



INFO Network: Effective approaches to fundamental principles

September 2014

The International Network of Financial Services Ombudsman Schemes (the INFO Network) is the worldwide association for financial services ombudsmen - independent and impartial out-of-court bodies that resolve complaints brought by consumers (and, in some cases, small businesses) against banks, insurers and/or other financial services providers.

Ombudsmen provide an accessible, informal and speedy alternative to the courts. Besides resolving individual cases, they usually also deal with enquiries, and report on the lessons learned from the cases they have handled — so that things can be improved for the future.

More information at www.networkfso.org

1 Introduction

- 1.1 This is part one of a seven-part guide. Parts two to seven describe:
- six fundamental principles to which INFO Network members should aspire; and
 - effective approaches that help to meet those fundamental principles.

Purpose

- 1.2 Network members may be constrained by their structures and resources, which are often outside their own control. So the guide does not set compulsory standards for members.
- 1.3 But the Network does expect its members to aspire to comply with the fundamental principles in the guide, so far as it is within members' control, and the Network aims to help them do so.
- 1.4 The guide is intended to assist Network members, including by helping them to persuade those who control their structures and resources.

Fundamental principles

- 1.5 After studying worldwide standards relevant to ombudsman schemes, the Network has agreed the following fundamental principles:
- independence, to secure impartiality; see page 2
 - clarity of scope and powers; see page 5
 - accessibility; see page 7
 - effectiveness; see page 9
 - fairness; see page 11
 - transparency and accountability. see page 13

Effective approaches

- 1.6 Financial ombudsman schemes operate in many different countries and sectors. They need to take account of relevant cultural, legal and economic circumstances.
- 1.7 The approaches to implementing the fundamental principles described in the guide are ones that have worked in some countries, but there may possibly be other ways.

Terminology

- 1.8 In the guide:
- 'financial ombudsman scheme' includes any body that fulfils the same role;
 - 'ombudsman' includes any individual with the final say on resolving a case;
 - 'decision panel' means any collegiate body with the final say on resolving a case;
 - 'decision-panel chair' means the chair of any decision panel;
 - 'decision-maker' means any ombudsman or any chair/member of a decision panel;
 - 'complainant' means a complainant eligible under the financial ombudsman scheme's rules;
 - 'customer' means a customer eligible under the ombudsman scheme's rules.
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2 Independence, to secure impartiality

Fundamental principle

which members should aspire to comply with, so far as it is within their control

- 2.1 Financial ombudsman schemes are an alternative to the courts. They should be (and also be seen to be) independent and impartial – resolving cases on their merits, without fear or favour.
- 2.2 Financial ombudsman schemes should be established so that they are visibly and demonstrably independent of both the financial industry and consumer bodies.
- 2.3 Decision-makers should be free from influence/direction – including free from influence/direction by:
 - parties to disputes (and those representing them); and
 - regulators and governments.

Effective approaches

that have worked in some countries, though there may possibly be other ways.

Constitution

- 2.4 The independence of the financial ombudsman scheme is established in law or in a constitution that is approved by a public-interest agency.
- 2.5 The parties to disputes are not in a position to exert commercial or other influence over the financial ombudsman scheme, directly or indirectly.
- 2.6 The financial ombudsman scheme is free to publish reports on its work and on issues that give rise to complaints.¹

Resolving cases

- 2.7 Case decisions are made by an ombudsman, or by a decision panel comprising an independent chair and an equal number of industry representatives and consumer representatives.
- 2.8 An ombudsman and a decision-panel chair have not worked, in the previous three years, in a financial business (or an industry association for the sector) covered by the ombudsman scheme.²
- 2.9 Only an ombudsman or a decision panel:
 - decide whether any case is within jurisdiction;
 - choose the procedure for the resolution of any case; or
 - decide/recommend the outcome of any case.
- 2.10 A binding decision or non-binding recommendation by an ombudsman or decision panel is not able to be overturned, or is only able to be overturned by the courts (or a tribunal with equivalent independence and standing).

¹ Section 7 on transparency and accountability covers the publication and contents of an annual report.

² Section 5 on effectiveness covers experience, expertise and training.

- 2.11 Any decision-maker discloses any conflict of interest in relation to a case, and ceases to be involved in the case unless both parties agree.

Appointment and terms

- 2.12 A decision-maker is appointed by any of the following which commands public confidence in the relevant country:
- the legislature, the government, the financial regulator(s) or a body that has only public-interest members; or
 - a body with balanced membership – for example:
 - one third each from the financial regulator(s), the financial industry and consumer bodies; or
 - equal numbers from the financial industry and consumer bodies with an independent chair; or
 - a majority are independent members.
- 2.13 The body appointing a decision-maker does not have:
- a majority of industry representatives; nor
 - a majority of consumer representatives.
- 2.14 Appointments of decision-makers are made by a transparent process, following a public advertisement.
- 2.15 Whoever appoints them, a decision-maker is appointed on terms that secure their independence from:
- the financial industry and consumer bodies;
 - the financial regulator(s) and the government; and
 - those who appointed the decision-maker.
- 2.16 A decision-maker is appointed (or reappointed) for a sufficient term to ensure independence (typically at least five years), and is not removable – except for incapacity, misconduct or other just cause.
- 2.17 Any decision to remove a decision-maker is in the hands of a body that is independent of the financial industry and independent of consumer bodies.
- 2.18 If a decision-maker can be reappointed, the process does not compromise the decision-maker's independence and he/she is told the outcome at least one year before the previous term ends.
- 2.19 A decision maker's pay is not subject to reduction or suspension, and it is not influenced by the outcome of cases.

Staff and resources

- 2.20 The financial ombudsman scheme is provided with sufficient resources to cope efficiently with its workload. It operates on a not-for-profit basis.
- 2.21 The funding structure is such that those providing the funds (whether from the public sector or private sector) cannot influence the work of the financial ombudsman scheme.
- 2.22 The financial ombudsman scheme is able to select and employ its own staff.

Governance body

- 2.23 It may be helpful, but not essential, for the financial ombudsman scheme to have an independent governance body, to:
- appoint decision-makers;
 - help safeguard the independence of the decision-makers;
 - help ensure that the ombudsman scheme has adequate resources to handle its work;
 - oversee the efficiency and effectiveness of the ombudsman scheme; and
 - advise on the strategic direction of the ombudsman scheme.
- 2.24 Any governance body is not involved in:
- deciding cases: nor
 - the day-to-day management of the financial ombudsman scheme.
- 2.25 Members of any governance body are any of the following which commands public confidence in the relevant country:
- appointed by the legislature, the government, the financial regulator(s) or a body that has only public-interest members; or
 - a body with balanced membership – for example:
 - one third each from the financial regulator(s), the financial industry and consumer bodies; or
 - equal numbers from the financial industry and consumer bodies with an independent chair; or
 - a majority are independent members.
- 2.26 Any governance body does not have:
- a majority of industry representatives; nor
 - a majority of consumer representatives.
- 2.27 Appointments of members of any governance body are made by a transparent process, following a public advertisement.
- 2.28 Whoever appoints them, the members of the governing body, they are appointed on terms that:
- require them to act in the public interest; and
 - secure their independence from those appointing them.
- 2.29 Any member of any governance body discloses any conflict of interest and ceases to be involved in a discussion or decision.
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3 Clarity of scope and powers

Fundamental principle

which members should aspire to comply with, so far as it is within their control

- 3.1 The financial ombudsman scheme should publish details of:
- the scope of its jurisdiction;
 - its enquiry and case-handling processes;
 - its powers;
 - the status of its decisions;
 - any effect on the complainant's legal rights of using the ombudsman scheme; and
 - what information is (or is not) kept confidential.

Effective approaches

that have worked in some countries, though there may possibly be other ways.

Basics

- 3.2 The financial ombudsman scheme publishes details of:
- its postal address, phone number, email address and website address;
 - the basis of its authority;
 - its decision makers, their method of appointment and term of office; and
 - its membership of any national or international network.

Jurisdiction

- 3.3 The financial ombudsman scheme publishes details of the scope of its jurisdiction, including:
- the financial businesses that are covered;
 - the types of services that are covered;
 - whether or not that includes services provided cross-border;
 - whether or not the complainant must be a customer;
 - whether any businesses can complain and, if they can, what types of business;
 - any time limits within which a dispute must be brought to the ombudsman scheme;
 - any minimum or maximum value of disputes that the ombudsman scheme can handle; and
 - any grounds on which the ombudsman scheme may decline to deal with a dispute that is in its jurisdiction.

Processes

- 3.4 The financial ombudsman scheme publishes details of its enquiry and case-handling processes, including:
- whether the complainant must first complain directly to the financial business;
 - any requirements on how financial businesses handle complaints;
 - anything else the complainant must do before referring a dispute to the ombudsman scheme;
 - whether or not the ombudsman scheme handles enquiries;
 - whether or not the ombudsman scheme uses negotiation/conciliation/mediation;
 - whether or not the ombudsman scheme actively investigates cases;
 - the language(s) in which disputes can be submitted and can be handled; and
 - whether or not bringing a dispute to the ombudsman scheme suspends any time limit for taking the dispute to court.

Powers

- 3.5 The financial ombudsman scheme publishes details of its powers, including:
- any power to demand information or documents from either of the parties;
 - the basis on which disputes are decided – for example. fairness/equity;
 - any maximum limit to the amount of compensation it can recommend/award;
 - whether or not compensation is limited to financial loss;
 - whether or not compensation can carry interest until the date it is paid;
 - whether or not costs can be (and, if so, are likely to be) awarded;
 - whether or not the financial business can be required to do anything else to put things right for the complainant; and
 - whether or not the financial business can be required to change its processes.

Status of decisions

- 3.6 The financial ombudsman scheme publishes details of the status of its decisions, including:
- whether or not they are published;
 - whether or not they bind the financial business;
 - if binding, how they can be enforced;
 - if non-binding, the percentage of cases in which they are followed by financial businesses;
 - if non-binding and not followed, whether there are consequences (e.g. publicity);
 - whether or not they bind the complainant; and
 - whether or not there is the possibility of review by, or appeal to, the courts.

Confidentiality

- 3.7 The financial ombudsman scheme publishes details of whether or not:
- the identities of the parties are kept confidential;
 - other information about disputes is kept confidential; and
 - a party can use information from the investigation/decision in subsequent court/arbitration proceedings.

Publication

- 3.8 These details are made publicly available:
- on the financial ombudsman scheme's own website; and
 - in any other way appropriate in the relevant country.
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4 Accessibility

Fundamental principle

which members should aspire to comply with, so far as it is within their control

- 4.1 Financial businesses should be required to tell customers about the financial ombudsman scheme.
- 4.2 The financial ombudsman scheme should:
- provide comprehensive information on its own website and in other appropriate ways;
 - be easily available and accessible to complainants (without any cost barrier);
 - communicate clearly; and
 - make appropriate provision for vulnerable complainants.

Effective approaches

that have worked in some countries, though there may possibly be other ways.

Financial businesses

- 4.3 Financial businesses are required to tell customers in writing about the financial ombudsman scheme:
- on the financial business's website, if it has one;
 - at the point of sale;
 - in contracts;
 - if the customer makes a complaint; and
 - in its final written decision on a complaint.
- 4.4 The financial business's final written decision on the complaint includes details of:
- how to contact the financial ombudsman scheme; and
 - any time limits that apply.

Financial ombudsman scheme website

- 4.5 The financial ombudsman scheme has its own website showing, at least:
- the scope of its jurisdiction;
 - its enquiry and case-handling processes;
 - its powers;
 - the status of its decisions;
 - what information is kept confidential, and what may be published;
 - its most recent annual report;
 - any current consultations; and
 - the outcome of any recent consultations.

Other sources of information

- 4.6 The financial ombudsman scheme ensures that information is also readily available to potential complainants who do not have access to the internet. Depending on national circumstances, this may involve the ombudsman scheme making information available through:
- consumer advice organisations;
 - local consumer advice centres;

- public libraries;
- local authorities;
- other places where consumers are used to receiving information;
- elected representatives; and
- the media.

Communication

- 4.7 The financial ombudsman scheme is easily available and accessible to complainants for submission of disputes:
- online;
 - by post; and
 - by telephone.
- 4.8 In any country where the predominant culture requires it, the financial ombudsman scheme is easily available and accessible to complainants who need face-to-face meetings.
- 4.9 Complainants are able to approach the financial ombudsman directly, without having to go through any other person/organisation – save for any requirement to complain first to the financial business.
- 4.10 The financial ombudsman scheme:
- ensures that all its communications (including its letters and its decisions/recommendations) are in clear and jargon-free language; and
 - makes appropriate provision for consumers who are particularly vulnerable because of disability, age, language, literacy or other reasons.

Free for complainants

- 4.11 The financial ombudsman scheme is free-of-charge for complainants.
- [If (because of national circumstances) that is impossible, any fee for complainants should be modest and not exceed 5 per cent of the average weekly salary in the country.]

Access to court

- 4.12 A complainant has a free choice whether to take a dispute to court instead of the financial ombudsman scheme. No agreement concluded before the dispute materialised requires the complainant to go to the ombudsman scheme instead of the court.
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5 Effectiveness

Fundamental principle

which members should aspire to comply with, so far as it is within their control

5.1 There should be:

- a clear definition of what constitutes a complaint; and
- clear obligations on financial businesses to deal with complaints fairly and promptly.

5.2 Financial ombudsman schemes should:

- have a flexible and informal process (where parties do not need professional advisers);
- have skilled decision-makers; and
- be properly resourced.

Effective approaches

that have worked in some countries, though there may possibly be other ways.

Obligations for financial businesses

5.3 What constitutes a complaint is clear, and documented. For example:

- can it be any oral/written expression of dissatisfaction; or
- does it have to be a formal complaint in writing?

5.4 Financial businesses within the financial ombudsman scheme's jurisdiction are required to:

- have an accessible, effective and fair internal complaints process, which is published;
- issue a written response to a complaint, with reasons, within a specified time;
- tell complainants that, if they are still dissatisfied, they can go to the ombudsman scheme;
- have a single person with overall responsibility for the handling of complaints;
- respond promptly to communications from the ombudsman scheme;
- provide information and documents requested by the ombudsman scheme; and
- comply promptly with the ombudsman scheme's decisions.

Informal and flexible process

5.5 The financial ombudsman scheme has an informal and flexible process, so that neither party needs a lawyer or advisor (though parties are not prohibited from using a lawyer/adviser if they want to).

5.6 The financial ombudsman scheme:

- handles enquiries, to resolve some problems before they turn into full-blown disputes;
- takes an active role in deciding what evidence is required and calling for it;
- obtains expert reports when these are necessary;
- uses informal mediation to reach a fair settlement, where this is possible and appropriate; and
- issues a formal decision in cases that are not settled.

Information, advice and training

- 5.7 The financial ombudsman scheme assists early resolution of complaints by:
- publishing details of its approach to common disputes;
 - giving advice to consumers and financial businesses; and
 - helping train consumer advice centres and financial businesses' complaint departments.

Knowledge and skills

- 5.8 Financial ombudsman scheme decision-makers:
- have the necessary knowledge and skills in resolving disputes;
 - have a general understanding of law;
 - have knowledge of relevant financial services; and
 - are appropriately trained.

Financial ombudsman resources

- 5.9 The financial ombudsman scheme is:
- adequately staffed;
 - adequately funded;
 - efficient; and
 - cost-effective
- so that disputes can be effectively and expeditiously investigated and resolved.
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6 Fairness

Fundamental principle

which members should aspire to comply with, so far as it is within their control

6.1 The financial ombudsman scheme should:

- be prompt;
- be impartial;
- proceed fairly; and
- tell the parties in writing its decision and the reasons for it.

Effective approaches

that have worked in some countries, though there may possibly be other ways.

Disputes not handled

6.2 If a case is outside the jurisdiction of the financial ombudsman scheme, or if it is inappropriate for the ombudsman scheme to deal with it for any other reason, it promptly tells the complainant of that decision and the reasons for it.

At the outset

6.3 If the financial ombudsman scheme's decision will not bind the financial business, even if accepted by the complainant, the ombudsman scheme tells the complainant at the outset that:

- the ombudsman scheme's decision will not bind the financial business;
- the complainant can withdraw at any stage; and
- if applicable, the complainant could go to court (subject to any time limits) instead.

6.4 If the financial ombudsman scheme's decision will bind the complainant, even if rejected by the complainant, the ombudsman scheme tells the complainant at the outset that:

- the ombudsman scheme's decision will bind the complainant;
- the complaint can withdraw at any stage before the decision is issued; and
- if applicable, the complainant could go to court (subject to any time limits) instead;

and secures the complainant's specific agreement to proceed.

Due process

6.5 The financial ombudsman scheme ensures that the complainant and the financial business:

- can put forward their information and arguments;
- can comment on the other party's information and arguments;
- see a copy of any expert statements/opinions obtained by the ombudsman scheme;
- can comment on any expert statements/opinions obtained by the ombudsman scheme;
- are told they do not need a lawyer or legal advisor;
- are told they may seek independent advice or be represented/assisted by a third party; and
- are notified of the outcome, with reasons, in writing.

Prompt and impartial

- 6.6 The financial ombudsman scheme:
- deals promptly with all stages of its enquiry and dispute-resolution process; and
 - reaches its decisions impartially.

Accepting a settlement or decision

- 6.7 Before asking the complainant to accept a settlement or a decision, the financial ombudsman scheme tells the complainant:
- the legal effect (if any) of accepting the settlement or decision;
 - if applicable, that the solution is less advantageous to the complainant than a court would give;
- and gives the complainant a reasonable time to reflect.
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7 Transparency and accountability

Fundamental principle

which members should aspire to comply with, so far as it is within their control

7.1 Financial ombudsman schemes should:

- pay due regard to the overall public interest in forward-planning and day-to-day operations;
- consult publicly about their scope, procedures, business plans and budgets; and
- publish a report at least yearly, explaining the work that they have done.

Effective approaches

that have worked in some countries, though there may possibly be other ways.

Consultation

7.2 The financial ombudsman scheme consults publicly about:

- its initial scope and procedures;
- any significant changes to its scope and/or procedures; and
- its business plans and budgets.

Report

7.3 The financial ombudsman scheme publishes a report at least yearly, providing information about:

- the disputes it has handled; and
- the way in which it has handled them.

7.4 The report includes details of the numbers and types of disputes that:

- were received;
- were outside the ombudsman scheme's jurisdiction;
- the ombudsman scheme declined to deal with (even though in jurisdiction);
- were discontinued;
- were resolved by the ombudsman scheme;
- were resolved in favour of the complainant; and
- were resolved in favour of the financial business.

7.5 The report also includes:

- the average time taken to resolve disputes;
- the rate of compliance with outcomes, if known;
- representative case studies;
- any systemic or significant problems identified in the financial system;
- the ombudsman scheme's governance arrangements;
- how it preserves the independence of its decision makers;
- the ombudsman scheme's arrangements for control of quality; and
- cooperation with other ombudsman schemes, nationally (where applicable) and internationally.

7.6 The report should make clear whether the financial ombudsman scheme provides information directly to any financial regulator about any systemic or significant problems identified in:

- the financial system; and/or
- individual financial businesses.

7.7 The report is made publicly available:

- on the financial ombudsman scheme's own website;
- in print; and
- in any other way appropriate in the relevant country.

Finance

7.8 The financial ombudsman scheme:

- publishes its annual accounts; and
- has appropriate internal controls to demonstrate financial probity.

Service quality

7.9 The financial ombudsman scheme has a robust mechanism for:

- reviewing the quality of the service it provides; and
 - handling complaints about service quality.
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