

Independent Assessor Annual Report for Ombudsman Services, 2021

This report provides an overview of the work of the Independent Assessor in the calendar year 2021.

1.0 Independent Assessor Caseload

The number of complaints escalated to the IA in 2021 increased markedly on last year, to the highest level I have seen since I started this role. Case volumes picked up in April (that seemed to coincide with lockdown measures easing in March) and stayed higher than in previous years from that point onwards, and remain so in 2022 so far.

Month	Reports 2021	Reports 2020	Reports 2019	Reports 2018
January	8	6	9	7
February	7	6	3	5
March	6	7	10	3
April	10	7	10	8
May	20	6	16	8
June	15	9	9	9
6-month RT	66	40	57	40
July	12	6	13	7
August	16	10	13	8
September	9	6	4	5
October	16	12	17	3
November	16	11	14	11
December	20	13	11	9
6-month RT	89	58	72	43
Total reports	155	98	129	83
Of which first cases	138	93		

Of the total 155 reports I wrote, 138 were first reports (usually regarding one or two OS cases, but sometimes multiples). Seventeen detailed replies were written in response to 'representations' about a first report, with a notable spike in those around the middle of the year, from the uptick of cases that came as lockdown eased. Customers can challenge only 'a material error of fact that would lead to a different finding' in my reports, but not a decision or opinion. In practice, and as a courtesy, I address all customer concerns most of which are couched as material errors of fact. As IA review is the final step in the process and a claim of 'material

error' with my report the very last part of that, the representations customers bring are often complex. In several instances there were more representations (35 in one case) than original elements of complaint. In only one of the 17 cases case did the representations have merit (in that one the customer's first decision, appeal and then post decision review were all carried out by the same IO, which wasn't the focus of his first complaint, but which I agreed in the context of the case was unreasonable).

Throughout the rest of this report, I refer only to my findings from the 138 'first' reports that I produced in 2021.

2.0 Case Outcomes

I send customers an acceptance letter when I pick up a complaint and explain my remit to make clear what I can and can't consider for them. I 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 – a complaint that has merit and has not been acknowledged until IA review;
- Not upheld – a complaint that the IA considers has no merit;
- Justified – a complaint that has merit but has already been acknowledged by Customer Relations before the case gets to me.

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

- **72 (52%) had at least one element upheld** (55% last year) or at least one new valid issue (this continues the fall in the proportion of upheld findings I have seen over the last three years). 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 cases where a service failure hasn't been recognised until my review, and very rarely cases in which the overall recognition of what has gone wrong falls materially short of what I think is needed.
- **2 (~1.5%) were not upheld** (last year 11%) – so neither Customer Relations nor I found any merit in what the customer alleged.
- **63 (46%) were justified** (last year 34%) – so I saw nothing more in my own review than Customer Relations had already acknowledged, and I believed they had recognised any errors appropriately. These cases include many customers who

are simply looking for a higher (or any) award in cases that have been very fully reviewed and who will pursue every complaint avenue open to them, and others who feel there are additional service issues that simply haven't been identified. Very often these are at heart concerns about the OS decision or are from customers who have a misconception about how the OS process usually works, so believe their case was mishandled.

Overall, these data support my view that Customer Relations' responses are generally of an excellent standard, with almost half of the complaints I see having nothing further for me to add, with the previous goodwill recommendations made having been appropriate.

3.0 What are Customers complaining about?

At different points in 2021 I saw complaints clearly reflecting transient operational issues. These included:

- delays in uploading emails to the case system at the end of 2020 and in the first part of 2021;
- cases dropped by staff leaving as a result of organisational change with no apparent proper plan for them to be picked up;
- in the latter part of the year a marked up-tick in remedy implementation cases.

Otherwise, the general theme was that the complaints I upheld **tended to arise from cases which had in some way gone outside the usual process**, and then apparently for lack of structure or guidance been overlooked or mishandled. These included again cases needing reasonable adjustments and issues with post-decision case reviews, and other cases in which departure from standard process created confusion about important dates and deadlines.

I will give examples of the kinds of issues I have seen under broad headings, and a few case summaries to illustrate how these issues play out for customers.

3.1 Remedy Issues

The volume of cases with remedy implementation as a core issue was markedly higher this year than I have seen before. In the earlier part of the year these seemed to arise from the impact of Covid working arrangements in provider companies and then in the latter part of the year from the impact of energy businesses' moving into administration.

In the early part of the year, I was seeing cases with failed remedies getting lost between the investigation and the Remedy Team. Generally, the complaints I saw at that stage suggested OS were slow to grasp cases that needed escalation through

the Remedy Team and then to the Partners Team who liaise directly with the provider companies. In one case a particular provider was only working by phone due to Covid, but that was overlooked, and repeated messages were sent on CMS with no reply. Despite that this was realised and noted on the case, it happened again leading to unnecessary delays for the customer.

In the latter part of the year that escalation process from the Remedy to the Partners Team appeared to work more smoothly, and my role became one of explaining in my reports the responsibilities of each party to an ADR agreement and the limits of OS' powers in securing remedies. Customers frequently believe that OS can in some way 'force' a provider to action a remedy, or indeed in some cases I have seen, make payments due from the provider on their behalf.

In cases at the end of the year I started to also see the difficult consequence of OS process errors or administrative failure in cases for providers who have gone into administration. These are difficult and are being dealt with on a case-by-case basis at present with very close working between the IA and Customer Relations and through them the Partners Team, to try to find individual resolutions or provide best advice for customers caught in this position.

3.2 Meeting requests for reasonable adjustment

24% of the cases I reviewed this year were for customers who identified themselves as being vulnerable or needing reasonable adjustments and most of these complaints had failure to meet those reasonable adjustment requests as a significant part of the customer's issue. The proportion of those upheld at 52% reflects exactly the proportion of total upheld complaints in my case load this year.

I have two broad comments:

- OS has an anticipatory duty under the Equality Act 2010 to see where problems might arise and address them ahead of time. I am not confident this is properly appreciated, and it seems a different process may be needed to achieve that than simply noting a case and it passing through the system as happens now;
- As I mentioned in previous years, in my view Customer Relations' goodwill payments are appropriate for failures to meet reasonable adjustment – they are at the higher end of the awards made and rightly so, as the consequence of errors in these cases are amongst the worst I see. Three customers this year have asked me why an OS decision places a lower value on similar failures by their energy or telecoms provider.

3.3 Postal Customers

It is positive that I have seen continuing efforts to apply extensions for postal cases to allow more time for a customer's reply. Unfortunately, from my perspective, this doesn't tell the customer they have longer to reply (so doesn't address their anxiety about that); rather the process adds an extra week on the OS system to try to stop the case closing while a reply is in the post. Because of this in more than one case I have seen customers being given conflicting deadlines as staff haven't understood which date is for the customer and which for the internal process.

I continue to be concerned that exchange of evidence isn't a step in the postal process when it is part of the online one. I am also concerned that postal customers apparently have no information at all about the overall process. The case system relies heavily on screens providing guidance at each stage as to what happens next – postal customers get no overview that I am aware of, and these are often the customers who also have no or limited access to the internet and the website.

3.4 Disputes and post decision reviews

Disputes and post decision reviews are respectively at the very start and end of the whole OS process, and are themselves in the remit of Regulatory Affairs and not the IA; I have received many complaints about the administration of both.

I talked about disputes in some detail last year and continue to see many cases that are closed incorrectly. Reasons such as email backlog are described elsewhere, otherwise the most usual reason is that OS have accepted a provider's view that the complaint duplicates a previous one, and which is later disproven. Customers find incorrect case closure very upsetting – it gets the whole experience with the business off to a poor start and I often see cases which just spiral downhill from there. It's made worse as I frequently see that customers aren't given an explanation for the closure, but just find when they visit the website that their case is closed. Moreover, in the complaints I see this frequently happens several times, as new cases continue to be disputed by the provider and each dispute is dealt with by a different staff member.

Post-decision review is carried out when a customer continues to raise issues with a decision after appeal has been carried out and a final decision issued. During the year Customer Relations began to carry out some of these along with the service complaint review and this appears to me to be a very successful move. It avoids customers bouncing back and forth between two departments and prevents boundary issues falling 'down the crack' between the two. When separate senior post decision review has been carried out it has been part of many complaints to

me this year. In some cases, reviews were promised but simply not actioned – sometimes for several months. In another the review changed the decision but did not provide direction to the customer as to what to do next – there was no deadline for acceptance or clear instruction that the process was then over and an accept or decline response needed. No reply was sent by the customer in the required timeframe, so the case closed and when the customer did then reply and found that they complained again. In several other cases customers returned with questions but the senior dealing with post decision review had issued their decision and disengaged from the case – as no reply was sent there were further complaints.

I have again seen cases in which the OS decision changes after a customer has accepted it, due to a post-decision provider challenge; these situations continue to be very difficult. Customers often bring these case to me claiming that OS are biased and colluding with the provider – I make frequent reference to the OS Terms of Reference which provide for review after a final decision for either party if new evidence becomes available which would make a material difference to the decision.

3.5 Problems with CMS/email

I continue to see customers who struggle to use the case system but who seem perfectly comfortable using email. It is hard to know whether some customer's problems are technical or user issues and although OS try to help, customers who come to me can still be stuck.

Uploading evidence has caused fewer significant problems in the cases I have seen this year, as the option to email it in was for most customers a successful work around, albeit there were then the problems with delay in getting emails added to the case in the first part of the year.

In a number of those I saw evidence to counter a dispute (of a customer's engagement with their provider for example) stuck in the email backlog when the case closed automatically due to the ten-day deadline on CMS to provide that being missed. In others appeal requests were stuck in the back log and cases closed before the appeal could be logged to the case. In another the evidence for appeal was stuck in the back log and the final decision was issued without considering it – the evidence wasn't uploaded for another seven days after the final decision had been sent.

Again, I saw cases where the decision on the system page didn't match the pdf version attached to it and many others in which the case 'ticked on' to the next process step automatically despite that a decision had been made to pause or delay

it for some valid reason. This always prompts customers to call in and adds another 'notch' of extra agitation and anxiety to their case experience.

3.6 Record keeping

I have seen a number of issues with inaccurate or incomplete records this year, sometimes with missing records, and several where the notes on the case don't match what happened in a call.

Missing records most often are of actions taken by email off the system but not noted; it can also become apparent that discussions have taken place but not been properly noted. Advice from Regulatory Affairs can be missing or referenced tangentially; as this is only taken in the more contested cases the omission is unhelpful.

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, and in some cases to try to help future complaints work better. 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 I have made this year have included:

- apology;
- goodwill payment;
- explanation of the provider case findings;
- setting up a single point of contact (this has mixed success);
- other case specific actions to help a customer going forwards or return them, to the position they should be in;
- recommendations for OS operational staff discussion so lessons can be learned.

The complainant is asked 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** in goodwill payments awarded by the IA in 2021 was £3785. That is an increase in total from £3015 last year but still a decrease from £4480 in 2019, and accounting for the case volume increase IA financial awards

have gone down on average. 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.

Additional IA goodwill payments	2021		2020		2019	
	No. of reports	% of reports	No. of reports	% of reports	No. of reports	% of reports
None (previous goodwill sufficient, apology only or none merited)	65	47%	42	45%	43	33%
£50 or less	48	35%	31	33%	59	46%
£51 to £100	25	18%	15	16%	24	19%
More than £100	-	-	5	5%	3	2%

I believe the increasing proportion of reports with no awards, and the ‘on average’ decrease speaks to the continuing high standard of the reviews that Customer Relations carry out before a complaint is referred to me. I do have to emphasise 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 often significant goodwill offers before the case comes to me. In many cases my contribution is to reassure a customer that the case has been fully reviewed and considered, there is nothing further I can add and that the offer made to them from Customer Relations is appropriate.

I do also on rare occasion decrease an award if I do not consider that the circumstances of the case merit the amount offered by Customer Relations; it is made clear to customers that I review a case afresh and this may be the case in the letters from Customer Relations which signpost to the IA.

5.0 Final Observations

I will end by commenting on the amount of explanation of OS processes that I am finding I need to provide to customers, in order to back up my decisions as to whether a case has been handled as it should or not. Customers often seem surprised that the process has the degree of formality it does, with set timeframes for each stage, a limited and clearly defined appeal process and requirements of each party. This need for explanation applies not just in remedy implementation, which requires a customer to understand the basics of OS’ role in relation to the

provider, but also to the whole case process of evidence exchange, investigation, first decision, appeal, and final decision. I often see this is first explained to a customer in a final response from Customer Relations, by which time customers can feel it has been largely made up to try to deflect their complaint.

Whilst I appreciate OS don't want to put off customers by making the process look unduly onerous before they start, it seems these misunderstandings could be avoided if there was clearer information up-front. Many of my customers clearly have an unmet need for more detail, and I am also frequently asked why OS doesn't have a flow chart or diagram of the process on the website. In short there is a sharp contrast between the simple website description of what OS do and the much more structured and hard-edged reality of the complaint process once a customer is in it.

As a final comment, I noted last year that I had been struck by the increase in customers whose behaviour had been aggressive or threatening. This continued, particularly in the post lockdown surge. I have also found customers seem markedly less trusting of the whole process and many are pushing persistently to try to secure higher goodwill payments, whether their case merits that or not. As I see more cases for companies that have gone out of business and being mindful of the rising cost of living generally, and energy prices in particular, I am not expecting to see this ease.

In closing, I'd again like to thank both OS' customers for bringing their concerns to me, and all at OS who help me. Staff doing case work, in legal, and IT frequently answer questions to help me be sure I am clear on OS' processes and procedures. I am also finding I need to work increasingly closely with Customer Relations, with often daily contact, to try to make sure that customers move smoothly through the complaints process and that vulnerable customers in particular get the help they need from us both. I am grateful to all of them for the time they give me.

Joanna Wallace
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