



**Financial
Ombudsman
Service**

from **Caroline Wayman**
chief ombudsman &
chief executive

write to **Financial Ombudsman Service**
Exchange Tower
London
E14 9SR

Rt Hon Nicky Morgan MP
Chair of the Treasury Committee
House of Commons
Committee Office
London
SW1A 0AA

Sent by email

1 November 2018

Dear Ms Morgan,

Thank you for your letter of 9 October, which we received on 17 October.

We are grateful to understand your thoughts on our plans to look at an appropriate sample of casework, to check that decisions made during the early stages of our reorganisation were handled in accordance with the controls and standards put in place at that time. In commissioning Deloitte to undertake a review of a sample of almost a thousand cases, we are seeking to address this specific recommendation made by Richard Lloyd in the report of his independent review.

However, we understand that there is also a wider concern about the outcomes of cases decided during this period. And it is for this reason that we have added a second stage – a review of a sample of those outcomes, to be undertaken by Carol Brady. By linking this second stage to the first, we are trying to focus on cases for which there might be the most concern about the outcome. This also has the benefit of addressing the committee's concern about the handling of complex cases, because many of the controls relate to the handling of complex cases. And as a former ombudsman, Carol Brady is experienced in reaching ombudsman decisions, but has had no connection with our casework, so can clearly be seen to be independent.

Assessing the outcome of a case is not straightforward. Although our outcomes are binary, this is only in the sense that we usually find either in favour of the complainant or the business against which the complaint is made. In practice and in law, our ombudsmen are required to use their judgement to decide what they think is fair and reasonable, taking into account a number of relevant considerations specified in our rules. We are required to take this approach, which comes directly from the legislation under which we were created. This is more complex than seeking to determine the “correct” decision. In

making a decision our investigators and ombudsmen have the benefit of their own and our collective experience and training, access to a wide range of resources and are able to seek expert assistance – in order to inform their decisions, but ultimately they are exercising their judgement. So there isn't a "correct" answer against which an outcome can be tested or audited, rather a range of reasonable outcomes. And, in practice many cases are finely balanced. Often conflicting evidence and different recollections of events require a careful interpretation of the relevant law, rules and good practice from the relevant time. This is particularly true for more complex cases involving vulnerable consumers, new or complex products or services, or cases for which the relevant events span long periods of time.

In proposing to use the Wednesbury reasonableness test we were not attempting to create a high bar and would not want to do so. We have reconsidered this in light of the Committee's remarks and now propose an alternative test which is whether the outcome is "safe", ie whether the outcome is one which a reasonable ombudsman would reach, taking into account the duties of the ombudsman in resolving cases.

Further, given that you have expressed concern about particular types of cases, if these concerns are specific and you are able to provide us with further details, we will seek to take them into account.

I note that the committee continues to receive correspondence from parties to the complaints we have considered. It's obviously very disappointing, but perhaps not surprising. Because of the nature of our role, it is often the case that the party who doesn't get the answer they were hoping for will be dissatisfied with the outcome. While we do all that we can to ensure that people feel listened to and it feels fair to everyone involved, and this is very important to us, it is unlikely that we will satisfy everyone in that respect. If you would like to refer details of the correspondence you have received, I'd be happy to look at this in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Wayman', with a horizontal line extending to the right.

Caroline Wayman
chief ombudsman and chief executive