

**Report for the Board of Ombudsman Services  
Annual Report of the Independent Assessor for 2022**

This is my final report for the OS Board on my work as Independent Assessor, covering cases completed in the calendar year 2022. I write it mindful that the OS case handling process has recently quite fundamentally changed with the introduction of the Dispute Resolution Executive role, and whilst I have now reviewed cases escalated to the IA from this new process in 2023, none of those new process cases were completed in 2022.

**1.0 Independent Assessor Caseload**

Last year I reported the largest number of cases escalated to the IA since I started this role in 2015, noting case volumes had picked up in April 2021. Those increased volumes continued through 2022, peaking still higher in the first half of the year and taking new case escalations to double that in 2020, and a new record high.

<b>Month</b>	<b>Reports 2022</b>	<b>Reports 2021</b>	<b>Reports 2020</b>
January	11	8	6
February	15	7	6
March	16	6	7
April	24	10	7
May	21	20	6
June	20	15	9
6-month RT	107	66	40
July	12	12	6
August	14	16	10
September	8	9	6
October	17	16	12
November	15	16	11
December	15	20	13
6-month RT	81	89	58
<b>Total reports</b>	<b>188</b>	<b>155</b>	<b>98</b>
Of which first cases	<b>181</b>	<b>138</b>	<b>93</b>

Of the total 188 reports I wrote, 181 were first reports (usually regarding one or two OS cases, but sometimes multiples). Seven detailed replies were written in response to ‘representations’ about a first report; that was down from 17 representations cases in the previous year. Customers can challenge only ‘a material error of fact that would lead to a different finding’ in IA 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, although they aren't. 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, as a very final attempt to get their complaints supported. Two cases were amended this year on review, both on the basis of new or clarified information from the customer.

**Throughout the rest of this report, I refer only to my findings from the 181 'first' reports that I produced in 2022.**

## **2.0 Case Outcomes**

Customers were sent an acceptance letter after their escalation to me, to explain the IA remit and make clear what I could and couldn't consider for them. I explained that the IA 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 actions taken had been reasonable. This is the fourth 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

- **56% had at least one element upheld** (that was 52% last year and 55% the year before) or at least one new valid issue. 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. This category also though includes cases in which a service failure hasn't been recognised until IA review, and very rarely cases in which the overall recognition of what has gone wrong has fallen materially short.
- **10% were not upheld** (last year 2% and 11% the year before ) – so neither Customer Relations nor I found any merit in what the customer alleged.
- **34 % were justified** (last year 46% and the year before 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)

financial award in cases that have been very fully reviewed. Others though are at heart concerns about the OS decision or are from customers who have a misconception about how the OS process actually works, so believe their case was mishandled.

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

At different points in 2022 I saw complaints clearly reflecting the operational work load of the business. The marked up-tick in remedy implementation cases that I had noted at the end of 2021 continued into 2022, relating to energy business receivership and mergers, and other cases linked in one way or another to those energy sector dynamics, especially in the first half of the year.

The general theme continued that I have noted before of complaints arising 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 again included cases needing reasonable adjustments, and issues with post-decision case reviews, and again 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 – the examples show that complaints are rarely about a single issue but have a number of roots causes playing into the overall service the customer reviews.

#### **3.1 Remedy Issues**

Apparently due to the energy sector upheaval, remedy implementation problems for complaints arising from that sector were markedly higher this year than I have seen before. Customers were also reluctant to accept the point that OS could no longer consider a case for a company that had ceased to trade, even if the case had been accepted while the company was still trading; this led to some often valid concerns of delay. Having said that, the escalation process from the Remedy to the Partners Team appeared to work more smoothly than the year before, so there were fewer cases apparently 'lost' outside any clear process.

**Case example A** – The customer called to set up the case (I listened to the call) – he made it very clear several times that the account address was a second home and rarely visited. He gave his postcode with the correspondence address to be used, but inexplicably that wasn't noted on the case. He asked to progress the case by post and telephone, so all subsequent post was sent to the second home (and therefore not seen). The call handler noted the case to say he'd told the customer of the 8-week timeframe for investigation, but in fact from listening to the call he just

said the IO would be in touch but gave no steer on the time frame, and for reasons I can't understand, told the customer 'no news is good news'. The customer didn't receive the provider case decision as it was sent to the wrong address, so of course didn't reply, and the address issue aside, no reminder letter was sent as should have happened. The case duly closed. The customer reconnected in September 2021 having left his provider, which had now ceased trading – the IO offered the remedies from the decision several months earlier. OS then sent general information and links to follow for advice when companies cease trading, (again to the second home) then that Eon Next as the SOLR would contact about credit or debit balances on the account. A service complaint was sent in, and Customer Relations replied – they didn't realise the address error in the case set up, so said he'd been properly notified of the case decision, and that he was aware of the 8-week timescale so could have contacted OS for an update (of course the customer had actually been told 'no news is good news'). They said they couldn't chase the new supplier for the case remedies - of note the customer hadn't been able to appeal the decision as he had never received it, and now said the decision was based on readings from the now defunct supplier that were wrong. Customer Relations offered apologies and a £60 goodwill payment simply recognising the failure to send the reminder letter about the decision – that complaint reply itself was also sent to the second home address. The complaint came to the IA and as part of completing my report I contacted OS to see how the provider case could be resolved. The Customer Relations Manager contacted the administrators in February 2022, and using the end reads from August 2021 and a customer one from April 2021, she estimated for the administrators a fair opening reading from August 2019 which the administrators and the customer accepted. I made an additional £100 goodwill award.

### **3.2 Meeting requests for reasonable adjustment**

I continued to see cases for customers who identified themselves as being vulnerable or needing reasonable adjustments - most of these complaints had failure to meet those reasonable adjustment requests as a significant part of the customer's issue. These cases tend to be the ones that receive the highest awards, as the impact of service issues is often magnified because of the customer's disability and OS' failure to accommodate that. I have again dealt with number of cases for autistic customers; whilst some are incredibly complex, I do note that the failure of the organisation to simply do what it says it will do, is a tremendous source of distress for this customer group. I believe at the time of writing training in Autism Awareness is being organised.

**Case example B** – A customer was registered as blind – the complaint was set up in 2019 as a phone case, and he asked for no online account but said people came to his house and could help with letters. The Investigation Officer (IO) spoke to

the customer but then in error issued the decision on the case system - being completely unaware aware of that he of course didn't reply, and the case closed. Almost a year passed, and the Customer called to chase a decision – no call backs were made, and Customer Relations became involved. They offered £100 goodwill in apology and asked for a senior review of the case for the customer and a fresh decision. After a spell in hospital and a difficult call with SIO (the customer had new issues since the first case was set up and wanted them added) Customer Relations sent a final reply. The customer called in December, February and March (with call-back issues) and sent SAR information from BT to inform the SIO review. He called again in April as BT were offering a direct resolution to him – the SIO review hadn't been actioned. Customer Relations replied again– the BT SAR had been put on an old case and still no action taken. An SIO picked up the case in June – he noted the goodwill need increasing but that he didn't know how to deal with that, then left the business and the case was dropped again. It was then reassigned and after more missed call backs, in October, Regulatory Affairs said they wanted a complete review of the case – only in November was it agreed that all this vulnerable customer's issues with BT could be looked at as a reasonable adjustment. In January 2022 the Customer accepted a final BT decision from OS (three years after starting the process) which involved a £700 payment, and the service concerns about the case came to the IA. I identified five other issues in my review than had been acknowledged in the final offer of £200 in regard to the service complaint and made a total £350 goodwill award.

**Case example C** - Another visually impaired customer asked for hard copy documents in large print font or by email to enlarge on screen. The decision was issued on the case system (he didn't have access to that) and then the IO didn't call back when asked. The IO had told the customer her decision was based on a call with the provider – when he asked for a copy of that she acknowledged she hadn't spoken to them. Customer Relations became involved and asked for information to be sent to the customer, and for a case review based on his reply and offered a £50 goodwill award. The IO who reviewed the case then again issued the final decision online – the customer hadn't seen that when I dealt with the case.

**Case example D** - A customer with a hearing disability told OS they were unable to use the telephone and asked for all correspondence by email and needed that sent in a font and format which her assistive software could access. The customer was unable to read the provider's evidence on the case system as that didn't work with her assistive software. Customer Relations replied to a complaint and apologised the decision wasn't emailed as asked and that the decision after appeal was also only issued on the case too and made a £50 goodwill award – they asked the provider evidence to be sent and for a case review after that. The customer then said the emailed case file had crashed her assistive software and the posted version required a friend to collect it. The Head of Service Delivery became involved. The

provider case was reviewed, and a new decision sent. After many exchanges OS offered £500 recognising service issues in this and another case. Exchanges continued about the case decision itself but that didn't change. When I reviewed the escalated service complaint I noted three additional material issues and awarded an additional £200.

### 3.3 Jurisdiction Disputes and Post Decision reviews

Jurisdiction 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, most usually as OS have decided themselves (or accepted a provider's view) that the complaint duplicates a previous one - later shown to not be the case. Customers find incorrect case closure very upsetting – as I've noted before it gets the whole experience with the business off to a poor start and I continue to see cases which just spiral downhill from there. It's still being made worse as customers often aren't given an explanation for the closure, but just find when they visit the website that their case is closed.

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. Customer Relations senior staff have very successfully reviewed some complex and contentious cases which have this year avoided customers bouncing back and forth between two departments and prevented boundary issues in falling 'down the crack' between investigations and service (I appreciate the new system is intended to remove that crack). When separate senior post decision review has been carried out, in some cases reviews were promised but simply not actioned – sometimes for several months and after more than one reminder.

I seem to have seen more cases in which the OS decision changes after a customer had accepted it, due to a post-decision provider challenge; these situations continue to be very difficult. In a few cases the customer wasn't explicitly told of this but received a revised decision some time after they thought all work had been completed and their acceptance of a decision logged, as the first indication that things were not as they thought. As I have noted before customers often bring these cases to me claiming that OS are 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 that would make a material difference to the decision.

**Case example E** - A case was opened in February 2022 and a first decision accepted by the customer in March, though the energy company appealed.. The case was assigned to a new IO for appeal review and a final decision was sent to both parties in April – that had not changed, and the customer accepted. The energy company was then in touch with OS about the decision and the case was referred on for senior review. Three weeks later OS told the customer they had reviewed additional comments from the provider and amended the decision, which was now final and required no action of the company. The customer sent in a service complaint and said there was no new information provided by the company - they had simply restated information available at the time of the earlier decisions. Customer Relations replied in June and explained that OS Terms of Reference allow them to reconsider a case ‘where we have not properly taken into account all the circumstances’. They said it was within their process but could understand it would feel unfair and apologised they hadn’t told her of the post-decision review until they sent the results of it - they offered a goodwill payment offer of £30. In my review I explained that OS were able to change a decision as they did based on OS’ Terms of Reference, which provided for the fact that OS’ two-step process might ‘overlook’ evidence or facts, and that if brought to their attention, the duty to provide a correct decision in effect ‘overrode’ the usual finality of the appeal decision as the conclusion of the process. In short the case decision wasn’t right at either the first or appeal stages and whilst the IO’s letter had suggested later review was in some way outside usual process, it was entirely within it – albeit rare. Considering the case in the round and the customer’s overall experience I awarded a total goodwill payment of £75.

### 3.4 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 (as in Case example A).

I have noted before, and it hasn’t changed, that 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 is often missing or referenced tangentially; as this is only taken in the more contested cases the omission is unhelpful.

**Case example F** – a customer opened an Energy case in February 2019 and appealed the first decision in May that year; there was then delay (unclear why) to the appeal review in September. The customer accepted the decision, but then the provider challenged it in November – the IO did call the Customer to tell him. There were then missing case notes through to March 2020 when the IO noted he’d been told to review the case as a post -decision review. Notes were then hazy – it

seems a post decision review was sent to the company (though not the customer) in July – but they didn't reply and there is no record of that decision on the case – to all intents and purposes it didn't happen. The IO was poorly in touch with the customer through to November 2020 then was in better touch albeit only to promise progress which didn't happen in December, January, February and March 2021 – in April it was noted the IO had left the business. A SIO was then to review the case and was in touch with the customer in May and June when a post decision review was issued, amending the one made in 2019. A service complaint from the customer was overlooked in September and a final reply to that then sent in December 2021 offering a goodwill payment of £175 recognising the delay, lack of reply to letters and calls, and overall poor contact. From my review and the customers carefully kept records I realised the contact had in fact been very much worse than the case suggested as substantial amounts of records were simply missing, with marked gaps most notably between March and August 2020, (including the first post decision review of which there was no record), which had hampered my investigation of the case. I made a £300 total award.

#### 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;
- 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.

The total **additional sum** in goodwill payments awarded by the IA in 2022 was £5,225. That was an increase in total from £3,785 last year and £3,015 the year before. Accounting for the case volume increase IA financial awards went up very slightly this year (it's hard to determine a meaningful measure, but on average



from £52.57 across all cases with an upheld finding last year, to £54.57 across the upheld cases this year). 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 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, some times of amounts in the £100s. In many cases with a ‘justified’ finding 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 was appropriate.

<i>Additional IA goodwill</i>	2022		2021		2020	
	No. of reports	% of reports	No. of reports	% of reports	No. of reports	% of reports
None (previous goodwill sufficient, apology only or none merited)	84	47%	65	47%	42	45%
£50 or less	69	38%	48	35%	31	33%
£51 to £100	22	12%	25	18%	15	16%
More than £100	6	3%	-	-	5	5%

I should just comment that I am aware that OS’ new process does not award goodwill payments for time and trouble, only for material loss, and I have some sympathy with that approach. I have frequently explained to customers this year that goodwill awards are not a ‘fine’ on the business for anything that might simply go wrong, and that the kinds of issues that often arise in the course of everyday life due to human error merit an apology and not a monetary award. I have recommended only an apology in a number of cases.

At the time of writing however, the IA Terms of Reference do provide for goodwill awards ‘...an appropriate goodwill payment is paid (equivalent to that which Ombudsman Services would award against a service provider in similar circumstances) for any damage, distress or inconvenience caused by its standard of service to the person or firm making the service complaint.’ Unless or until this is changed the overall complaint system does seem anomalous, creating an incentive for customers to escalate all the way through the internal process to the IA, seeking payment. As can be seen, under the current Terms of Reference, many merit that.

Having said that, I also have again this year reduced the award in a case in which I thought OS' award unnecessarily high. Customers are told the IA will look at a case afresh and, in this case, it was very clear the customer's main objective was simply to seek payment and I felt looking at the issues in the case overall the award before the case came to me was greater than I would have made.

## **5.0 Final Observations**

I will make my final comments brief, primarily as I am aware this is a retrospective review of the final year of an OS system and process that is fundamentally changing. My successor will be feeding back on the issues that are coming up from the 2023 cases we are seeing – I wish him, and the OS business well moving forwards.

In closing, I'd again like to thank both OS' customers for bringing their concerns to me, and all at OS who have helped me over the years. Staff doing case work, in legal, and IT have frequently answered questions to help me be sure I am clear on OS' processes and procedures. The Customer Relations team especially have been an invaluable source of support in making sure that customers move smoothly through the complaints process, and that vulnerable customers in particular had the help they needed from us both.

**Joanna Wallace**  
**February 2023**

