 'case manager' at that stage. This becomes a more important issue if the facilitated resolution offers a higher goodwill payment than OS' final decision. At the risk of repetition, many of the complainants who choose to use the post are elderly and some are vulnerable. I am not yet reassured that a group of customers who most need OS' support are getting an equal service.

Finally, each year I see postal cases which simply become lost in their own correspondence. Often these are for older or vulnerable customers who make lengthy and detailed complaints, often handwritten, which can be difficult to read, presenting critical and peripheral information with similar emphasis. Post goes astray, and correspondence drags on, with the customer frequently referring each time to previous letters. Invariably there is some merit in these complaints, often as points made early in the case have been lost in the sheer volume of the exchanges following. These cases clearly cause huge frustration and anxiety for the customer – one such case I saw this year started in April 2018 with the customer asking that she phrase her complaint form in her own words, as she had had a previous case with OS where the complaint summary had been 'unsatisfactory' and due to her 'physical, mental and sensory impairments' she didn't have the strength to repeat

that. After a voluminous correspondence it was October 2019 when the Ombudsman said OS should accept her complaint as she presented it, and the signed complaint form was finally received in December 2019 more than 18 months after she had brought her issue to OS. An explanation then had to be made to the provider as to the cause of the delay in her complaint progressing.

### **3.2 Disputes, Appeals and Decisions**

These three areas are ostensibly in the remit of the Ombudsman and not the IA, but I have received many complaints, some with merit, about all three.

OS allow a provider to dispute acceptance of a case three times. Customers dislike this, even when OS decline the disputes in the customers favour. I have seen a number of cases this year where it is apparent that insufficient scrutiny was given to the complaint or the evidence the customer had submitted and a provider dispute (often that the matter had been considered before) had been too readily accepted.

In one case two disputes from a telecoms provider were rejected (they said the case was a duplicate) – the third was sent to the Ombudsman team for a view but the case automatically closed before that was received. The Ombudsman then said the case should be accepted. A new case was set up for the same customer complaint, which the provider then disputed twice more, believing in error that the first case had been closed due to their successful dispute. By the time the case eventually progressed, the customer was very unhappy that the provider had been able to make five disputes of the same issue.

In October I produced a report for a customer who first brought his complaint to OS in April 2019; after disputes and Ombudsman advice a new case was opened in March 2020, only for a further dispute to be accepted in June 2020 and the customer not told. The matter was then overlooked until the customer emailed in September 2020 – between times he had had a stroke and been hospitalised. The Ombudsman finally decided in October 2020 that the case was not in OS remit.

Turning to appeal, the OS practice of the same IO reviewing an appeal as reached the first decision was again the subject of complaint, sometimes vigorously argued on the grounds, amongst other things, of natural justice. As this has been OS 'standard procedure' it has never been a service or administrative error. I am aware of the pilot and subsequent change in practice on this and I am sure it will avoid many complaints.

Finally in this section, there are frequently complaints underpinned by a customer's belief that the OS decision is incorrect. It isn't in my remit to address that and Customer Relations have usually referred that aspect on for SIO review so

there can be a proper response to decision concerns before a complaint gets to me. Cases in which the OS decision changes after a customer has accepted it due to a post-decision provider challenge are infrequent, but always difficult. Such a decision change is inevitably to a customer's detriment and they experience financial disappointment – as they have been led to believe they would get something that in the final analysis isn't available to them. They invariably find that hard to understand and often firmly believe they are experiencing detriment and should be paid in goodwill what the OS decision they first accepted offered them.

### **3.3 Delay**

There haven't been any systemic delays in the provider cases I reviewed this year, and as Customer Relations cleared their backlog in March I also stopped seeing complaints about delay from them. However, there were individual errors that caused delay in cases starting or progressing. The most significant was the case for which I made my highest award. A customer approached OS in 2018 and provided information to progress his case. He told OS he had learning disabilities and asked for telephone contact as he had difficulties reading and writing. He was emailed; twice more he asked OS to call him, and twice more he was emailed. He next contacted OS again in 2020 with the same issues with BT – a new case was set up on CMS and the old information he supplied in 2018 was transferred over and the case progressed with no further information. The IO recommended as part of the decision that he cancel his contract with BT and he argued to me that if he had been told this in 2018, he would have done so then, and as such OS' delay had cost him a substantial sum. Whilst I was critical of the communication failures and the delay caused (and concluded on balance of probability that as he gave no new information in 2020, the case could equally have progressed in 2018), I didn't accept that the entire responsibility for that should fall to OS. He hadn't been in touch for two years while the issues had continued – albeit that he said he had been dealing with family issues in that time - I would have expected to see him engage with OS to progress the case between times.

In other cases I have seen delay as a request from an existing customer for another new provider case has been overlooked – in one report I wrote in November a request for a new case made in August hadn't been actioned; in another complex report for energy supply a request for a new case in May wasn't actioned until my review in August.

### **3.4 Evidence**

Evidence has been a vexed issue in many of my reports this year with problems relating to some apparent process inconsistency in its handling and availability.

My concerns about this are underpinned by the decision OS made to try to make the evidence first submitted by both parties available for all to see, by creating an evidence section of the CMS case. I have seen the following:

- providers submitting their initial evidence by message, rather than uploading it to evidence themselves - so the IO saw it, but the customer never did;
- additional evidence being sent after the period for that by either party by message and not added to the evidence section, so the basis for the first decision wasn't apparent to both parties;
- a case in which neither the customer nor the provider submitted any evidence, so the IO had to ask the provider for critical pieces, which they sent by message – the evidence section remained entirely empty and the customer never saw any of that before making their appeal;
- a case in which the appeal decision wasn't altered because the customer was told his evidence wasn't new – as he hadn't had sight of the evidence the provider had supplied he was guessing as to what might be new or not;
- postal customer having no access to the evidence the provider submitted as it hadn't been posted to them; and
- evidence not being sent to a customer when they have asked for it as an evidence exchange.

### 3.5 Remedy Issues

I saw a number of remedy problems again in 2020 – these most often arise when a customer says a remedy isn't in place and the matter gets lost between the investigation officer and the remedy team. Things are often resolved with Customer Relations' intervention, as remedy issues readily spark service complaints. By this stage in the process customers are on a short fuse, especially if they were reticent to accept the remedy in the first place and often see issues at this stage as a chance to secure a larger award in some way, with from the provider or OS.

I commented last year that the failed remedy process in energy<sup>2</sup> wasn't being followed consistently; this year I saw a case in which it was attempted in communications, which has no such provision. In this case a customer accepted an OS decision in September 2019 – the remedies weren't in place by December and a new case was set up to chase them, which was then promptly closed again when the error in that was spotted, though its brief existence served to confuse the provider for some months. Customer Relations concluded their review of the service complaint in May and referred the case to an SIO to review and to liaise

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<sup>2</sup> The OS Energy failed remedy process involves at 57 days classifying a remedy as failed -an admin fee should be charged to the company and the customer offered a new case to recognise this.

with the Ombudsman Team. The OS account managers became involved in June and I reported on the case in October as the customer was unwilling to wait any longer – it was eventually resolved by the SIO in December 2020.

In another case for a vulnerable customer in Energy, the OS decision was accepted in April 2020 – in May she told OS the remedies weren't in place, but no action was taken. Customer Relations reviewed a service complaint in June and sent the case to the Remedy Team, and again in July when an escalated service complaint was dealt with. The customer came to the IA in August and I prompted Customer Relations as I accepted it that remedy action was still needed. In early September it was decided a post decision review was needed but as I worked on the case at the end of the month there had been no progress - it was eventually resolved in October.

### 3.6 Problems with CMS

I have again seen customers struggle to use the system and clearly become annoyed and frustrated - uploading evidence continued to cause problems as did finding replies to messages on threads. Again, I saw problems with home systems being incompatible – seemingly with formatting on smaller tablet devices and with more elderly customers using outdated operating systems. It is hard to know whether some customer's problems are technical or user issues; either way CMS has been far from an enabler in many of the cases I have seen. The introduction of the email address to access CMS has stopped the complaints I saw last year about the lack of that - but then I expect to see delay in getting emails added to the CMS case appearing in my reports soon.

Again, I have seen several cases where the decision on the system page didn't match the pdf version attached to it. In one prolonged and complex telecoms case the final decision pdf invited appeal in error (I presume from poor editing of an appeal pdf template) which the customer then tried to exercise. In another the time frame for a remedy to be completed was in the pdf but not on the system screen version. The customer didn't open the pdf and made his own assumptions as to how quickly the remedy would be in place, then chased that prematurely.

Finally, there have been cases in which the time frames for a stage of the process haven't aligned with the 'clock' on the system and cases have ticked over from one stage to the next on apparently the wrong dates. There have also been several cases in which a pause on the case has been agreed but that hasn't been carried through to stop the case clock. That then ticked over and sent an automated message to the customer causing confusion and annoyance.



### **3.7 Meeting requests for reasonable adjustment**

I have again seen very few cases in which straightforward request for reasonable adjustment hasn't been met, though I have commented on some of the communication the issues related to this in Section 3.1. More specifically, I have seen concern that letters sent for special formatting to meet reasonable adjustment needs are delayed and so the date on the letter when it was produced doesn't then match the date it was posted, leading customers to accuse OS of 'lying' about when the letter was sent.

Finally, I have again seen complaints from customers about inconsistency in the way OS reflects failure to meet reasonable adjustment in its provider decisions, in comparison to the way Customer Relations recognises this in OS' own service. In my view Customer Relations' goodwill payments are appropriate - it is hard to explain to a customer why an OS decision places a lower value on similar failures by their energy or telecoms provider.

### **3.8 Other issues**

I have seen other issues in just a few cases, falling short of constituting a 'theme', including a few cases with problems in cases submitted through Resolver to OS, problems with record keeping (especially when cases have involvement from account managers) and acceptance of an OS decision from postal customers being overlooked. Each is of course a significant concern for that customer, even if due to an isolated error.

### **4.0 Recommendations in IA reports**

Each IA report with upheld or justified elements ends with recommendations, intended as far as possible to restore complainants to the position they would have been in, had there been no service shortfall. If service complaints have been found to be justified (so OS have already offered appropriate remedy before IA review), the recommendation is usually that Customer Relations' previous offer should remain available. Recommendations may include:

- Apology;
- Goodwill payment;
- Costs/financial loss (rarely – I awarded £30 this year on one case to 'refund' SAR charges that had been made incorrectly);
- Systemic or case specific actions
- Recommendation for IA review with OS operational staff so lessons can be learned.

The complainant is directed to let OS know if they accept or reject the recommendations (they generally, but not always, accept) as it is OS who action the recommendations and not the IA.

#### 4.1 Goodwill payments

The total additional sum awarded by the IA in 2020 was £3015 (down from £4480 last year 2019 and a small increase from £2845 in 2018). The distribution of goodwill payments is in the table below – these are the additional amounts recommended above any award that has been made by OS themselves in the case before IA review.

<i>Additional IA goodwill payments</i>	2020		2019		2018	
	No. of reports	% of reports	No. of reports	% of reports	No. of reports	No. of reports
None (previous goodwill sufficient, apology only or none merited)	42	45%	43	33%	32	39%
£50 or less	31	33%	59	46%	34	41%
£51 to £100	15	16%	24	19%	13	16%
More than £100	5	5%	3	2%	3	4%

Again, the higher proportion of reports with no award is mainly due to Customer Relations thorough review before I see a complaint. It is important to note that I have seen a number of cases which have been dealt with extremely poorly by the business, but Customer Relations have reviewed them very thoroughly and made appropriate and significant goodwill offers, which leaves me only to say there is nothing further I can add and that the offer made to them from Customer Relations remains.

There were five awards above £100 this year, the highest for £250 as detailed in Section 3.3.

#### 5.0 Final Observations

In closing, to state the obvious, 2020 was a challenging year. Whilst the Board will be considering a wide array of metrics, I wouldn't have known from my observation of the business through the cases that I see, that OS had been operating through a pandemic and switched entirely to home working towards the very start of it.

However, I do comment each year on the changing 'character' of the complaints that I review. This year I have been struck by a marked increase in customers whose behaviour has been aggressive, offensive and rude, and others who have apparently wilfully created problems to then complain about. These customers are difficult for OS operations to handle and then concentrate in the workload of the Customer Relations team. I have been concerned after listening to a number of calls about the burden this places on staff, especially given they have been home working this year.

As ever I thank all at OS who help me - Customer Relations mainly, but also staff in enquiries, legal and IT who often answer questions to help me be sure I am clear on OS' processes and procedures. My feedback sessions with the organisation have been limited this year, but I look forward to picking them up again more regularly in 2021.

In closing, I again thank OS' Customers for bringing their concerns to me, and for their feedback.

**Joanna Wallace**  
**February 2021**

## APPENDIX A

### How the Independent Assessor Works

The Independent Assessor (IA) can review complaints about OS service that Customer Relations have had 'reasonable opportunity' to consider first – these can come from a customer, an authorised third party or from a provider company. This does mean that (almost) every case the IA sees has been scrutinised by the organisation, with the exception of any issues arising after the final OS complaint reply has been sent, or cases Customer Relations have declined as they believe there are no service issues in them.

The IA has no jurisdiction over the decisions of the Investigation Team in the underlying provider case from which the service complaint has been generated, as the decision of the Ombudsman, under whose delegation the Investigation Team operates, is final. This includes their decisions on the weighting of evidence and the assessment of what is relevant in a case, as well as the final remedies and awards. Whilst this seems a clear distinction, it can be hard to explain to complainants, and service complaints can be presented as a 'proxy' for concerns about the provider case findings (or more often the weighting of evidence that leads to those decisions). This year more than one customer complained that a decision by the Ombudsman in regard to the OS Terms of Reference, that I consider outside my remit, was an issue of maladministration on the part of the Ombudsman in the exercise of their role.

The IA assesses whether there has been maladministration in a case – whether OS have applied their stated procedures or customary handling. If there is no stated process or established practice relating to an element of complaint the IA uses 'reasonableness' as a test, in the circumstances of the case. On occasion the IA may make no finding if, when an element of complaint is investigated in detail it becomes apparent that it is not a matter for the IA to consider (usually because the root cause of that element lies in the Ombudsman's purview). Complainants often consider that an aspect of the service they have received could be handled in a 'better' way, and they often make suggestions, or want the IA to tell the company how to organise itself differently, but it is always emphasised that OS has the right to decide how to organise its own operations and is accountable to its own Board for that.

The IA writes a report for each complaint (and then may audio record that or discuss the findings with the complainant if they have problems reading) which outlines the case history, focusing on the facts of the case which speak to the elements of complaint. The findings for each element are then laid out, with an explanation for each and the recommendations for remedy. The final reports are

sent simultaneously to the complainant and to OS. All IA reports have been sent to the complainant this year within the 20-working day service standard.

I can spend significant time handling enquiries that do not progress to full review. The most common reasons are that:

- The complaint is not within IA terms of reference (most usually as it relates to the Ombudsman's or Investigation Team's finding in some way);
- The complainant has not yet completed the OS internal customer relations complaint process and the IA terms of reference require that they have;
- The complainant has accepted the remedy from OS for a complaint and has misunderstood that they can't therefore also bring it to the IA;
- The case is out of time (I request cases come to the IA within 3 months of the organisations final reply, although I do make exception to this if there is a persuasive reason for delay.)

All of this needs to be explained to complainants and they can find the distinction between service complaints and matters under the purview of the Ombudsman's investigation hard to grasp, especially if they are angry or frustrated with an OS case decision and see the IA as the only possible way to get any of the underpinning issues that they are unhappy with looked at.

Experience has shown this it is better to define what will be considered at the start of the case, rather than produce a report which the complainant then claims has not addressed all the issues of concern, and allows a cleaner 'disengagement' with a complainant at the end of a case. It also makes it very clear before any work starts that issues in the provider case (findings, weighting of evidence etc.) will not be addressed.

The IA has online access to the Ombudsman Services complaint management systems and so can see all the records on a case. Only very rarely do I contact either a complainant or OS regarding a case in investigation – usually to ask for help in finding information that the complainant or the OS record suggests is on the system but isn't apparent. The IA considers a case based on what is on the record – so if an action or decision is not documented and there is no evidence, from my perspective it did not happen. Poor record keeping has featured in reports, although this is less of an issue more recently.

The IA reports lay out as much case history or narrative on the case as is necessary to speak to the adjudications made, although the actual review of the case is often much wider. The reports state that the full details of the case are not recorded as some complainants in the past have expected me to document every action in the case and wanted to use it as a substitute for a Subject Access Request.

Once finalised, reports go simultaneously directly to the complainant and to OS Customer Relations. If recommendations are made, complainants must contact Customer Relations to accept them. The IA does not enter into correspondence with complainants after a report is sent unless there is a material error of fact, so the report ends the involvement with a case. In practice it can take quite a few exchanges to 'disengage' from a persistent complainant.