

INFO Network  
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# Guide to setting up a Financial Services Ombudsman Scheme



**INTERNATIONAL NETWORK**  
**FINANCIAL SERVICES**  
**OMBUDSMAN SCHEMES**

## Foreword

Each year the annual conference of the **International Network of Financial Services Ombudsman Schemes (INFO Network)** brings together ombudsman practitioners from around the world. We rekindle the professional and personal relationships that have made our organisation so valued by all of us who share these unique and challenging public interest roles. While some groups may protect their exclusivity, the INFO Network has consistently and actively sought to grow both the number and geographic reach of financial services ombudsman schemes. By doing this, we also seek to extend the many benefits of accessible, effective and independent dispute resolution to financial consumers around the world.

Our first major effort in this regard was the development and adoption of guiding principles for financial services ombudsman schemes. *'Effective approaches to fundamental principles'* sets out our members' collective view of aspirational good practices which guide the development, refinement, and evaluation of financial services ombudsman schemes. To actively support the development of new ombudsman schemes in various regions, we translated the 'effective approaches' publication into other languages.

Designing and implementing a new scheme, especially in a smaller jurisdiction with limited resources, can be a daunting task. Understanding this, our next major effort has been to capture some of the lessons learned from successful implementations of financial services ombudsman schemes and distil that wisdom into a start-up guide for new schemes. After a formal tender process, we engaged INFO Network member representatives David Thomas and Francis Frizon to develop this guide for us. It is a valuable resource covering many of the areas that warrant consideration during the planning phase of a financial services ombudsman scheme and offering some tangible resources to assist with implementation. In this way, we continue our efforts to support the development of new schemes and provide useful resources for existing ones.

We have often described the INFO Network as a 'family'. This guide is a tangible demonstration of that desire to provide mutual support. Just as most family members would aspire to support each other, yet grow as individuals and develop in their own directions following their own unique paths, so do we. It is through efforts like this that we, as a voluntary association of ombudsman professionals, identify our common values and principles, harness the work and hard-learned lessons of the past, and convert that into actionable support and guidance to be built upon for the future.

We extend our thanks to the authors and to all of the INFO Network members who have contributed to this guide. To those who will use it to develop new financial services ombudsman schemes, we wish you the best of success and look forward to welcoming you to the 'family'.

**Douglas Melville | INFO Network Chair 2014-17**

### About the consultants

**David Thomas** and **Francis Frizon**, the consultants who developed this guide for the INFO Network, were both senior financial ombudsmen and have advised in 35 countries worldwide.

### Using this guide

Anyone may quote from this guide, provided they clearly acknowledge the quotation comes from a guide produced by the INFO Network and describe the role of the INFO Network, as explained on page 2.

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## About the INFO Network

A new financial services ombudsman scheme will benefit significantly from taking an active part in the International Network of Financial Services Ombudsman Schemes (INFO Network).

The INFO Network is the worldwide association for financial services ombudsman schemes. It was established in late 2007 when a group of financial services ombudsmen from around the world decided to formalise their annual meetings and ongoing co-operation.

Our members are ombudsman schemes operating as independent, out-of-court (external) dispute resolution mechanisms in banking, investments, insurance, credit, financial advice, pensions and superannuation. In this context, the term 'financial services ombudsman scheme' may describe an office that is assessed as fulfilling the same independent and impartial role. While many of our members are called Ombudsman, some are not. Other common terms are Mediator, Adjudicator and Ombud.

The overall aim of the INFO Network is for members to work together to develop their expertise in dispute resolution, by exchanging experiences and information. Membership provides a network of colleagues who understand the ombudsman role and what it is like to run an independent external dispute resolution office.

Member schemes work together (through the INFO Network) to develop their expertise in dispute resolution, by exchanging experiences and information in areas including:

- structures, functions and governance models
- codes of conduct
- use of information technology
- handling of systemic issues
- referral of cross-border complaints
- staff training and continuing education.

Our annual conference provides opportunities for professional development and networking.

Our monthly e-bulletin keeps members in touch with the latest news from each other and financial services generally.

Our members' intranet provides facilities to seek advice, share documents and access a library of Ombudsman resources and research — including on the financial services ombudsman role, the operation of financial services ombudsman schemes, dispute resolution methodology, measuring complainant satisfaction, building awareness and accessibility, and common complaint issues.

Our public website helps build awareness of financial services ombudsman schemes worldwide.

At March 2018, the INFO Network has 59 members from 38 countries across four regions (Eurasia, Africa, Asia-Pacific, Americas).

Further information about the INFO Network is available from our website at [www.networkfso.org](http://www.networkfso.org) and our secretariat at [secretariat@networkfso.org](mailto:secretariat@networkfso.org).

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## Introduction

### About this guide

This introduction explains:

- the purpose of this guide
- the structure of this guide.

This guide gives practical help on setting up a financial services ombudsman scheme from scratch, or in developing existing arrangements.

It explains the concept of a financial services ombudsman scheme, the design of its structure and powers, and the operational issues in opening it for business.

There is also a toolkit of information and examples, which can be read with the guide.

### Purpose

The INFO Network has produced this guide to help you set up an effective and efficient financial services ombudsman scheme.<sup>1</sup>

This guide can help you in:

- setting up a new financial services ombudsman scheme from scratch
- developing an existing financial services ombudsman scheme
- transforming less effective forms of financial services dispute resolution and complaint handling bodies;

whether you are:

- a government
- a national or international agency
- an authority responsible for protecting financial services consumers (a 'financial services regulator')
- an association of financial services businesses (an 'industry body')
- an association/agency that promotes the interests of consumers (a 'consumer body')
- another body involved in financial services dispute resolution and complaint handling.

The information in the guide may also be helpful to existing financial services ombudsman schemes, and to anyone studying or undertaking research on the role, functions and operation of a financial services ombudsman scheme.

It deals with both the:

- fundamental principles that apply
- practical ways to implement those principles in differing national circumstances.

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<sup>1</sup> 'Financial services' are services that are financial in nature — including deposits, loans, payments, electronic money, insurance, investments, capital markets, pensions, intermediation/advice for these, credit reference registers and debt collection.

## Structure

### Concept

Things that you need to consider in deciding to set up a financial services ombudsman scheme

1. Reasons for a financial services ombudsman scheme
2. Fundamental principles and effective approaches

### Design

Things you need to consider in designing the structure and powers of the financial services ombudsman scheme (whether it is to be established by law or voluntarily)

3. Constitution and governance of a financial services ombudsman scheme
4. Independence of the board and financial services ombudsman
5. Funding a financial services ombudsman scheme
6. Scope and mandate of a financial services ombudsman scheme
7. Powers of a financial services ombudsman

### Operation

Things special to a financial services ombudsman scheme that you need to consider in opening it up for business

8. People for the board, financial services ombudsman and staff
9. Finance: budgets, accounts and financial controls
10. Enquiry and complaint handling process
11. Systems and information technology
12. Communication, visibility, transparency and accountability

### Glossary

Terms and abbreviations used in the guide

### Toolkit

Backup information and examples that can be read with this guide

- A. Law for a financial services ombudsman scheme
- B. Constitution and terms of reference for a financial services ombudsman scheme
- C. Simple initial funding structures
- D. Job descriptions
- E. Headings for budgeting
- F. Complaint handling by financial services businesses
- G. Process map for enquiries and complaint handling by financial services ombudsman scheme
- H. Service standards
- I. Service complaints
- J. Website contents
- K. Website structure
- L. Risk areas
- M. User survey
- N. Complaint classification
- O. Outline memorandum of understanding with financial services regulator

## Concept

### 1 Reasons

This chapter covers reasons for setting up a financial services ombudsman scheme, including:

- trust and confidence in financial services
- benefits of a financial services ombudsman scheme
- what a financial services ombudsman scheme does.

A financial services ombudsman scheme has a key role in helping to underpin consumer confidence in financial services. It benefits consumers<sup>2</sup>, financial services businesses, financial services regulators, the state and the national economy. It resolves individual complaints<sup>3</sup> against financial services businesses more quickly, more cheaply and less formally than the courts — as well as proactively feeding back information about its work in order to help make things better for the future.

### Trust and confidence in financial services

As financial services are intangible, they depend on consumers having trust and confidence in the financial services industry — for example, that:

- money deposited in a bank can be withdrawn
- an insurance policy will pay out if a valid claim is made
- an investment can be cashed in at the appropriate time.

Worldwide experience demonstrates that a financial services ombudsman scheme helps to underpin consumer trust and confidence in financial services. Consumer trust and confidence are higher where the financial services ombudsman scheme forms part of comprehensive arrangements for regulation and redress. The arrangements in the most developed economies typically include:

- **prudential regulation**, supervision by a financial services regulator to ensure that financial services businesses are financially sound and run by fit and proper people
- **conduct of business requirements**, set by a financial services regulator or by an industry code, so that financial services businesses are required to treat consumers fairly
- **a financial services ombudsman scheme**, providing user-friendly arrangements to resolve disputes between consumers (and, in some cases, small businesses) and financial services businesses
- **a compensation/indemnity fund**, a guarantee fund to provide appropriate protection to customers if a financial services business becomes insolvent
- **consumer education/information**, to increase consumer understanding of relevant financial issues and consumers' rights and responsibilities.

Creation of a financial services ombudsman scheme is not an alternative to effective regulation — it is complementary to it.

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<sup>2</sup> 'Consumer' is someone who buys products or services mainly for personal or household use — rather than for use in their trade, business or profession. In this guide, it also includes small businesses if the ombudsman scheme covers complaints from them.

<sup>3</sup> The international standard: ISO 10002: *Guidelines for complaint management in organizations* defines 'complaint' as '*an expression of dissatisfaction made to an organization, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected*'.

## G20 and OECD recommendations

The 2011 *High Level Principles on Financial Consumer Protection*<sup>4</sup> approved by the Group of 20 Finance Ministers and Central Bank Governors ('G20') and issued by the Organisation for Economic Co-operation and Development ('OECD') included:

*"Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers. In accordance with the above, financial services providers and authorised agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public."*

## World Bank recommendations

The World Bank's 2012 *Good practices for financial consumer protection* included the following recommended good practices related to dispute resolution processes:<sup>5</sup>

25. *"Every financial institution has a designated contact point with clear procedures for handling customer complaints, including complaints submitted verbally. Financial institutions also maintain up-to-date records of all complaints they receive and develop internal dispute resolution policies and practices, including processing time deadlines, complaint response, and customer access."*
26. *Consumers have access to an affordable, efficient, respected, professionally qualified and adequately resourced mechanism for dispute resolution, such as an independent financial services ombudsman or equivalent institution with effective enforcement capacity. The institution acts impartially and independently from the appointing authority, the industry, the institution with which the complaint has been lodged, the consumer, and the consumer association. Decisions by the financial services ombudsman or equivalent institution are binding on the financial institution."*
27. *Statistics of customer complaints, including those related to breaches of codes of conduct, are periodically compiled and published by the ombudsman or financial supervisory authority. The complaints are compiled by product type to facilitate identification of patterns and opportunities for improvements of service ..."*

The World Bank's 2017 updated *Good practices for financial consumer protection*,<sup>6</sup> in a new chapter on 'Private Pensions', includes:

*"If consumers are unsatisfied with the decision resulting from the internal complaints handling ... they should have the right to appeal within a reasonable timeframe (for example, 90 to 180 days), to an out-of-court ADR mechanism that:*

- I. has powers to issue decisions on each case that are binding on the employer or pension management company (but not binding on the consumer);*
- II. is independent of all parties and discharges its functions impartially;*
- III. is staffed by professionals trained in the subject(s) they deal with;*
- IV. has an adequate oversight structure that ensures efficient operations;*
- V. is financed adequately and on a sustainable basis;*
- VI. is free of charge to the consumer; and*
- VII. is accessible to consumers.*

*The existence of the ADR mechanism, its contact details, and basic information relating to its procedures should be made known to consumers through a wide range of means ..."*

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<sup>4</sup> [www.oecd.org/dataoecd/58/26/48892010.pdf](http://www.oecd.org/dataoecd/58/26/48892010.pdf)

<sup>5</sup> <http://documents.worldbank.org/curated/en/583191468246041829/pdf/701570WPOP12260REWRITE0THE0ABSTRACT.pdf>

<sup>6</sup> <http://documents.worldbank.org/curated/en/492761513113437043/pdf/122011-PUBLIC-GoodPractices-WebFinal.pdf>

## Benefits of a financial services ombudsman scheme

A financial services ombudsman scheme provides benefits for:

- consumers
- financial services businesses
- financial services regulators
- the state and the national economy.

**Consumer benefits** include:

- free and accessible individual redress if things go wrong
- a process that is informal and speedy
- a decision based on fairness (equity)
- a source of impartial information
- it helps build their confidence in financial products.

**Financial services business benefits** include:

- an effective financial services ombudsman scheme increases consumer trust in financial services
- confident consumers are more likely to use a wider range of financial services products
- disputes with consumers are resolved at minimum cost
- the financial services ombudsman scheme has specialist knowledge
- it provides consistent outcomes
- a decision based on fairness (equity)
- independent confirmation when the financial services business is in the right
- good financial services businesses are not dragged down by the actions of bad ones.

**Financial services regulator** benefits include:

- financial services regulators are freed up from individual consumer complaints
- they can focus their limited resources on prudential and systemic issues
- the financial services ombudsman scheme can help spot new and emerging issues
- it can provide a regular flow of information, to inform a regulator's risk assessments
- it can provide data that are truly comparable.

**State and economy** benefits include:

- it helps to protect citizens by providing independent individual redress
- this is at minimum cost, and usually at the expense of the industry rather than the state
- consumers become more self-reliant financially and less dependent on the state
- they will be more confident to join in growing a sound financial services market
- this increases the amount available for investment in developing the economy
- international reputation and competitiveness are enhanced.

## Summary of what a financial services ombudsman scheme does

Financial services ombudsman schemes provide a quicker, cheaper and less formal way of resolving financial services disputes than the courts. Typically:

- They handle enquiries, from both consumers and financial services businesses.
- Their informal process means that the parties<sup>7</sup> do not need to use lawyers.
- They triage complaints from the outset.
- They use their specialist knowledge to get quickly to the heart of the complaint.
- Complaints arising from misunderstandings can be resolved straightaway.
- Many other complaints can be resolved by advice/conciliation/mediation.
- Only a minority of complaints are likely to require investigation and a formal decision.
- The financial services ombudsman scheme knows what information to ask for, and asks for it.
- They deliver consistent outcomes.
- The financial services ombudsman scheme produces an annual report on the complaints it has handled.
- This includes recommendations on how complaints could be reduced in future.
- The financial services ombudsman scheme engages with stakeholders to discuss new and emerging issues.

Financial services ombudsman schemes are not regulators, and they do not punish financial services businesses.

### Complaining first to the financial services business

Financial services ombudsman schemes expect:

- complainants<sup>8</sup> to first take their complaint to the financial services business, in order to give it an opportunity of putting things right
- financial services businesses to consider complaints promptly and properly, providing a clear response to the complainant.

If financial services businesses handle complaints properly, the majority of complaints will be resolved at that stage. But the complainant can refer the complaint to the financial services ombudsman scheme for independent consideration if:

- the complainant is not satisfied with the response from the financial services business, or
- the financial services business does not respond to the complaint within a reasonable time.

### Resolving the complaint

The financial services ombudsman scheme actively investigates the complaint, using its specialist knowledge of financial services. This means that:

- the complainant is not disadvantaged by the financial services business's greater technical knowledge and resources
- neither the complainant nor the financial services business has to employ a lawyer (though they are not prevented from doing so).

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<sup>7</sup> 'Parties' are the complainant and financial business involved in a particular complaint.

<sup>8</sup> 'Complainant' is someone who makes a complaint to a financial business or refers a complaint to a financial services ombudsman scheme.

In the majority of complaints the financial services ombudsman scheme will be able to use its knowledge and experience to help the complainant and financial services business reach a fair outcome that they are both prepared to agree.

In the minority of complaints where that is not possible, the financial services ombudsman scheme will investigate the issues. It will take account of all the evidence and the arguments and the financial services ombudsman<sup>9</sup> will issue a decision — giving reasons for the decision.

As there is no appeal, it is usual for the financial services ombudsman scheme to issue a provisional decision, and give the parties a final opportunity to comment, before the financial services ombudsman issues a final decision.

The decision will be based on what is fair (equitable) in the circumstances of the complaint. The financial services ombudsman scheme will take into account the law, any industry code and good industry practice, but is not bound by them. This means that the financial services ombudsman scheme can deliver a fair outcome even if the law has not kept up with developments in financial services.

If the financial services ombudsman scheme's decision is in favour of the complainant, it will go on to say what the financial services business should do to put things right.

## Enquiries

Financial services ombudsman schemes also handle enquiries from both complainants and financial services businesses:

- Complainants can misunderstand what they are told by financial services businesses. An independent explanation to the complainant from the financial services ombudsman scheme can often sort things out there and then, preventing a full-blown complaint, and help improve consumer financial capability.
- A financial services business may receive a complaint and accept that it has not treated the complainant well — but be unsure what would be the fair way to sort things out. Advice from the financial services ombudsman scheme can often help resolve things straight away.

## Feedback

Financial services ombudsman schemes help to make things better for the future, by proactively feeding back information from their work:

- In reporting on the trends they see, financial services ombudsman schemes can provide independent insight — helping governments and regulators to supervise financial services more effectively, and helping financial services businesses and consumers to avoid problems.
- The financial services ombudsman scheme's reports can also be used by the communication media and consumer advisers to help improve the financial capability of the public — by explaining in clear language to consumers about financial issues, common pitfalls and their rights and responsibilities.

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<sup>9</sup> 'Financial services ombudsman' is the person (or people) in a financial services ombudsman scheme, whatever their job title, with power to make final decisions on complaints.

## Concept

### 2 Fundamentals

This chapter covers fundamental and national issues that you should consider, including:

- fundamental principles
- national context
- effective approaches
- meaningful consultation

A financial services ombudsman scheme should follow fundamental principles of independence to secure impartiality, clarity of scope and powers, accessibility, effectiveness, fairness, transparency and accountability. Whilst staying true to those principles, it is necessary to take account of the constitutional, legal, cultural and economic circumstances in the particular country — and to consult widely and publicly before details of the financial services ombudsman scheme are finalised. The INFO Network's guide on *Effective approaches to fundamental principles*<sup>10</sup> describes various ways in which the fundamental principles have been successfully implemented in differing national circumstances around the world.

### Fundamental principles

You should follow the INFO Network's six fundamental principles, which are based on widely accepted international standards.

#### Independence, to secure impartiality

Financial services ombudsman schemes are an alternative to the courts. They should be (and also be seen to be) independent and impartial — resolving complaints on their merits, without fear or favour.

Financial services ombudsman schemes should be established so that they are visibly and demonstrably independent of both the financial services industry and consumer bodies.

Financial services ombudsmen should be free from influence/direction — including free from influence or direction by:

- parties to disputes (and those representing them)
- regulators and governments.

#### Clarity of scope and powers

The financial services ombudsman scheme should publish details of:

- the scope of its jurisdiction<sup>11</sup>
- its enquiry and complaint handling processes

<sup>10</sup> [www.networkfso.org](http://www.networkfso.org)

<sup>11</sup> 'Jurisdiction' is the scope of the financial services ombudsman scheme, including: the financial businesses and activities covered; who is eligible to complain; and time limits.

- its powers
- the status of its decisions
- any effect on the complainant's legal rights of using the financial services ombudsman scheme
- what information is (or is not) kept confidential.

### Accessibility

Financial services businesses should be required to tell customers about the financial services ombudsman scheme.

The financial services ombudsman scheme should:

- provide comprehensive information on its own website and in other appropriate ways
- be easily available and accessible to complainants
- be free for complainants
- communicate clearly
- make appropriate provision for vulnerable complainants.

### Effectiveness

There should be:

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

Financial services ombudsman schemes should:

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

### Fairness

The financial services ombudsman scheme should:

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

### Transparency and accountability

Financial services ombudsman schemes should:

- pay due regard to the overall public interest in forward planning and day-to-day operations
- consult about their scope, procedures, business plans and budgets<sup>12</sup>
- publish a report at least yearly, explaining the work that they have done.

These principles are not compulsory standards. But the INFO Network expects its members to aspire to apply with the fundamental principles and observe the effective approaches, so far as it is within the member's control. And the Network aims to help them do so.

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<sup>12</sup> 'Budget' is the planned expenditure and income of the financial services ombudsman scheme for the coming financial year.

## National context

You need to take account of differing constitutional, legal, cultural and economic circumstances — whilst remaining true to fundamental financial services ombudsman principles, including independence and effectiveness. Financial services ombudsman schemes were first created in highly developed economies with long-standing democracies, and a tradition of providing effective protection to consumers. Practical challenges have increased as the schemes have spread to countries with more challenging environments.

Examples of issues that you may find in some countries include:

- If the country has recently emerged from an authoritarian past, non-governmental bodies may not yet have fully developed the capacity for exercising initiative — so that establishment of a financial services ombudsman scheme may require proactive action or support from the government.
- Even if there is proactive support from the government, work may be hampered by lack of financial resources for development work (though The World Bank or other international agencies may possibly help) and/or lack of co-ordination among rival regulatory bodies.
- There may be significant differences in attitudes to consumer protection among financial services businesses in different sectors. For example, in some countries banks were more sympathetic than insurers, whilst in other countries insurers were more sympathetic than banks.
- In countries where a consumer-friendly market economy has not yet fully developed, financial services businesses may take more persuasion that effective consumer protection is in the longer-term interests of financial services businesses, and consumer bodies may be weak or non-existent.
- Similarly, in some countries, financial services regulators have not yet developed beyond high-level supervision of major financial services businesses. They may not see protection of consumers as part of their role, and they may lack consumer protection powers
- A financial services ombudsman scheme will work most effectively when the economy has developed to the stage that consumers have rights, know they have rights, and (crucially) have the confidence to assert their rights.
- In some less developed countries, difficulties may arise (particularly in making the financial services ombudsman scheme visible and accessible to consumers) because of poor literacy, scant understanding of financial services, and poor and unreliable travel/communications infrastructure.
- If consumer confidence in public institutions is low (perhaps because of excessive bureaucracy or corruption) particular efforts will be required to design a financial services ombudsman scheme that will give consumers confidence in its independence and effectiveness.
- If a majority of key financial institutions are controlled by the state or by a small group of super-rich and influential individuals, ensuring the independence and effectiveness of the financial services ombudsman scheme will present additional challenges.
- Consumer preference for face-to-face interactions may present operational difficulties, especially where the population is sparsely spread over a wide area with poor communications. Religious beliefs may affect the kinds of financial services available and consumers' approach to them.
- Financial services ombudsman schemes, especially new ones, tend to be comparatively small. This requires a higher degree of flexibility and cross-skilling, and a lack of bureaucratic hierarchy, among staff than is usual in some cultures.
- The national constitution may reserve certain functions to the courts. This may affect how far a financial services ombudsman scheme can both be compulsory for a financial services business (if a consumer chooses to use it) and issue a decision that binds the financial services business.

- In some countries the judiciary may support the creation of a financial services ombudsman scheme, because it frees up the courts for other things. But in other countries the judiciary may see the financial services ombudsman scheme as an unwelcome competitor.
- In some countries the leaders of the legal profession may be both influential and close to financial services businesses (as major clients) — and they may well need persuasion that a financial services ombudsman scheme is in the public interest.
- In some countries there may be general consumer protection agencies or general tribunals for consumer disputes, which lack the specialist expertise and/or resources to handle financial services disputes, but which will nevertheless see a financial services ombudsman scheme as a rival.

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## Effective approaches

Financial services ombudsman schemes have been successfully established worldwide — despite differing constitutional, legal, cultural and economic circumstances.

You can find more information in the INFO Network's *Effective Approaches to Fundamental Principles*. This describes various ways, appropriate to differing national circumstances around the world, in which the six fundamental principles have been successfully implemented in practice. These effective approaches have been published in<sup>13</sup> English, French, German, Portuguese (Portugal), Portuguese (Brazil), Russian, Spanish (Spain) and Spanish (Latin America).

This guide follows those effective approaches to the fundamental principles.

It also takes account of:

- the G20/OECD's high-level principles on financial consumer protection<sup>14</sup>
- the OECD's effective approaches to implementing those high-level principles<sup>15</sup>
- the World Bank's good practices for financial consumer protection<sup>16</sup>
- the World Bank's report on fundamental principles for financial services ombudsmen<sup>17</sup>
- the European Union directive on alternative dispute resolution ('EU ADR directive').<sup>18</sup>

The EU ADR directive (which covers all consumer sectors) creates common standards that apply across (currently) 28 countries with differing national circumstances. These standards include:

- independence
- impartiality
- expertise
- accessibility
- effectiveness
- fairness
- transparency
- suspension of court limitation/prescription periods
- cross-border co-operation.

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<sup>13</sup> <https://www.networkfso.org/principles.php>

<sup>14</sup> [www.oecd.org/regreform/sectors/48892010.pdf](http://www.oecd.org/regreform/sectors/48892010.pdf)

<sup>15</sup> [www.oecd.org/finance/financial-education/G20EffectiveApproachesFCP.pdf](http://www.oecd.org/finance/financial-education/G20EffectiveApproachesFCP.pdf)

<sup>16</sup> [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good\\_Practices\\_for\\_Financial\\_CP.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good_Practices_for_Financial_CP.pdf)

<sup>17</sup> [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial\\_Obudsmen\\_Vol1\\_Fundamentals.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Obudsmen_Vol1_Fundamentals.pdf)

<sup>18</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

## Meaningful consultation

Creation of a financial services ombudsman scheme usually requires the involvement of a body with the will and power to make things happen. But it is desirable to consult widely and publicly before details of the financial services ombudsman scheme are finalised. This will help to ensure that:

- misunderstandings are eliminated
- unforeseen issues are identified
- the final details are got right
- financial services businesses have early warning of changes that will be required to their systems
- widespread acceptance is encouraged.

Consultation does not require that all parties agree. But it does mean that all legitimate issues are taken into account in decisions about the design of the financial services ombudsman scheme. The consultation should use whatever means are appropriate in the country concerned to ensure that it comes to the attention of:

- relevant government departments
  - financial services regulators
  - financial services businesses
  - consumer bodies
  - the public.
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## Design

### 3 Constitution

This chapter covers issues about constitutional structure that you need to consider in designing a financial services ombudsman scheme, including:

- governance models
- common features
- schemes established by law
- voluntary schemes
- hybrid schemes (to meet standards set by law/regulator).

Financial services ombudsman schemes may be created by law; through a voluntary scheme; or to meet specified criteria set by law or a financial services regulator.

They should all include an independent board, which appoints the financial services ombudsman, approves the budget and oversees the effectiveness of the financial services ombudsman scheme — but is not involved in deciding complaints.

### Governance models

You need to consider what governance model is to be adopted. The independence of financial services ombudsman schemes is typically created in one of three ways:

- **Schemes established by law:** A law establishes the scope and powers of the financial services ombudsman scheme, giving it compulsory jurisdiction over specified types of financial services businesses.
- **Voluntary schemes:** Established voluntarily (though sometimes after government/consumer pressure) by a particular financial services industry association, but with independent governance.
- **Hybrid schemes:** A law, or a regulator, requires specified types of financial services businesses to belong to a 'voluntary' financial services ombudsman scheme that meets specified criteria.

Broadly:

- A financial services ombudsman scheme established by law may have more authority in the perception of consumers, and more ability to compel co-operation by financial services businesses.

But it can take longer to set up, and (because a change in the law may be required) be more difficult to modify in the light of developments and national circumstances.

This can be mitigated by ensuring that however the scheme is set up there is flexibility to respond to changing circumstances. The law needs to be drafted in way that facilitates this rather than being over-prescriptive (i.e. time limits set in law) as laws are difficult to amend.

- A voluntary financial services ombudsman scheme may be quicker to set up, if the financial services industry is willing or if it yields to pressure from the government or financial services regulator.

A voluntary scheme may be quicker to modify in order to reflect developments or national circumstances — because it does not require a change in the law.

But it may have less authority in the perception of consumers, and it may have less ability to compel co-operation by financial services businesses.

- A hybrid scheme (to meet standards set by law or by a regulator) may fall somewhere between the two — in flexibility, reputation and powers.

The model that is adopted is likely to be influenced by national circumstances, and by whether creation of the financial services ombudsman scheme is being championed by:

- the government
- a financial services regulator
- an industry body
- a partnership between an industry body and a consumer body.

In some countries, the work to design a financial services ombudsman scheme may form part of a financial capability programme assisted by The World Bank or some other agency (such as US Aid, UK Aid or Australia Aid).

In some countries, a financial services ombudsman scheme was established by law from the outset. In other countries, where schemes were originally established on a voluntary basis:

- some continue to operate successfully as voluntary schemes
- some, once they were working smoothly, were later underpinned by law or a regulator
- some, once they were working smoothly, were later re-established by law
- some, because they did not work effectively, were replaced by schemes established by law.

In a few countries, the financial services regulator has a complaints department (funded from the financial services regulator's budget) that performs a similar function to a financial services ombudsman scheme.

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## Common features

Typically (whichever governance model is adopted) there is an independent board of non-executive directors, which should:

- appoint the financial services ombudsman and protect their independence
- oversee the strategy, efficiency and effectiveness of the financial services ombudsman scheme
- approve the budget proposed by the financial services ombudsman
- not be involved in the day-to-day management of the financial services ombudsman scheme
- not be involved in deciding complaints.

The members of the independent board should:

- each be required to represent the public interest
- collectively be familiar with public/consumer/ business interests.

The makeup of the board could be any of the following which commands public confidence in the relevant country:

- equal numbers from the financial services industry and consumer bodies with an independent chair
- one third each from the financial services regulator, the financial services industry and consumer bodies
- a majority are independent members.

A majority of members of the independent board should be people who are not connected with financial services businesses or the financial services industry.

If the financial services ombudsman scheme is taking over from another kind of complaint handling body, there needs to be a plan (and sufficient time allowed) for a smooth transition, including how to retain any relevant existing expertise.

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## Schemes established by law

Where the financial services ombudsman scheme is established by law, typically:

- The financial services ombudsman scheme is a public corporate body, established directly by the law or under powers given by the law.
- The jurisdiction, process and powers of the financial services ombudsman scheme are set by the law, or by rules made under delegated powers given by the law.
- Financial services businesses are required by law to be covered by the financial services ombudsman scheme.

It is likely to be difficult to get changes in the law. So it is helpful for the law to give delegated powers to make detailed rules about jurisdiction, powers and funding.

These can then be kept up-to-date in the light of developing circumstances or to deal with any mismatch with national circumstances that was not foreseen when the law was drafted.

Depending on the subject matter, the delegated powers may be given to:

- a government minister
- the financial services regulator
- the financial services ombudsman scheme
- the financial services ombudsman scheme, subject to approval by the financial services regulator.

But any such delegation should not run counter to the need for the scheme to be independent and be seen to be independent from the government and regulators.



### Toolkit

In the toolkit that can be read with this guide, there is an example of a law to establish a financial services ombudsman scheme — illustrating areas that will need to be considered. It is not a model law.

The actual form and content of the law will depend on:

- the intended distribution of governance functions
- the legal drafting style and constitutional/legal/cultural circumstances in the country concerned.

## Voluntary schemes

Typically:

- The financial services ombudsman scheme is established as a private corporate body, under the country's normal rules for creating corporate bodies.
- Its governance, scope and powers are set out in the constitution, together with the obligations of financial services businesses that are covered by the financial services ombudsman scheme.
- The jurisdiction and the complaint handling processes of the financial services ombudsman scheme are set out in the terms of reference.
- By signing up to the financial services ombudsman scheme (individually or as part of the membership of an industry body), financial services businesses contract to comply with its terms of reference.

The voluntary financial services ombudsman scheme should have, and control, its own operational budget. Its operational budget should not be part of the budget of an industry association.

In a few countries, rather than being a corporate body with a board, the voluntary financial services ombudsman scheme is an unincorporated body established by a charter — typically agreed among the government, an industry body and a consumer body.



### Toolkit

In the toolkit that can be read with this guide, there is an example constitution and terms of reference for a voluntary financial services ombudsman scheme — illustrating areas that will need to be considered, in addition to the governance arrangements. It is not a model constitution and terms of reference. The actual form and content will depend on the constitutional, legal and cultural circumstances in the country concerned.

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## Hybrid schemes (to meet standards set by law/regulator)

Where the financial services ombudsman scheme is established to meet standards set by law or by the rules of a financial services regulator, typically:

- Governance and the provisions for making rules about jurisdiction/process/powers follow the 'voluntary' model described above — adapted so far as necessary to comply with the criteria set out by law or a financial services regulator's rules.
- These often include a requirement that the financial services ombudsman scheme must be approved by the financial services regulator, to ensure that the financial services ombudsman scheme complies with the specified criteria and keeps its performance under review.

The hybrid model involves two extra bits of administration, compared to a financial services ombudsman scheme established by law:

- First, the powers of the financial services ombudsman scheme over financial services businesses arise from the contract resulting from financial services businesses individually signing up to the financial services ombudsman scheme. So there needs to be an administrative process for that.
- Second, if signing up to the financial services ombudsman scheme is to be a condition of being licensed by the financial services regulator, the financial services regulator will have to check that when issuing and renewing licences.

The financial services regulator usually approves a single financial services ombudsman scheme. But, in a few cases, financial services regulators have approved two or more 'competitive' financial services ombudsman schemes (each meeting the statutory criteria) with financial services businesses choosing which financial services ombudsman scheme to join.

There are potential risks with 'competing' financial services ombudsman schemes:

- Complainants may be unsure which financial services business is covered by which financial services ombudsman scheme. And complainants may have less confidence in independence and impartiality if it is the financial services business that has the choice of which financial services ombudsman scheme to use.
  - Unscrupulous financial services businesses might try to exercise influence over the financial services ombudsman schemes — by favouring the one that they like best and/or by threatening to undermine one scheme financially by threatening to move to another.
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## Design

### 4 Independence

This chapter covers issues about governance and independence that you need to consider in designing the constitution of a financial services ombudsman scheme (whether it is to be established by law or voluntarily), including:

- independent board
- independent financial services ombudsman
- independent decision panel.

The independent board should have an independent chairman and a balanced board that collectively provides an understanding of the regulation of financial services businesses, the legitimate interests of consumers and the legitimate interests of the financial services industry. Only a minority of members should be associated with the financial services industry.

The financial services ombudsman should be appointed by the independent board. The board members and the financial services ombudsman should be appointed by a transparent process, following a public advertisement. They should be appointed on terms that secure their independence (including from those who appointed them).

### Independent board

The constitution of the financial services ombudsman scheme should include an independent board — which provides the financial services ombudsman with essential support and accountability.

The role of the independent board is to:

- appoint the financial services ombudsman/ombudsmen
- help safeguard the independence of the financial services ombudsman/ombudsmen
- help ensure the financial services ombudsman scheme has adequate resources to handle its work
- adopt the budget
- oversee the efficiency and effectiveness of the financial services ombudsman scheme
- advise on the strategic direction of the financial services ombudsman scheme.

The independent board is not involved in deciding complaints or in the day-to-day management of the financial services ombudsman scheme — this is delegated to the financial services ombudsman (or the chief financial services ombudsman if there is more than one ombudsman).

The role and the composition of the independent board are crucial in underpinning the independence of the financial services ombudsman scheme — so as to guarantee its impartiality. Its members, and the way in which they are chosen, need to instil public confidence in the relevant country. They should include members known to, and trusted by, consumers.

Depending on what will command confidence in national circumstances, the members of the independent board may:

- be appointed by:
  - the head of state
  - the parliament
  - the government
  - the financial services regulator(s)
  - a body that has only public interest members
- comprise a body with an independent chair and a balanced membership, such as:
  - one third each from the financial services regulator(s), the financial services industry and consumer bodies
  - equal numbers from the financial services industry and consumer bodies with an independent chair
  - a majority of independent members.

Members of the independent board should be chosen by a transparent process, following a public advertisement. They should all be of good character.<sup>19</sup> None of them should be a serving politician or financial services regulator.

The chairman of the independent board should not be anyone who is associated with the financial services industry. Only a minority of the board should be associated with the financial services industry. This does not prevent an equal number from industry and consumer backgrounds with an independent chair.

Someone 'associated with the financial services industry' means anyone who:

- works in a financial services business, or has done so in the previous three years
- works in an association of financial services businesses, or has done so in the previous three years
- has (or has a close family member who has) a beneficial interest of more than five percent in a financial services business.

It is helpful if the independent board collectively provides a balance of understanding in respect of:

- the regulation of financial services businesses
- the legitimate concerns of consumers of financial services
- the legitimate concerns of the financial services industry.

You should ensure that members of the independent board must be appointed on terms that:

- secure their independence from those appointing them
- require them to act in the public interest
- require them to disclose any conflict of interest and not be involved in a connected discussion or decision.

This includes:

- appointment for a sufficient length of time to ensure their independence (typically at least three years)
- protection from removal — except for incapacity, misconduct or other just cause by a body that is independent of the financial services industry and independent of consumer bodies.

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<sup>19</sup> 'Good character' is used in the Anglophone sense (never having been subject to any sanction for criminal/professional/fiscal/financial conduct and free from any other blot on their reputation) though the Francophone sense (pleasant disposition) would also be helpful.

## Independent financial services ombudsman

It is crucial that the constitution of the financial services ombudsman scheme guarantees the independence of any financial services ombudsman — meaning anyone (whatever their job title) who has the power to make a final decision on complaints.

This is to protect the financial services ombudsman's impartiality:

- resolving complaints on their merits, without fear or favour
- free from influence/direction by parties, financial services regulators or the government.

A smaller financial services ombudsman scheme may have a single financial services ombudsman who is also chief executive of the financial services ombudsman scheme — to whom the staff members are responsible.

A larger financial services ombudsman scheme may have a number of financial services ombudsmen (each with power to make the final decision on complaints), one of whom is appointed as the chief ombudsman and chief executive.

You should ensure that the independence of any financial services ombudsman is reflected in:

- the governance structure of the financial services ombudsman scheme
- the powers which the financial services ombudsman exercises
- the way in which the financial services ombudsman is appointed
- the terms on which the financial services ombudsman is employed.

### Governance structure

The independence of the financial services ombudsman scheme, and the financial services ombudsman, should be established by the constitution of the financial services ombudsman scheme.

This should ensure that the financial services ombudsman scheme:

- is provided with sufficient resources to cope efficiently with its workload, and operate on a not-for-profit basis
- has a funding structure where those providing the funds (whether from the public or private sector) cannot influence the work of the financial services ombudsman scheme
- cannot be subjected, directly or indirectly, to commercial or other influence by parties to the disputes it handles
- publishes regular reports on its work and on issues that give rise to complaints.

### Powers

The law, or the constitution of the financial services ombudsman scheme, should ensure that only a financial services ombudsman can make the final decision on:

- whether any complaint is within the jurisdiction set by the scheme's constitution
- the procedure for the resolution of any complaint
- the outcome of any complaint.

A decision by a financial services ombudsman should either:

- not be able to be overturned
- be able to be overturned only by the courts or a tribunal with equivalent independence and standing.

The law, or the constitution of the financial services ombudsman scheme, should require a financial services ombudsman to disclose any conflict of interest in relation to a complaint, and cease to be involved in the complaint.

## Appointment

Appointment of a financial services ombudsman should be by a transparent process, following a public advertisement.

To ensure consumer confidence in a financial services ombudsman's impartiality, they should not have worked in a financial services business (or an industry body for the sector) covered by the ombudsman scheme in the previous three years.

The financial services ombudsman should be of good character. They should not be a serving politician.

If there is no independent board to appoint the financial services ombudsman, they should be appointed by a body that commands public confidence in the relevant country. Depending on national circumstances, this may be:

- the legislature
- the government
- a financial services regulator
- a body that has only public interest members.

In any event, the appointment body should not have:

- a majority of industry representatives
- a majority of consumer representatives.

## Employment terms

The constitution of the financial services ombudsman scheme should ensure that a financial services ombudsman is appointed on terms that secure their independence from:

- the financial services industry and consumer bodies
- the financial services regulator(s) and the government
- those who appointed the financial services ombudsman.

The constitution of the financial services ombudsman scheme should ensure that a financial services ombudsman:

- should be appointed (or reappointed) for a sufficient term to ensure independence (ideally, five years)
- should not be removable — except for incapacity, misconduct or other just cause by a body that is independent of the financial services industry and independent of consumer bodies.

If a financial services ombudsman can be reappointed:

- the reappointment process should not compromise their independence
- they should be told the outcome at least one year before the previous term ends.

A financial services ombudsman's pay could be linked to that of an equivalent grade of judge.

In any event, the financial services ombudsman's pay should not be:

- subject to reduction or suspension
- influenced by the outcome of complaints.

It may be acceptable to introduce a performance-related element to the part of the financial services ombudsman's pay that relates to their role as chief executive — but this should:

- not be done until financial services ombudsman scheme has been successfully established, and has operated smoothly for a time
- be clearly insulated from being affected by, and from affecting, the complaint decisions that the financial services ombudsman makes
- affect only the part of the financial services ombudsman's pay that relates to their role as chief executive of the financial services ombudsman scheme
- be an upwards-only adjustment by the independent board, based on previously set and clearly disclosed criteria relating to operational efficiency.

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## Independent decision panels

In a few cases, the constitution of the financial services ombudsman scheme provides instead for complaints to be decided by a panel — for example:

- an independent chairman
- one member nominated by the financial services industry
- one member nominated by a consumer body.

However, this may:

- increase cost
- increase the time taken to reach and document a decision
- make it more difficult to achieve consistency
- diffuse accountability.

But where complaints are decided by a panel:

- the independent chairman needs the same protection for their independence as a financial services ombudsman
- there should be an equal number of panel members nominated by the financial services industry and panel members nominated by a consumer body.

## Design

### 5 Funding

This chapter covers issues about funding that you need to consider in designing the constitution of a financial services ombudsman scheme (whether it is to be established by law or voluntarily), including:

- separate budget
- no charge for complainants
- start-up funding
- operational funding
- levies
- case fees
- initial funding structure.

The financial services ombudsman scheme should have its own operational budget, prepared by the financial services ombudsman and approved by the independent board. The budget should include appropriate provision for reserves.

There should be no charge for complainants. Unless the cost of the financial services ombudsman scheme is met by the government or the financial services regulator, it should be raised from the financial services industry — by levies, case fees (for complaints handled) or a combination of the two.

It is usually best to start with a simple funding structure that is easy and economical for the financial services ombudsman scheme to operate; can be readily understood by financial services businesses; and is reasonably predictable in the amounts to be paid and received.

#### Separate budget

The financial services ombudsman scheme should have, and control, its own operational budget. Its operational budget should not be part of the budget of another body.

The proposed yearly budget, covering the financial services ombudsman scheme's income and expenditure, should be prepared by the financial services ombudsman and presented to the independent board for approval. The board may seek the views of stakeholders before adopting the budget.

In order to ensure a degree of oversight that remains consistent with the independence of the financial services ombudsman scheme, the budget:

- may be subject to approval by an independent financial services regulator
- should not be subject to approval by the financial services industry.

If the financial services industry had a role in approving the budget, the financial services ombudsman scheme's independence would be seen to be infringed.

## No charge for complainants

If the financial services ombudsman scheme is paid for by the financial services industry, it will be reflected in the charges of financial services businesses — so the cost will ultimately and indirectly fall on customers as a whole.

But the constitution of the financial services ombudsman scheme should require that there is no charge for complainants to refer a complaint to the financial services ombudsman, so that cost does not form a barrier to access.

This also helps financial services businesses to deal with the few persistent complainants who lobby the media or members of parliament. Financial services businesses can say, in effect:

*We have investigated the complaint and we do not consider it is valid. But the complainant can take their complaint free of charge to the financial services ombudsman, whose decision we will follow.*

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## Start-up funding

Start-up costs will be incurred in:

- planning for the financial services ombudsman scheme
- getting it established
- creating an initial operating reserve up to the point where it opens for business and the operational funding starts.

An initial operating reserve is to guard against cashflow difficulties and to cover the possibility that, once the financial services ombudsman scheme opens for business, the workload in practice will exceed projections made in theory. It may also be helpful to have a fall-back line of credit ready just in case it is needed.

These start-up costs could be met by one or more of the following:

- the government:
  - a grant out of general taxation
  - a loan to be repaid later from the operational funding
- a financial services regulator:
  - a grant out of its budget
  - a loan to be repaid later from the operational funding
- an industry association:
  - a grant out of its budget
  - a loan to be repaid later from the operational funding
- a loan on commercial terms from a bank, which is likely to require a guarantee from:
  - the government
  - a financial services regulator
- technical assistance from The World Bank or another international agency.

## Operational funding

The financial services ombudsman scheme needs adequate operational funding, so that it can carry out its work effectively and expeditiously. This includes provision of appropriate operating reserves, to:

- cover fluctuations in cashflow and workload
- smooth any fluctuations in the amounts that financial services businesses have to pay.

The financial services ombudsman scheme aims to balance its income and expenditure, so as not to make a surplus or a loss. But if circumstances arise where it makes a surplus (or a loss), that is carried forward as a reduction (or an increase) in the operational funding for the following year.

By law, or the terms of the financial services ombudsman scheme's constitution, the funding structure should be designed so that those providing the funds (whether from the public sector or private sector) cannot influence the work of the financial services ombudsman scheme.

Operational funding could in theory be provided by the government (out of general taxation) or by a financial services regulator, out of its budget. But this is seldom a practical proposition.

Usually, operational funding comes from financial services businesses. Their liability to pay can arise from:

- the law, where the law requires it
- a financial services regulator's rules, where the rules require it
- membership of an industry body, where its rules require it
- signing up individually to the financial services ombudsman scheme.

In order to ensure a degree of oversight that remains consistent with the independence of the financial services ombudsman scheme, the funding structure:

- may be subject to approval by an independent financial services regulator
- should not be subject to approval by the financial services industry.

Industry funding can come through:

- levies payable by all financial services businesses, which:
  - reflect the increased consumer trust and confidence in all financial services businesses where a financial services ombudsman exists
  - reflect the benefit to the reputation of financial services businesses derived from increased consumer trust and confidence in financial services where there is a financial services ombudsman scheme
  - give financial services businesses a degree of stability and predictability in the amount payable, enabling them to budget ahead
  - give the financial services ombudsman scheme a reasonable degree of certainty about the amount of funding it will receive
- case fees payable by financial services businesses about which complaints are referred to the financial services ombudsman scheme, which:
  - reflect the workload which those financial services businesses generate for the financial services ombudsman scheme
  - create a degree of volatility in the amounts which will be payable by financial services businesses, making it more difficult for them to budget ahead
  - create a significant degree of uncertainty for the financial services ombudsman scheme about the amount of funding it will receive

- a combination of levies and case fees<sup>20</sup> to:
  - balance the increased consumer trust and confidence obtained by all financial services businesses and the workload created by those financial services business with complaints
  - mitigate any uncertainty for financial services businesses about the amounts they will be required to pay
  - mitigate any uncertainty for the financial services ombudsman scheme about the amount of funding it will receive.

For a new financial services ombudsman scheme, the whole of the budget for year one will need to be raised by levies. This is to ensure that all outgoings can be paid, because it will not be known what case fees will be received in year one. Case fees from year one can go to reduce levies in year two; case fees in year two can go to reduce levies in year three; and so on.

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## Levies

Levies, which are usually yearly levies, may be calculated in various ways, including:

- as a flat rate:
  - the same flat rate for all financial services businesses
  - differing flat rates for financial services businesses of a particular type
- according to the market share of:
  - that type of financial services business
  - that individual financial services business.

Note:

- In the nature of things, a levy can only be raised from those financial services businesses that are on record, as a result of being regulated or registered.
- Some types of financial services businesses (such as banks in most countries) are more widely used and so more likely to be the subject of complaints.
- There may be public policy reasons to exempt some socially useful smaller financial services businesses (such as microfinance and microinsurance) from any levy, or to charge them a reduced rate.
- It is only practicable to use market share where there is an official record of the relevant data (such as where it is collected by a financial services regulator).
- It is simpler to assess market share within a particular sector (such as banking or insurance) than across sectors. For example, how many bank accounts equal how many insurance policies?

However the levy is calculated, it is usually assessed and collected yearly. The levy may be collected:

- by a financial services regulator, with its own levy, and paid across to the financial services ombudsman scheme
- by the financial services ombudsman scheme itself, which will need the necessary resources to do so
- by an industry body, and paid across to the financial services ombudsman scheme.

The law or rules under which the levy is collected need to allow for the fact that some financial services businesses may not pay on time. They should provide for any late payer to be liable for interest and any additional collection costs — so that prompt payers do not subsidise late payers.

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<sup>20</sup> 'Case fees' are fees payable by financial businesses for complaints about them that are handled by the financial services ombudsman scheme.

## Case fees

Where there is a case fee (on complaints handled by the financial services ombudsman scheme), it may be payable by the financial services business for:

- all complaints about it referred to the financial services ombudsman scheme
- all complaints, except for a small number of 'free' complaints
- complaints that are found by the financial services ombudsman scheme to be within its jurisdiction
- complaints which the financial services business 'loses'
- complaints where the financial services business did not handle the complaint properly when received.

You should note:

- The argument for a small number of 'free' complaints (especially where the financial services business has paid a levy) is that, if the financial services business genuinely believes itself to be in the right, it is not discouraged from standing its ground and letting the complaint go through to the financial services ombudsman scheme even where the amount in issue is less than the case fee.
- Charging a case fee only where the financial services business 'loses' is problematic. There may not be a clear 'winner' and 'loser' — for example where the financial services ombudsman scheme facilitates an agreed outcome,<sup>21</sup> or the financial services ombudsman scheme awards more than the financial services business offered but less than the complainant claimed. And it is undesirable for the impartiality of the financial services ombudsman scheme if it derives a financial benefit from upholding a complaint.
- In a few cases, the financial services ombudsman scheme charges a case fee only where the financial services business failed to handle the original complaint properly, but this increases workload — because, as well as deciding the merits of the complaint, the financial services ombudsman scheme has to make a second decision about the quality of the financial services business's complaint handling.
- Where a financial services ombudsman scheme covers both regulated/registered financial services businesses (from which it collects a levy) and unregulated/unregistered financial services businesses, the unregulated/unregistered financial services businesses should pay a higher complaint fee to reflect that they have not paid a levy.
- The fewer the types of cases in which a case fee is payable, the larger the case fee will need to be in order to generate the necessary income. Case fees should not be so high that they skew how financial services businesses approach complaints, either by trying to suppress complaints or by paying unjustified complaints, to avoid the case fee.
- Most financial services ombudsman schemes charge the same case fee, irrespective of whether a complaint is resolved by advice/conciliation/mediation or has to go on to a formal decision. A few financial services ombudsman schemes charge case fees that vary according to how far the complaint has gone through the process — though it is the financial services business that pays the case fee, but it might have been the complainant who pressed on with the complaint.
- There may be public policy reasons to exempt some socially useful smaller financial services businesses (such as microfinance and microinsurance) from any levy or to charge them a reduced rate.

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<sup>21</sup> 'Agreed outcome' is a settlement agreed between the complainant and financial business as a result of the financial services ombudsman scheme using alternative dispute resolution techniques such as mediation or conciliation.

Case fees may be collected:

- individually:
  - upfront, when the complaint is first referred to the financial services ombudsman scheme
  - at the end, when the complaint is finally resolved
- periodically, for example:
  - once the financial services business has incurred a set number of case fees
  - every three months
  - every year, perhaps alongside a yearly levy — to reduce collection expenses.

The case fees may be collected by the financial services ombudsman scheme — or, if collected alongside the yearly levy, by whoever collects the levy.

The law or rules under which the case fees are collected need to allow for the fact that some financial services businesses may not pay on time. They should provide for any late payer to be liable for interest and any additional collection costs — so that prompt payers do not subsidise late payers.

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## Initial funding structure

There should be meaningful consultation with financial services businesses about funding arrangements. It can be tempting to design a complicated funding structure, in an attempt to accommodate differing views. But the funding structure needs to be relatively easy to explain and also to operationalise:

- The more complicated the funding structure is, the more costly it will be to explain, assess and collect — and this will be reflected in the administrative workload for the financial services ombudsman scheme and hence the amount that has to be collected.
- Any mismatch between the classification of the categories of financial services businesses covered by the financial services ombudsman scheme and the classification of the categories of financial services businesses subject to regulation/registration will increase that complexity, as the financial services ombudsman scheme will be unable to draw directly on the records of the financial services regulators.
- At the beginning of a new financial services ombudsman scheme, there is unlikely to be reliable data from which to calculate the likely number of complaints (both in totality and from different financial services sectors), and the data on the size of financial services businesses available from the financial services regulators may be very limited or non-existent.
- It is difficult to accurately predict the number of complaints that will be received, so the funding structure will need to be based on a set of working assumptions (tested by consultation) combined with the creation of a robust financial reserve in order to accommodate peaks and troughs in workload and funding.

It is usually best to start with a simple and unsophisticated funding structure, that:

- is easy and economical for the financial services ombudsman scheme to operate
- can be readily understood by financial services businesses
- is reasonably predictable in the amounts to be paid and received, and avoids significant volatility.

That initial funding structure can be developed gradually, in the light of experience of the actual circumstances and workload faced by the financial services ombudsman scheme.



### Toolkit

In the toolkit that can be read with this guide, there are some examples of comparatively simple initial funding structures.

## Design

### 6 Scope

This chapter covers issues about scope that you need to consider in designing the constitution of a financial services ombudsman scheme (whether it is to be established by law or voluntarily), including:

- not a financial services regulator
- one financial services ombudsman or an ombudsman for each sector?
- financial services businesses and activities covered
- complaints and complainants covered
- where and when the financial service was provided.

It is necessary to identify, in the light of national circumstances, which financial services businesses (and which of their activities) are to be covered by the financial services ombudsman scheme. The boundaries should be made clear. And there should be a clear definition of what comprises a complaint.

All financial services ombudsman schemes accept complaints from consumers. Some also accept complaints from smaller businesses, because their capabilities are likely to be similar to those of consumers and, in a small family business, the dividing line between consumers and business will be unclear.

### Not a financial services regulator

The role of the financial services ombudsman scheme is to provide individual redress for complainants. It does not make general rules for the financial services industry or punish individual financial services businesses. These are the roles of the financial services regulator. But, equally, the financial services regulator should leave individual redress to the financial services ombudsman scheme.

### One financial services ombudsman or an ombudsman for each sector?

Historically, financial services ombudsman schemes tended to be created to cover a particular financial services sector (such as banking, insurance or investments).

But in many countries the traditional boundaries between financial services sectors have become increasingly blurred. For example, banks sell insurance and investments as well as bank accounts and loans. This blurring is likely to increase as financial services are delivered in new ways through the use of technology.

This makes it confusing for complainants. For example, if the complaint is about an insurance policy sold by a bank, does the complaint go to the insurance ombudsman scheme or the banking ombudsman scheme?

So for some years there has been a growing movement towards having a single financial services ombudsman scheme covering all financial services sectors — either created from scratch or by amalgamating existing sectoral financial services ombudsman schemes.

Bringing all the sectors together in a single financial services ombudsman scheme:

- makes it simpler for complainants to know where to take their complaint
- means that financial services businesses have to deal with only one set of procedures
- offers economies of scale
- provides flexibility when workload swings between different financial services sectors
- does not prevent individual members of ombudsman staff focusing on a particular financial sector.

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## Financial services businesses and activities covered

It is necessary to identify, in the light of national circumstances, which financial services business (and which of their activities) are to be covered by the financial services ombudsman scheme. The boundaries should be made clear.

The scope of the financial services ombudsman scheme need not be restricted to financial services businesses and activities that are regulated, especially where the scope of regulation:

- is narrow
- has not kept pace with evolving models of delivering financial services.

### Financial services businesses

Financial services businesses that might be covered include:

- banks
- payment service providers
- electronic money issuers
- lenders (secured or unsecured)
- credit unions
- financial co-operatives
- microfinance businesses
- insurers, including providers of takaful (Islamic insurance)
- microinsurance businesses
- investment providers
- stock exchanges
- capital market participants
- pension providers
- intermediaries for any of these (including deposit/loan/insurance brokers and investment advisers)
- credit reference agencies
- debt collectors.

It would be usual to provide that financial services businesses must accept liability for the acts/omissions of their agents.

## Activities covered

It is also necessary to identify which activities are covered, because some businesses are not mainstream financial services businesses. They only provide financial services as a small and ancillary part of another business — for example, arranging credit or insurance only in relation to goods that they sell.

Activities that might be covered by the financial services ombudsman scheme include:

- accepting deposits
- lending (secured or unsecured)
- issuing credit/debit/charge cards
- providing other payment services
- issuing electronic money
- insurance
- providing investments
- issuing/transferring stocks and shares
- providing pensions
- running a credit reference register
- debt collection
- advising on, or arranging, any of the above
- any activities ancillary to the financial services.

If the ombudsman only covers a single sector (such as banking, insurance or investments), it is helpful if all the financial services businesses in that sector (including intermediaries) are covered by the financial services ombudsman scheme. For example:

- **Deposit-taking and lending (or credit)**

A bank current (or cheque) account with an overdraft facility may move backwards and forwards between deposit-taking and lending, depending on whether it is in credit or debit at a particular time. Lending may be in various forms, including ordinary loans and credit cards. But, in many countries, loans and credit cards are also provided by financial services businesses that are not banks. Consumers may find it difficult to understand the distinction, especially if the lending is arranged through an intermediary.

- **Electronic money**

There is an increase in other forms of 'money' (such as electronic money) and transactions in 'money' (such as payment services — moving money from one place to another, or from a consumer to a business). Electronic money and payment services are neither deposit-taking nor lending. Some are provided by banks, and some are provided by businesses that are not banks. Though many consumers have one or more plastic cards, few fully understand the differences among:

- a debit card (debiting an account that may be in credit or authorised overdraft)
- a charge card (a short-term facility that does not count as credit for many purposes)
- a credit card (which is a loan, maybe short-term or longer-term)
- a stored-value card or 'electronic purse' (which is electronic money).

- **Insurance**

A financial services ombudsman scheme dealing with insurance should cover not only insurers (and their agents) but also intermediaries, such as banks and insurance brokers. Otherwise, complainants will not know where to go — and there may be significant gaps in coverage.

For example, if a complainant's complaint is about a rejected insurance claim, it may not be apparent to the complainant whether the problem is that:

- the intermediary sold a policy that did not cover the relevant risk
- the risk is covered, but the insurer was wrong to reject the claim.

- **Investments**

Similarly, a financial services ombudsman scheme dealing with investments should cover not only investment providers (and their agents) but also intermediaries, such as banks and independent financial advisers. It may not be clear to the complainant whether the problem lies with the financial services business that designed and produced the investment or with the intermediary that recommended the complainant to buy the investment.

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## Complaints and complainants covered

It is necessary to identify, in the light of national circumstances, which complaints and complainants are to be covered by the financial services ombudsman scheme.

### Complaints

The international standard: *ISO 10002: Guidelines for complaint management in organizations* defines a complaint as 'an expression of dissatisfaction made to an organization, related to its products, or the complaint handling process itself, where a response or resolution is explicitly or implicitly expected'. In some countries, for complaints about financial services, it is common to:

- include an explicit reference to services
- make it clear that the expression of dissatisfaction can be oral or written
- require that there has been some loss or material inconvenience to the complainant.

### Consumers

All financial services ombudsman schemes accept complaints from individual consumers. A consumer is someone who buys products or services mainly for personal or household use — rather than for use in their trade, business or profession.

### Small businesses

It is helpful if financial services ombudsman schemes also accept complaints from smaller businesses, on the basis that:

- their capabilities are likely to be similar to those of consumers
- in a small family business, the dividing line between consumers and business will be unclear.

Small businesses are usually defined in relation to turnover and/or staff numbers. Some countries use the European Union definition of 'micro-enterprise' or 'small and medium enterprise'.<sup>22</sup>

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<sup>22</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

## Non-business bodies

If the financial services ombudsman scheme is to accept complaints from small businesses, it should also accept complaints from non-business bodies (such as charities and trusts) of equivalent size.

## Financial services businesses as complainants

Where a financial services ombudsman scheme accepts complaints from small businesses, should it handle a financial services complaint by one financial services business (that qualifies as a small business) against another financial services business? There are three main possibilities:

- It would be possible for a financial services ombudsman scheme to handle such complaints.
- But some schemes exclude such complaints from their jurisdiction.
- The financial services ombudsman could be given some discretion, depending on the type of complaint.

Such discretion could be given by adding to the grounds for early dismissal (see chapter 7) power for the financial services ombudsman to dismiss the complaint if it is by a financial services business against another financial services business in relation to a financial service activity of a type that the first financial services business itself carries on.<sup>23</sup>

## Relationship with financial services business

The acts/omissions of a financial services business may harm someone who does not actually become a customer/client/investor. Consideration should be given to covering consumers who are directly affected by the activities of a financial services business, even though they do not actually become customers/clients/investors.

Examples include:

- prospective customers/clients/investors, for complaints about a financial services business's wrongful refusal to provide a service (perhaps involving unlawful discrimination)
- users (and prospective users) of payment services, and holders (and prospective holders) of electronic money, provided by the financial services business
- a guarantor or surety for a loan (or credit) that was provided to a customer by a financial services business
- a beneficiary under an insurance policy taken out by someone else (such as a policy taken out by an employer to benefit its employees, or by someone to benefit their family/dependents)
- a beneficiary under a collective investment managed by the financial services business (such as a holder of units in a unit trust)
- a beneficiary under a pension taken out by someone else (such as a pension taken out by someone for their own benefit and the benefit of their family/dependents)
- someone whose credit history has been (incorrectly) recorded on a credit reference register (so that their ability to borrow has been adversely affected)
- someone from whom a debt is being (incorrectly) claimed (such as where the lender has wrongly confused them with the actual debtor).

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<sup>23</sup> This would enable the financial services ombudsman to dismiss a complaint about an intra-industry dispute (for example, between an insurance agent and the insurer it represents), but deal with a complaint where the financial services business is genuinely acting as a consumer (for example, where an insurance agent is complaining against its bank).

Some financial services ombudsman schemes accept complaints against motor insurers by victims of an accident caused by an insured driver, and some do not. The constitution of the financial services ombudsman scheme should make clear whether or not these are covered.

It should also make clear that complaints can be brought:

- by the complainant personally
- on behalf of the complainant by anyone authorised by the complainant
- on behalf of the complainant (including a deceased complainant) by anyone authorised by law.

Complainants should be free to choose whether to take their complaint to the financial services ombudsman scheme or to court. Contracts produced by financial services businesses should not make it compulsory for customers to go to the financial services ombudsman scheme and not to court.

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## Where and when the financial service was provided

It is usual for a financial services ombudsman scheme to be able to consider complaints:

- about a financial service provided in or from (perhaps by internet or phone) the country where the financial services ombudsman scheme is based
- whether or not the complainant is in the country where the financial services ombudsman scheme is based (so that cross-border complaints are covered).

It is also usual to consider setting time limits for referring complaints to the financial services ombudsman scheme:

- In some countries the financial services ombudsman scheme only covers complaints about events after a specified date — usually the date that the financial services ombudsman scheme was announced or set up. In other countries the financial services ombudsman scheme can cover complaints about earlier events.<sup>24</sup>
- In most countries, the complainant must refer the complaint to the financial services ombudsman scheme within a set period from the date of the act/omission that caused the dispute. Often the length of the time limit reflects what is usual in that country's courts.
- In some countries, in cases where the complainant could not have known there was a problem at the time, the time limit is extended to run from the date when the complainant knew (or should reasonably have known) that they had grounds for complaint.
- In some countries, there is also a (shorter) time limit from the date on which the financial services business issued a written final decision on the complainant's complaint (provided that final decision warned the complainant of the time limit and gave contact details for the financial services ombudsman scheme).
- In many countries, the financial services ombudsman scheme is given discretion to extend time limits where the complainant was prevented (for example, by illness) from complying with the time limit.

In some countries, the time limits for taking a case to court may be interrupted whilst an ombudsman considers the complaint.

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<sup>24</sup> Where there was an earlier complaint handling scheme (perhaps a department in the financial regulator) there are good precedents for giving the new financial services ombudsman scheme jurisdiction over complaints about earlier events that would have been covered by that predecessor scheme.

## Design

### 7 Powers

This chapter covers issues about the powers of the financial services ombudsman that you need to consider in designing the constitution of a financial services ombudsman scheme (whether it is to be established by law or voluntarily), including:

- early dismissal of complaints
- successor financial services businesses
- requiring information or documents
- basis of decision
- individual redress powers
- effect of an ombudsman decision
- confidentiality.

The financial services ombudsman scheme should have all of the powers necessary to investigate and resolve complaints. If the complaint is not resolved by an outcome agreed between the parties, the financial services ombudsman should decide on the basis of what is fair (equitable) in the circumstances.

The financial services ombudsman should have the power to require the financial services business to pay compensation to the complainant and/or to direct the financial services business to put things right by doing, or not doing, something (specified by the financial services ombudsman) in relation to the complainant.

It should be clearly specified how far information received by the financial services ombudsman scheme is confidential, what information (if any) can be shared with the financial services regulator and whether or not data can be published that identifies individual financial services businesses.

### Early dismissal of complaints

The financial services ombudsman should have a discretionary power to dismiss complaints at an early stage, without further consideration, where it is apparent that the complaint should not proceed further.

Circumstances where the financial services ombudsman should have a discretionary power to dismiss complaints, without further consideration include where:

- there has been no loss or material inconvenience to the complainant
- the financial services business is already offering adequate compensation
- the complainant is acting unreasonably
- the complaint is about the legitimate exercise of commercial judgement
- the complaint is about investment performance (rather than suitability of an investment)
- the complaint has already been dealt with by a predecessor complaints scheme
- only a court can deal with the complaint properly.

Circumstances where the financial services ombudsman should have a discretionary power to dismiss complaints, without further consideration also include where the subject matter of the complaint:

- was the subject of court proceedings in which the court issued a judgement on the merits of the complaint
- is subject to court proceedings (and the court has not suspended the proceedings so that the matter can be considered by the financial services ombudsman)
- was previously considered by the financial services ombudsman, unless material new evidence (that would change the outcome) has since become available.

These are not (objective) matters of jurisdiction they are a (subjective) use of the financial services ombudsman's powers where they consider that it is appropriate in the circumstances of a particular complaint.

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## Successor financial services businesses

By the time the complainant brings a complaint, the financial services business responsible for the original act/omission that gave rise to the complaint may no longer be continuing in its original form.

For example, it may have:

- merged with another financial services business
- been taken over by another financial services business
- sold the financial product and the customer relationship to another financial services business.

The circumstances may well be complex, and difficult to cover by a rigid rule. It is better to give the financial services ombudsman discretion to decide whether it is fair to pursue the complaint against the original financial services business or the successor financial services business.

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## Requiring information or documents

The financial services ombudsman should have power to require relevant information and documents from:

- the parties (the complainant and the financial services business complained against)
- any other financial services business covered by the financial services ombudsman that holds relevant information.

This power should not apply to information and documents protected from disclosure by law, unless:

- the financial services ombudsman scheme is established or underpinned by law
- that law gives an overriding power to the financial services ombudsman.

The power to require relevant information and documents should include:

- the ability to set a time limit for production
- the consequences of failing to comply
- provision for an appropriate sanction which can be imposed on the financial services business.

The financial services ombudsman should treat certain information as confidential, and not disclose it to the other party — for example, information about:

- a bank's security systems
- an insurer's fraud detection systems.

It is for the financial services ombudsman to decide, after seeing the information, whether or not to treat it as confidential. A party should not be able to make production of information conditional on the financial services ombudsman first guaranteeing to treat it as confidential.

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## Basis of decision

The financial services ombudsman's decision on the merits of a complaint should be based on what they consider to be fair (equitable) in the circumstances of the complaint.

It is acceptable for the constitution of the financial services ombudsman scheme, or rules made under it, to specify things the financial services ombudsman should take into account when considering what is fair (equitable) in the circumstances of the complaint — for example:

- legal principles (apart from any rules of evidence)
- any breach of an obligation imposed by law, rule or contract
- any unfair treatment or maladministration
- any relevant code of conduct and good industry practice
- the ombudsman's opinion of what was good industry practice at the relevant time
- any relevant advertisement or communication with the complainant.

But, to reach a fair (equitable) outcome, the financial services ombudsman should not be restricted to a strict application of these. For example:

- The circumstances of the complaint may not be covered by a law/rule/code.
- Any law/rules/code may not have kept up-to-date with new products or service channels.
- A financial services business's standard-form contract may be oppressive.

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## Individual redress powers

### Compensation

If the financial services ombudsman upholds a complaint in favour of the complainant, the financial services ombudsman should have the power to require the financial services business to pay compensation to the complainant for:

- loss caused directly by the financial services business's unfair act/omission
- proven consequential loss which would not have arisen but for the unfair act/omission
- any material distress or inconvenience caused to the complainant.

Additionally, the financial services ombudsman should have power to award interest on the compensation in appropriate circumstances, for example:

- if the compensation was for a loss that the complainant incurred in the past, interest from then until the date of the decision (to compensate the complainant for not having the money, and possibly having to borrow in the meantime)

- in any event, if the financial services business does not pay the compensation within a specified time after the financial services ombudsman's decision (to encourage prompt payment and compensate the complainant for any delay).

It may be helpful to specify that the financial services ombudsman:

- so far as practicable, will aim to put the complainant in the position they would have been but for the act or omission that gave rise to the complaint
- will not seek to penalise the financial services business.

### Direction<sup>25</sup>

Fairness may require an alternative (or addition) to compensation in some circumstances, for example:

- If a bank wrongly charged an account fee, it will have affected the amount of interest subsequently received or paid on the relevant account, so it would be fair to require the bank to recalculate the account as if the fee had never been charged.
- If a financial services business filed incorrect information with a credit reference agency, it would be fair to require the financial services business to correct the information with the credit reference agency.

To cover situations such as these, the financial services ombudsman should also have power to make a 'direction', which requires the financial services business to put things right by doing, or not doing, something (specified by the financial services ombudsman) in relation to the complainant.

The qualifying words 'in relation to the complainant' mean that the financial services ombudsman cannot issue general directions about how a financial services business operates, as this is the function of a financial services regulator.

### Upper limit

Where the financial services ombudsman's decision is binding:

- To avoid pressure for the financial services ombudsman scheme to operate more like a court, because of the size of the amount at stake — and to reflect that the service is free to complainants — it is common to place an upper limit on the amount that the financial services ombudsman can award. This does not prevent the financial services ombudsman making a non-binding recommendation for the excess.
- Earnings and the cost of living differ significantly from one country to another. So the appropriate level for the upper limit, to cover the vast majority of consumer complaints, will depend on national circumstances. Worldwide limits currently range from the local equivalents of about 5,000 EUR / 5,350 USD to about 200,000 EUR / 215,000 USD.

The limit should be high enough to cover the generality of financial consumer complaints in the particular country, or the whole purpose of creating a financial services ombudsman scheme will be undermined. Whatever the limit that is fixed, it is helpful to ensure there is a simple mechanism to increase it — in order to reflect inflation.

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<sup>25</sup> A direction is an instruction issued by a financial services ombudsman, requiring a financial business to take, or refrain from taking, steps (specified by the financial services ombudsman) in relation to a complainant.

## Effect of an ombudsman decision

The constitution of the financial services ombudsman scheme needs to make clear whether a decision by the financial services ombudsman is binding on the financial services business, and whether it is binding on the complainant.

### Typical model

The most typical model is:

- The financial services ombudsman sends the financial services business and the complainant a signed written decision (with reasons).
- The financial services ombudsman sets a time limit within which the complainant must notify the financial services ombudsman if the complainant accepts the decision.
- The financial services ombudsman may extend the time for acceptance if, in the ombudsman's opinion, there was an exceptional reason why the complainant could not respond earlier.<sup>26</sup>
- If the complainant accepts the decision in time, it is binding on both the financial services business and the complainant — the complainant cannot pursue the subject matter of the complaint in court.
- If the complainant does not accept the decision in time, the complainant is deemed to have rejected it, and it is not binding on either party.

The advantage is that complainants are encouraged to use the financial services ombudsman scheme, because they have nothing to lose. In practice, it is very rare for a complainant who loses with the financial services ombudsman to try again in court. In some countries, the financial services ombudsman's decision can be produced in court; in other countries it cannot.

### Alternative models

- In some countries, the financial services ombudsman's decision is only a recommendation, which is not binding on either the financial services business or the complainant.

The drawback is that a financial services business is free to disregard a recommendation that it does not like.

This drawback may be mitigated to some extent where:

- the compliance culture of the financial services business is strong
  - there is a very strong consumer movement and the financial services business knows it will lose custom if it ignores a financial services ombudsman's recommendation.
- In a few countries, the financial services ombudsman's decision is automatically binding on both the financial services business and the complainant.

The drawback is that a complainant may well be reluctant to use a comparatively new financial services ombudsman scheme that has not yet had an opportunity to gain confidence among complainants after they have seen it in action over time.

So this model only works effectively in the minority of countries where ombudsman schemes are well established and the courts are relatively inaccessible (for cost or other reasons).

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<sup>26</sup> For example, the complainant may have been ill or away when the determination was issued.

## Ensuring it is binding

If the decisions of the financial services ombudsman are to be binding, you need to ensure that there is a proper legal basis for this (which works in the country concerned). The legal basis depends on the status of the financial services ombudsman scheme:

- If the financial services ombudsman scheme is established by law, this can be achieved by the law itself — though you will need to consider how far the country's national constitution allows this.
- If it is a voluntary financial services ombudsman scheme, financial services businesses usually bind themselves legally as a matter of contract when they sign up to the financial services ombudsman scheme.

## Follow-up

Usually, the financial services ombudsman assumes that the financial services business has complied with the decision, unless the complainant lets them know to the contrary. If that happens:

- The financial services ombudsman should exert pressure on the financial services business and, in appropriate cases, notify the financial services regulator and/or report the non-compliance publicly.
- Where the financial services ombudsman's decision is legally binding, it should normally be enforceable by the court. The financial services ombudsman scheme may wish to assist the complainant with this.

## Relationship with any compensation/indemnity fund<sup>27</sup>

If a financial services business becomes insolvent before individual redress awarded by a financial services ombudsman is provided, the complainant will lose out — unless the relevant country has a compensation/indemnity fund for insolvent financial services businesses of that type.

If there is a relevant compensation/indemnity fund, it simplifies matters if:

- the terms of the compensation fund empower it to pay out on the basis of the financial services ombudsman's decision, without having to make a fresh investigation of its own
- the financial services ombudsman scheme is empowered (with the consent of the complainant) to pass its records on the complaint to the compensation scheme.

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## Confidentiality

Typically, information collected by the financial services ombudsman scheme in dealing with complaints is to be treated as confidential, subject to specified exceptions — where:

- the information has already been made public from another source
- fairness requires disclosure of the information to the opposing party
- the information is disclosed in a public hearing
- it is included in an ombudsman's decision
- it is required to enforce a decision or an agreed outcome
- disclosure is required under the requirements of any law.

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<sup>27</sup> A compensation/indemnity fund is a guarantee fund to provide appropriate protection to consumers if a financial business becomes insolvent.

Additionally, it is usual to allow the financial services ombudsman scheme to disclose:

- any serious regulatory breach to the financial services regulator
- any crime to anybody involved in investigating or prosecuting crime.

In some countries the financial services ombudsman scheme publishes data about named financial services businesses. If it is intended that the financial services ombudsman scheme should be able to do this — from the outset or after a settling-in period of a few years — the relevant power needs to be included in the constitution of the financial services ombudsman scheme.

## Operation

### 8 People

This chapter covers:

- choosing the members of the independent board
- choosing the financial services ombudsman
- staff structure, selection and training.

Prospective members of the independent board should understand, and take an interest in, the role of a financial services ombudsman scheme; be committed to its values; and be ready to protect the financial services ombudsman's independence and to help in dealing with stakeholders.

Financial services ombudsmen do not necessarily have to be lawyers, but they should have the necessary knowledge and skills in resolving disputes; have a general understanding of law; have/gain knowledge of relevant financial services; and undergo appropriate training.

The financial services ombudsman scheme should employ its own staff. It should not be dependent for its staff on people seconded from another body. The financial services ombudsman, as chief executive, is responsible for the structure of the staff and the selection of staff members.

### Choosing the members of the independent board

Chapter 4 explains about the design of the independent board, including its role, its composition, how it is appointed and its security in office.

This chapter deals with choosing the individual members of the independent board.

As previously explained:

- They should be chosen by a transparent process, following a public advertisement.
- None of them should be a serving politician or financial services regulator.
- The chairman should not be anyone who is associated with the financial services industry.
- No group (for example, those who are connected with financial services businesses or the financial services industry) should be in a majority.

In addition to the usual qualities that you would look for in the members of a board of directors, you need to consider additional issues. Prospective members of the independent board should:

- understand, and take an interest in, the role of a financial services ombudsman scheme (such as may be gained from reading this guide)
- be committed to its values — including acting fairly in how they, and the financial services ombudsman scheme, deal with staff, users, stakeholders and the public
- be ready to protect the financial services ombudsman's independence, and support their independent decision of complaints — whatever their own personal views on the issues may be

- have the capacity to separate that from constructive challenge of the financial services ombudsman in their role as chief executive
- be able and willing to act as advocates for effective dispute resolution and the values of the financial services ombudsman scheme, and to help in dealing with stakeholders.

It helps if:

- collectively they provide a balance of understanding of financial services — including regulation, the legitimate concerns of consumers and the legitimate concerns of the financial services industry
- the chairman and most members come from the types of jobs or backgrounds that are trusted by consumers in the particular country (even better if some of the individuals are well-known)
- the financial services ombudsman subsequently arranges training for the board members to help them better understand their role, the financial services ombudsman scheme and the environment in which it operates.

As the independent board is not involved in day-to-day management, it could be comparatively small — provided its members have the necessary range of skills.

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## Choosing the financial services ombudsman

Chapter 4 explains about the role of the independent financial services ombudsman, including:

- the governance structure of the financial services ombudsman scheme
- the powers which the financial services ombudsman exercises
- the way in which the financial services ombudsman is appointed
- the terms on which the financial services ombudsman is employed.

This chapter deals with choosing the person who is appointed as financial services ombudsman.

- It assumes a new financial services ombudsman scheme with a single financial services ombudsman who is also chief executive of the financial services ombudsman scheme — to whom the staff members are responsible.
- If the financial services ombudsman scheme grows, it may then need additional ombudsmen (each with power to make the final decision on complaints), one of whom is appointed as the chief ombudsman and chief executive.

As previously explained, the financial services ombudsman should:

- be chosen by a transparent process, following a public advertisement
- be of good character
- not be a serving politician
- not have worked in a financial services business (or an industry body) in the previous three years.

Being a financial services ombudsman can be a lonely role, involving difficult decisions. The person chosen needs to have the strength of character and the personal authority required to balance:

- deciding contentious complaints
- acting as chief executive of the financial services ombudsman scheme
- being its chief public representative.

Financial services ombudsmen do not necessarily have to be lawyers, but they should:

- have the necessary knowledge and skills in resolving disputes
- have a general understanding of law

- have knowledge of relevant financial services (or gain it before taking up the post)
- undergo appropriate training.

The approach of a financial services ombudsman scheme is very different from the approach of a court. So, before appointing a former judge or a practising lawyer, consider carefully whether they will adapt themselves to the different demands of a financial services ombudsman scheme.

Before the financial services ombudsman scheme opens for business, sufficient time should be allowed for the new financial services ombudsman to become familiar with the various aspects of the role and to learn from good practice in comparable financial services ombudsman schemes.



### Toolkit

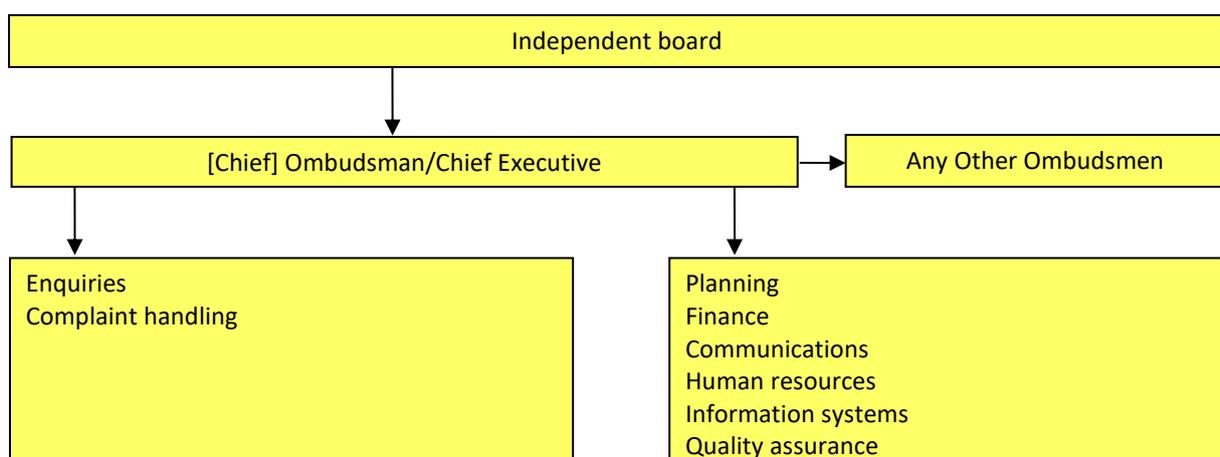
In the toolkit that can be read with this guide, there is an example job description for a financial services ombudsman, describing the main function, the main responsibilities and the skills and experience needed. It assumes that the financial services ombudsman scheme is small and new, so that there is only one financial services ombudsman.

## Staff structure, selection and training

### Structure

The quality of the financial services ombudsman scheme depends on the quality of the financial services ombudsman and the quality of the staff. The financial services ombudsman scheme should employ its own staff. It should not be dependent for its staff on people seconded from another body.<sup>28</sup>

The financial services ombudsman, as chief executive, is responsible for the structure of the staff and the selection of staff members. The simplest form of structure is as follows (subject to the possible outsourcing of some support functions):



If there is a surge in work that appears to be temporary, the financial services ombudsman will need to consider whether to employ some staff for fixed terms, rather than on permanent contracts.

<sup>28</sup> This does not prevent individual temporary inward secondments (for example, of a member of staff from the financial regulator) of someone who is developing their understanding of the financial services ombudsman scheme.

In a small financial services ombudsman scheme, it is more difficult to provide a developing 'career path' for the best and most ambitious members of staff. To help retain them, consider providing:

- outward secondments
- financial assistance towards professional/academic/language qualifications
- other opportunities to develop their expertise.

## Selection

Ordinarily, the financial services ombudsman scheme will be starting from scratch. Vacancies should be publicly advertised (this also provides an opportunity to publicise the work of the financial services ombudsman scheme).

Occasionally, the financial services ombudsman scheme may be taking over from another kind of complaint handling body. If so, there needs to be a plan for a smooth transition, including how to retain any relevant existing expertise.

Whatever the role, everyone (including administrative and support staff) should:

- understand, and take an interest in, the role of a financial services ombudsman scheme
- be committed to its values, and to providing empathetic service.

## Caseworkers<sup>29</sup>

A key staff role is that of dealing with enquiries and complaints. In this guide, we call these members of staff 'caseworkers', but many financial services ombudsman schemes use other names (for example, 'conciliators', 'investigators', 'assessors' or 'case analysts').

The level of educational or professional qualification required will depend on the relative seniority of the role concerned. Credentials — such as professional qualifications or accreditation in conciliation/mediation or dispute resolution — are more important in some national cultures than in others.

Caseworkers will work more efficiently if they are confident and happy in what they are doing. So a degree of specialisation, if the size of the financial services ombudsman scheme allows, will help both efficiency and staff satisfaction.

The financial services ombudsman scheme could 'license' its caseworkers to deal with complaints in different financial sectors, based both on their past experience and on the training they undergo.

Before the financial services ombudsman scheme opens for business, sufficient time should be allowed for the new caseworkers to be recruited and trained.



## Toolkit

In the toolkit that can be read with this guide, there is an example job description for a caseworker, describing the main functions, the main responsibilities and the skills and experience needed. It assumes that the financial services ombudsman scheme is small and new, so that caseworkers both handle enquiries and resolve complaints.

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<sup>29</sup> A caseworker is a staff member of a financial services ombudsman scheme who deals with enquiries and complaints, but is not a financial services ombudsman.

## External experts

Most complaints are usually about fairly straightforward financial services issues, administrative problems or human mistakes. But a small proportion of complaints may involve more complex financial services issues or other issues (such as property valuation).

For financial services ombudsman schemes that cannot provide all the expertise they need in-house, it may help to have a pre-approved panel of external experts who are familiar with the needs of the financial services ombudsman scheme.

## Possible ways of working

Because a new financial services ombudsman scheme is likely to be small, staff need to work flexibly. Even the financial services ombudsman may need to help with administration or answer the phone at times.

All members of staff need to be alert to spotting new and emerging issues as they arise, so that they can brief the financial services ombudsman and they can establish a consistent approach as soon as possible.

In appropriate cases, recruitment may be helped by offering part-time work, partial working from home and/or job shares. But it is helpful for everyone to spend some core time working/training time in the office. This is because financial services ombudsman schemes depend on a collegial approach — working as a team to:

- share information and experiences
- develop a consistent approach to process, fairness (equity) and outcome.

Where there is partial working from home, additional issues arise over security of files and communications.

## Staff training and support

The training budget should be treated as a target; it should not be underspent.

For caseworkers, there should be:

- induction training at the outset, to ensure they are familiar with the:
  - role, powers and approach of the financial services ombudsman scheme
  - regulatory and legal environment
- structured ongoing training to develop their skills and knowledge in the light of:
  - the financial services ombudsman scheme's workload
  - developments in financial services.

The ongoing training should be based on an analysis (for each caseworker) of the gap between:

- the knowledge and skills they need to fulfil their role
- the knowledge and skills they already possess.

This should include:

- how to deal empathetically with users of the financial services ombudsman scheme
- how to deal with vulnerable or challenging parties
- telephone, writing and file management skills

- investigation, conciliation/mediation and decision-making skills
- computer skills
- financial services products and processes, including electronic developments.

Industry stakeholders, regulators and external experts may well be prepared to assist with training in the technicalities of financial services, and this will also provide a good opportunity to liaise with them and acquaint them with the financial services ombudsman scheme's approach to fairness. The financial services ombudsman can provide periodic 'masterclasses', and other financial services ombudsman schemes may be prepared to assist with these.

As in any organisation providing a service to the public, caseworkers need to be able to handle difficult users — including users who are distressed or have mental health issues. The financial services ombudsman scheme should assist the resilience of caseworkers by providing them with:

- training in the necessary skills
  - escalation to someone more senior where appropriate
  - personal support.
-

## Operation

### 9 Finance

Chapter 5 (Funding) covered the funding of the financial services ombudsman scheme. This chapter covers:

- budgets
- accounts
- financial controls.

A financial services ombudsman scheme is a demand-led service. So the budget process needs to start with working assumptions on what the future workload is likely to be. The budget should allow for prudent reserves and be accompanied by a cashflow analysis.

The financial services ombudsman scheme should publish its annual accounts, usually with the annual report, showing the actual income and expenditure compared to the budget. It should have appropriate internal rules (approved by the independent board) to demonstrate financial probity.

### Budgets

A budget sets out the planned expenditure and income of the financial services ombudsman scheme for the coming financial year. This should not form part of the budget of another body.

When the financial services ombudsman scheme is first established:

- Particularly at the outset, it may be simpler and more economical to outsource some services, such as:
  - information technology
  - human resources
  - website design/support
  - report/leaflet design
  - organisation of events/meetings
  - book-keeping
  - legal advice.
- There may be advantages to using the flexibility of serviced offices. It helps to see what the workload is in practice, and hence what size of office is required, before the financial services ombudsman scheme ties itself to a lease. It also simplifies administration.

To protect its visible independence, the financial services ombudsman scheme should not share offices with a regulator, industry body or consumer body.

## Working assumptions

A financial services ombudsman scheme is a demand-led service:

- Its incoming workload is largely outside its control.
- The budget needs to provide sufficient money to handle this uncertain workload effectively.
- So it needs to start with working assumptions on what the future workload is likely to be.

The financial services ombudsman scheme's ability to keep to the budget will depend on the working assumptions turning out to be correct:

- Before the budget is finalised, it is helpful to give stakeholders (particularly those who are funding the financial services ombudsman scheme) an opportunity to comment on the working assumptions.
- This enables the financial services ombudsman scheme to update the working assumptions (and the budget) if appropriate, in the light of comments received.
- If the working assumptions accepted by stakeholders turn out to be incorrect (for example, significantly more new complaints than expected) the financial services ombudsman scheme should not be blamed for any consequent effect on expenditure.

## Estimating initial workload

Estimating the likely workload is usually the most difficult aspect of budgeting for a financial services ombudsman scheme:

- It is not economical to employ more staff than required to handle the number of complaints that the financial services ombudsman scheme actually receives.
- But it can take months to recruit and train new caseworkers so there are significant risks in budgeting for fewer staff than needed.

Estimating the workload in the first year of a new financial services ombudsman scheme is particularly difficult, as there is no past experience to go on:

- Financial services businesses may have records of the numbers of complaints that they have received in previous years.
  - But until a financial services ombudsman scheme is established, many dissatisfied complainants do not complain — because they think it will be a waste of time.
  - So the number of complaints to financial services businesses is likely to increase significantly once a financial services ombudsman scheme is established.
- The financial services ombudsman scheme has to handle only those complaints where the complainant remains dissatisfied with the financial services business's response to the complaint.
  - Financial services businesses may take a little time to become better at handling complaints, and there may be a backlog of dissatisfied complainants whose complaints were rejected in the past.
  - So, there may be an initial surge of complaints to the financial services ombudsman scheme, which tails off as financial services businesses get better at handling complaints and historic complaints are resolved.
- It helps to check national projections of enquiry and complaint numbers against international experience.
  - In comparing with other countries that already have a financial services ombudsman scheme, it is not just a question of scaling for the size of the population.

- It is necessary to consider how widespread the use of different types of financial services is, as well as the complexity and mix of financial products.
- It is also necessary to consider cultural differences that affect how likely it is that dissatisfied complainants will actually complain.

## Cashflow

The budget will provide for an appropriate balance between expenditure and income. But some expenditure may have to be paid before the corresponding income is received. For example:

- salaries and rent will be payable from the beginning of the financial year
- income (such as levy and case fees) may come in later in the financial year.

So:

- The budget should be accompanied by a cashflow analysis — showing expenditure and income on a monthly basis.
- This is to check that there will always be sufficient money (plus a safety margin) in hand to pay expenditure as it falls due, and avoid the need to collect more money during the year.
- The cashflow analysis should be stress-tested against likely contingencies, to ensure the financial services ombudsman scheme is not at risk of running out of money.

The cashflow analysis is one of the factors to be taken into account in setting a prudent level for reserves.

## Reserves

As well as raising sufficient income to meet anticipated expenditure, the financial services ombudsman scheme should also budget to raise enough money to maintain prudent reserves. Accounting advice may assist in determining what level of reserves would be appropriate in the particular circumstances.

This is to ensure that the financial services ombudsman scheme does not run out of money if:

- income turns out to be less or arrives more slowly than expected
- expenditure turns out to be more, or has to be paid more quickly, than anticipated.

Reserves can also be used to smooth volatilities in the amount of funding required from one year to another, providing greater predictability for those funding the financial services ombudsman scheme.

Where income comes from a levy on financial services businesses:

- The number of financial services businesses that actually pay the levy may turn out to be fewer than expected:
  - The financial services ombudsman scheme is likely to depend on another body for data on the number of financial services businesses, and the data may turn out to contain errors or uncertainties.
  - Some financial services businesses may cease trading after the date on which the levy is set and the date when the levy is payable.
  - Some levies may be uncollectable, for example where a financial services business turns out to be insolvent.
- Allowing for billing and collection, levy income is likely to start coming in after the financial services ombudsman scheme has started to pay expenditure.

Where income comes from case fees:

- The number of case fees paid may turn out to be fewer than expected:
  - There may turn out to be fewer complaints than expected.
  - Some case fees may be uncollectable, for example where a financial services business turns out to be insolvent.
- The case fees that are collected are likely to be received after the financial services ombudsman scheme has paid the expenditure for the work involved in dealing with the corresponding complaints.

In relation to expenditure:

- If new complaints come in more quickly than expected, there may be additional expenditure in managing the inflow.
- If there are more new complaints than expected, there may be additional expenditure for extra staff to deal with them.
- If new complaints are much more complex on average than expected, there may be additional expenditure for extra staff and/or experts' fees.
- If there is a significant legal dispute about a complaint, or a group of complaints, there may be additional legal fees to pay.



### Toolkit

In the toolkit that can be read with this guide, there are example headings for budgeting.

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## Accounts

Accounts set out the actual expenditure and income of the financial services ombudsman scheme for the past financial year.

The form of the accounts will depend on the accounting conventions that apply in the country concerned. As the financial services ombudsman scheme is spending other people's money, the accounts should be externally audited, even if national accounting conventions do not require it.

The financial services ombudsman scheme should publish its annual accounts, usually with the annual report, showing the actual income and expenditure compared to the budget. In the interests of transparency, they should follow best international practice on disclosure.

## Financial controls

The financial services ombudsman scheme should have appropriate internal rules to demonstrate financial probity. These should be approved by the independent board and need to apply at two key stages:

- procurement: when liability for the expenditure is incurred
- payment: when the expenditure is actually paid.

## Procurement

Financial control of procurement is intended to:

- obtain value for money
- ensure proper authorisation of expenditure
- minimise the possibility of fraud/corruption.

To demonstrate value for money, it is usual to require that procurement above:

- a specified value requires at least two competitive bids from independent suppliers
- a specified (higher) value requires a public tender process.

It is usual to require that expenditure must be approved in advance:

- up to a set limit, by an authorised member of staff
- over that limit, by two authorised members of staff
- over a (higher) set limit, by the financial services ombudsman
- over a (still higher) set limit, by the independent board.

## Payment

Financial control of payment is intended to:

- ensure proper authorisation of payments
- minimise the possibility of fraud/corruption.

It is usual to require that:

- payments must be authorised in advance by at least two people
  - over a set limit, one must be the financial services ombudsman or a member of the independent board
  - no-one can authorise their own payment.
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## Operation

### 10 Enquiry and complaint handling process

This chapter covers:

- complaint handling by financial services businesses
- enquiry handling by the financial services ombudsman scheme
- complaint handling by the financial services ombudsman scheme

There should be a clear process (and time limit) for complaint handling by financial services businesses. They bear the primary responsibility to resolve complaints. The financial services ombudsman scheme should consider how far it can assist the early resolution of complaints by financial services businesses.

The financial services ombudsman scheme should have an informal and flexible process for resolving complaints. The financial services ombudsman scheme should also handle enquiries from complainants and financial services businesses.

### Complaint handling by financial services businesses

Financial services businesses bear the primary responsibility to resolve complaints with their customers. They know about the circumstances, and they have the means and powers to resolve the problem.

The financial services ombudsman scheme will only look at complaints where:

- the complainant remains dissatisfied with the financial services business's response, or
- the financial services business does not respond in a reasonable time.

The fact that a dissatisfied complainant can go on to the financial services ombudsman scheme encourages the financial services business to handle the complaint fairly.

#### Requirements for financial services businesses

There should be a clear process (and time limit) for financial services businesses to handle complaints, so that:

- as many complaints as possible can be resolved quickly by financial services businesses themselves
- the workload (and the cost) of the financial services ombudsman scheme is minimised
- it is clear when the complainant can refer the dispute to the financial services ombudsman scheme.

Everyone needs to be clear about what constitutes:

- a complaint
- a reasonable time for the financial services business to respond.

As explained in chapter 6, the international standard: ISO 10002: *Guidelines for complaint management in organizations* defines a complaint as 'an expression of dissatisfaction made to an organization, related to its products, or the complaint handling process itself, where a response or resolution is explicitly or implicitly expected'.

In some countries, for complaints about financial services, it is common to:

- include an explicit reference to services
- make it clear that the expression of dissatisfaction can be oral or written
- require that there has been some loss or material inconvenience to the complainant.

Requirements for financial services businesses should include:

- nominating a single person with overall responsibility for the handling of complaints
- having an accessible, effective and fair internal complaints process, which is published
- what they are required to treat as a complaint
- whether it excludes anything resolved to the complainant's satisfaction straightaway
- publication and provision of a copy of the complaints procedure
- not having more than two stages in the complaint procedure
- a time limit for the financial services business to acknowledge the complaint in writing
- investigation by someone not involved in the complaint
- taking account of guidance from the financial services ombudsman scheme
- a time limit for the financial services business to provide a written decision, with reasons
- telling the complainant about the ombudsman scheme and any applicable time limit.

A complainant should be able to approach the financial services ombudsman scheme directly, without having to go through any other body (save for the requirement to complain first to the financial services business).

A complainant should have a free choice whether to take a dispute to the financial services ombudsman scheme or court. No agreement concluded before the dispute materialised should require the complainant to go to the ombudsman scheme instead of the court.

If a complaint is referred to the financial services ombudsman scheme, requirements for financial services businesses should include:

- responding promptly to communications from the financial services ombudsman scheme
- providing information and documents required by the financial services ombudsman scheme
- complying promptly with the financial services ombudsman scheme's decisions.

Financial services businesses should be required to tell their customers in writing about the financial services ombudsman scheme:

- on the financial services business's website, if it has one
- at the point of sale
- in contracts
- if the customer makes a complaint
- in its final written decision on a complaint.



## Toolkit

In the toolkit that can be read with this guide, there is example guidance on complaint handling by financial services businesses.

## Assistance from the financial services ombudsman scheme

The financial services ombudsman scheme should consider how far it can assist the early resolution of complaints by financial services businesses through:

- publishing details of its approach to common disputes
- giving advice to complainants and financial services businesses on its approach
- helping train consumer advice centres and financial services business complaint departments.

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## Enquiry handling by the financial services ombudsman scheme

The financial services ombudsman scheme should handle enquiries from complainants and financial services businesses, to:

- help them understand the issues
- indicate the general approach the financial services ombudsman scheme would take.

This may help the parties to resolve the issue between themselves, and also head off complaints based on misunderstandings.

If the enquiry is about something that is outside the financial services ombudsman scheme's jurisdiction, it should signpost the complainant to any agency that can help.

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## Complaint handling by the financial services ombudsman scheme

The financial services ombudsman scheme should have an informal and flexible process, so that neither party needs a lawyer or adviser (though parties are not prohibited from using a lawyer/adviser if they want to). That process needs to take account of technological developments and changing complainant expectations.

The financial services ombudsman scheme should:

- take an active role in deciding what evidence is required and call for it
- obtain expert reports when these are necessary
- use conciliation/mediation to reach a fair and agreed outcome, where this is possible and appropriate
- issue a formal decision in complaints that are not settled by an agreed outcome
- deal promptly with all stages of its enquiry and dispute resolution process
- keep both parties informed throughout the process
- reach its decisions impartially (without fear or favour).

## Receiving complaints

The financial services ombudsman scheme should be easily accessible to complainants for submission of complaints:

- online
- by telephone

- by post
- (where the local culture requires it) in person.

Receiving complaints by telephone or face-to-face may work more effectively than receiving them in writing — because the complainant can be asked questions to clarify the true nature of the problem. The complainant may not fully understand his/her own problem, and so be unable to explain it properly in writing.

If the complainant has not already complained to the financial services business, the financial services ombudsman should:

- forward the complaint to the financial services business (if the complainant agrees)
- invite the complainant to come back if the complaint is not resolved satisfactorily.

Otherwise, the financial services ombudsman should allocate the complaint to a caseworker, who will handle the case and should remain the parties' point of contact throughout the case. It may be helpful if the financial services ombudsman (or a senior caseworker) helps to identify the key issues to the caseworker at this stage.

If the complaint is outside the jurisdiction of the financial services ombudsman scheme, or if it is inappropriate for the financial services ombudsman scheme to deal with it for any other reason, the caseworker should tell the complainant promptly of:

- that decision
- the reasons for it
- the right to appeal to the ombudsman if the complainant considers the caseworker is mistaken.

Otherwise, as the financial services ombudsman scheme already knows what the complainant says, the next step is for the caseworker to ask for the financial services business's records about the complaint.

It helps if the financial services ombudsman scheme makes clear to financial services businesses the format and content of the information it expects to receive — either generally or by means of specific checklists.

### **Information to the complainant at the outset**

If the complainant accepts the financial services ombudsman's decision, it should then be binding on both the financial services business and the complainant— so that it is legally enforceable against the financial services business.

But if a different model is adopted, notification should be given to the complainant at the outset:

- Where the financial services ombudsman scheme's decision will not bind the financial services business, even if accepted by the complainant, the ombudsman scheme should tell the complainant at the outset that:
  - the ombudsman scheme's decision will not bind the financial services business
  - the complainant can withdraw at any stage
  - if applicable, the complainant could go to court (subject to any time limits) instead.

- Where the financial services ombudsman scheme's decision will bind the complainant, even if not accepted by the complainant, the financial services ombudsman scheme should tell the complainant at the outset that:
  - the financial services ombudsman scheme's decision will bind the complainant
  - the complaint can withdraw at any stage before the decision is issued
  - if applicable, the complainant could go to court (subject to any time limits) instead and the financial services ombudsman scheme should secure the complainant's specific agreement to proceed.

## Conciliation/mediation

Different bodies use different terms — such as 'mediation', 'conciliation' or 'neutral evaluation'. There is no standardised definition of these. We use conciliation/mediation to mean the intervention of the financial services ombudsman scheme to help the parties reach a fair and agreed outcome.

An attempt at conciliation/mediation is appropriate in most complaints, unless there are significant and material disputes of fact or the parties are too deeply entrenched. As an independent third party, with relevant specialist knowledge, the financial services ombudsman scheme may well be able to help the parties 'see sense' and come to a mutually agreed and fair solution.

It helps to understand what the complainant wants, and the emotions of both parties. But any mediated/conciliated agreement should be based on establishing a fair outcome, and not just 'splitting the difference' between the positions of the two parties.

Usually, conciliation/mediation consists of the caseworker using 'shuttle diplomacy' by telephone — speaking to the parties in turn. But some financial services ombudsman schemes bring the parties together with an independent mediator, and at least one is trialling electronic conciliation/mediation.

Before asking the complainant to accept a proposed agreed outcome, the financial services ombudsman scheme should tell the complainant:

- the legal effect (if any) of accepting the agreed outcome
- if applicable, that the solution is less advantageous to the complainant than a court would give and give the complainant a reasonable time to reflect.

## Investigation and decision

If an agreed outcome is not possible, a caseworker from the financial services ombudsman scheme should investigate the complaint. They should ensure that the complainant and the financial services business:

- can put forward their information and arguments
- can comment on any information and arguments that the financial services ombudsman will rely on
- can comment on any expert statements/opinions obtained by the ombudsman scheme
- are told they do not need a lawyer or legal adviser
- are told they may seek independent advice or be represented/assisted by a third party
- are notified of the outcome, with reasons, in writing.

The financial services ombudsman scheme should:

- not just rely on the parties to produce the evidence and arguments
- actively investigate, using its own specialist knowledge to identify and call for what is relevant.

It is usual for the financial services ombudsman scheme to issue a provisional decision, telling the parties what the financial services ombudsman is minded to decide and recommending an outcome:

- In some financial services ombudsman schemes the provisional decision may be issued in the name of the caseworker. It may be called by a different name, such as 'recommendation', 'assessment' or 'adjudication'.
- The parties can accept or reject the provisional decision. Worldwide experience suggests that 65% to 90% of provisional decisions will be accepted by both parties, and the financial services ombudsman scheme will not have to exercise its formal powers.

If either party does reject the provisional decision:

- The financial services ombudsman scheme should give the parties an opportunity to make any further representations.
- In exceptional cases, the ombudsman might consider that the most effective way to resolve a disputed material issue is to hold an informal hearing.

The financial services ombudsman will then review the whole of the complaint and issue a final decision.

It helps to keep a hearing informal if the parties do not cross-examine each other directly, and all questions a party wishes to raise are put through the financial services ombudsman.

Before asking the complainant to accept a decision, the financial services ombudsman scheme should tell the complainant:

- the legal effect (if any) of accepting the decision
- if applicable, that the solution is less advantageous to the complainant than a court would give and give the complainant a reasonable time to reflect.

## Mass complaints

By mass complaints, we do not mean class actions (one case covering numerous complainants). We mean the situation where the financial services ombudsman scheme receives a large number of individual complaints where the financial services product and the circumstances are very similar.

For mass complaints, it may be appropriate to select one typical complaint as a lead complaint — and take that through to an ombudsman decision. An anonymised copy can then be sent to the parties in the other complaints, giving them an opportunity to say whether (and, if so, how) 'their' complaint differs.

## Format of decisions

Decisions should summarise:

- the complaint
- what happened (and, if the facts are disputed, any findings of fact)
- what factors and/or requirements the financial services ombudsman has taken into account
- whether or not the financial services business was at fault
- if it was, what individual redress it should provide (and when).

Decisions should:

- keep to the essentials
- give reasons
- be persuasive
- not be legalistic
- be succinct.

Some more difficult or complex complaints may require slightly different treatment, and a longer decision, because the complaint concerns:

- a comparatively large amount of money
- a disputed issue of principle that may affect many complaints
- a standard clause in a widely-used contract
- complex circumstances with multiple issues
- an issue where the law is unclear.

In such cases, the provisional decision can be used to flush out any technical or legal points either of the parties wants to make, giving the financial services ombudsman an opportunity to ensure that they cover these points in the final decision.

As recommended in chapter 7, a decision whether or not to uphold a complainant's complaint against a financial services business should be based on what the financial services ombudsman considers to be fair (equitable) in the circumstances of the complaint. Note that:

- The financial services ombudsman scheme should aim for consistency of outcome in similar complaints, or financial services businesses will not know how they are expected to handle complaints themselves.
- The complaint is against the financial services business. Even if its employees had all done what they were expected to do, the financial services business's systems or processes may be at fault.



### Toolkit

In the toolkit that can be read with this guide, there is an example process map for casework.

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## Review of process

A financial services ombudsman scheme should have a robust mechanism for reviewing the quality of the service it provides and handling complaints about service quality. Once a new financial services ombudsman scheme has been operating for a year or so, it can help to ask someone from another financial services ombudsman scheme to review a sample of complaint files — in order to make suggestions about the process and the ways in which it is being implemented.

## Service standards and complaints

A financial services ombudsman scheme should publish brief service standards — and a process under which a user can raise any concern about the standard of service provided, though not about a decision on a complaint.

This should include an appeal about service complaints to the chairman of the independent board, or to an independent person nominated by the board.



### Toolkit

In the toolkit that can be read with this guide, there is an example of brief published service standards. There is also an example process for service complaints, and example terms of reference for an independent service complaint reviewer.

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## Operation

### 11 Systems

This chapter covers:

- complaint handling systems
- communication channels
- management and financial systems
- linkage of computerised systems
- risk management
- quality system.

A new financial services ombudsman scheme is unlikely to be large enough to bear the cost, and the risks, of developing systems specifically designed for it. It will usually need to use well-tried 'off-the-shelf' systems.

It helps efficiency if the different systems are linked (but with security barriers), so that they can 'talk' to one another and the financial services ombudsman scheme's staff do not have to take data from one system and enter it into another.

### Complaint handling systems

Complaint handling systems can range (in order of increasing efficiency):

- from paper-only files
- through simple spreadsheets
- to integrated event-driven systems.

#### Files

If the financial services ombudsman scheme has both paper and electronic files, it is important to decide which is the primary record — as that one needs to be complete:

- If the paper file is to be the primary record, it will need to include paper copies of all documents including:
  - prints of all incoming emails
  - all incoming letters/documents
  - prints of all outgoing emails/letters/documents
  - notes of all phone conversations.
- If the electronic file is to be the primary record, it will need to include copies of all documents including:
  - electronic copies of all incoming emails
  - scanned copies of all incoming letters/documents
  - electronic copies of all outgoing emails/letters/documents
  - electronic copies of notes (or recordings) of all phone conversations.

If the financial services ombudsman scheme receives original documents, it is usually prudent to copy and return them — rather than holding on to the originals.

### **Integrated event-driven**

By 'integrated' we mean a system where a particular item of information only ever has to be entered once.

For example, the complainant's name and address is entered at the outset, and any letters to the complainant created subsequently are automatically populated with the name and address.

An integrated system:

- can save repetitive work
  - can provide access to a wealth of information
- but makes it crucial that the information is correctly entered in the first place.

The design of an integrated system requires care, in order to avoid errors. For example:

- Mr Smith, who was the customer of the financial services business, has died and a complaint is submitted by his widow Mrs Smith.
- Real distress will be caused if the system does not allow for such cases and automatically addresses letters to Mr Smith.

By 'event-driven' we mean a system with the capacity to automatically generate reminders and documents in pre-specified circumstances.

For example, a caseworker writes to a financial services business, giving it two weeks to respond. At the end of the two weeks, the system automatically generates a reminder to the caseworker to check whether a reply has been received.

The integrated and event-driven features can be combined. For example, where the complaint has not previously been referred to the financial services business, the system (as one operation) can produce:

- a letter/email to the financial services business (automatically populated with details of the complainant, financial services business and the complaint) referring the complaint and reminding the financial services business of the time limit for issuing a final response
- a complaint form (automatically populated with details of the complainant, financial services business and the complaint) plus a letter/email to the complainant, inviting the complainant to complete and return the complaint form if the complaint is not resolved to the complainant's satisfaction by the financial services business within the time limit.

The system should be backed up daily to somewhere offsite or cloud-based, so that data can be recovered if the system crashes.

### **Markers**

It is helpful to have a standardised system for identifying complaints that require special treatment — for example, where the complainant has special needs or where the complaint is particularly urgent. This can range from a sticker on a paper file to a prominent note at the head of a computerised complaint file.

## Databases

Caseworkers will need access to databases of:

- up-to-date information about financial services businesses covered by the financial services ombudsman scheme, for both jurisdiction and communication purposes
- knowledge management information, setting out the financial services ombudsman scheme's usual approach to particular products and situations.

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## Communication channels

The financial services ombudsman scheme will need:

- a website
- email
- phones.

It might possibly need:

- a post office box
- fax.

## Website

The website should use optimisation tools in order to appear prominently in the results of relevant searches.

To assist navigation, it should use 'breadcrumbs' to show which page you are currently viewing and the pages above it in the website hierarchy, for example: *Home > about us > who we are > our ombudsman*



### Toolkit

In the toolkit that can be read with this guide, there is material that the website should include. There is also an example of a website structure.

Depending on how sophisticated the complaint handling system is, the website may also include:

- a complaint form that can be filled in online, and possibly the facility for the financial services ombudsman scheme to transfer the data from the complaint form into the complaint handling system
- a portal through which complainants and financial services businesses can upload documents electronically, which the financial services ombudsman scheme can transfer into the complaint handling system
- a facility for the parties to have a restricted 'window' into the complaint handling system, so that they can see the stage that their own complaint has reached.

In all these cases, the link should include a secure 'firewall' or system separation that prevents anyone using the website to hack into the complaint handling system, or any other internal systems.

## Email

The financial services ombudsman scheme's email arrangements should include:

- There should be a general enquiry email address, for use by those who do not have the email address of a specific member of staff.
- If a staff member is out of the office or away, an email to them should generate an automatic 'out of office' response — saying when they are expected back and giving an alternative contact for use if the matter is urgent.
- If a staff member ceases to work for the financial services ombudsman scheme, their email address should not just be deleted. It should be retained for a year, and an email to it should generate an automatic response — saying they have left and giving an alternative contact.
- There should be rules to prevent staff using the email system for inappropriate communications, and this should be monitored.

## Phones

For new callers to the financial services ombudsman scheme's main number, it is possible to help direct them to the appropriate person/department by using an 'automated operator', where a recording asks the caller to make a choice by entering a number — for example:

- *Press 1 if your call is about a banking or credit complaint*
- *Press 2 if your call is about an insurance or investment complaint*
- *Press 3 if your call is about anything else*

But you should keep the choices simple and straightforward. Otherwise, the financial services ombudsman scheme will appear impersonal and bureaucratic.

Some financial services ombudsman schemes find it helpful to have the automated-operator message (and any on-hold message) recorded by the ombudsman.

For callers about existing complaints, it is helpful if they can call the caseworker direct — which they can do if the caseworker puts their direct dial number on outgoing emails/letters.

To maximise accessibility for complainants, the financial services ombudsman scheme could provide a free-phone or low-cost phone number. Note that these may operate in different ways between calls from landlines and calls from mobile phones.

It helps to have the facility to record calls, to resolve any dispute about what was said. If so, the fact that calls may be recorded should be disclosed.

## Post office box

Some financial services ombudsman schemes may need a post office box address for mail, if a geographic address is not appropriate.

## Fax

Fax is now obsolete in most countries. But the financial services ombudsman scheme should have a fax number if, exceptionally, fax is still used in the relevant country.

## Social media

Depending on the local culture, it may be appropriate to consider social media — in order to reach younger consumers.

- But beware using social media unless the financial services ombudsman scheme can devote sufficient resources to using it effectively.
- In any event, there should be clear rules for staff, to prevent anything inappropriate being posted on social media.

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## Management and financial systems

The financial services ombudsman scheme will need systems for:

- records management
- billing and collection
- accounting
- management information
- data production.

### Records management

In the course of setting up a financial services ombudsman scheme, various important documents will be created by different parties involved in the process. Once the financial services ombudsman scheme is established, it should collect and collate copies of these — so that they are readily available for future reference.

The financial services ombudsman scheme should have an agreed structure within which its records are kept — so that everyone knows where to put things and where to find them. This structure should include arrangements to:

- provide version control (so it is clear which is the latest version of an evolving document)
- ensure the accuracy and periodic review of important documents
- protect confidentiality, including controls on who has access to what
- provide security from loss or tampering
- retain backup copies of important documents in a separate and safe location.

The system should take into account the requirements of any data protection and/or freedom of information requirements in the relevant country.

### Billing and collection

If the financial services ombudsman scheme is assessing a funding levy, it will need access to:

- up-to-date information to identify those liable to pay the levy
- any data required to calculate the levy.

If the financial services ombudsman scheme charges case fees, it will need a process to obtain billing information from the complaint handling system.

If the financial services ombudsman scheme collects a levy and/or case fees, it needs a system to:

- issue the resulting invoices
- record payments
- chase non-payment.

Billing and collection is something that could be outsourced (wholly or partly) if appropriate, but the financial services ombudsman scheme is likely to be blamed for any mistakes made by any outsourcer.

### **Accounting**

Functions will include:

- recording receipts, and what has happened to them
- recording payments, and who authorised them
- reconciliation between the accounts and the bank account(s)
- calculation and payment of salaries
- deduction and payment of tax and social security contributions.

This is something that could be outsourced (wholly or partly) if appropriate.

### **Management information**

The financial services ombudsman scheme will need systems to produce data from the complaint handling and finance systems, in order to monitor and analyse:

- the amount of work done by individuals and the financial services ombudsman scheme as a whole
- the type of work
- the cost of complaint handling
- income, expenditure and cashflow.

### **Data production**

For the purpose of reporting publicly (and possibly also reporting to a financial services regulator) the financial services ombudsman scheme will need systems to produce data on the complaints that it handles, including:

- types of complaints
- types of complainants
- types of financial services businesses involved
- outcomes.

Obviously, the financial services ombudsman scheme can only report data that it collects. So, in deciding which information fields to include in any complaint handling system, the financial services ombudsman scheme needs to consider what data it ought to report.

Chapter 12 explains what data will be needed for the financial services ombudsman scheme's annual report. In respect of other data, there may be a balance to be struck among:

- completeness of data
- efficiency of enquiry and complaint handling
- what will be generally acceptable to the parties.

For example:

- there may be legitimate interest in whether ethnic minorities use the ombudsman scheme
- the more data that is collected, the more time that is taken
- users may (or may not) object to being asked their ethnicity.

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## Choice and linkage of computerised systems

A new financial services ombudsman scheme is unlikely to be large enough to bear the cost, and the risks, of developing systems specifically designed for it. It will usually need to use well-tried 'off-the-shelf' systems.

This may be a particular challenge in relation to the complaint handling system, because of the particular way in which a financial services ombudsman scheme operates. It may be best for a new financial services ombudsman scheme to:

- start with a low-tech approach in order to work out, in practice, what the needs are — before committing to a high-tech system
- study the systems already used successfully by other financial services ombudsman schemes, in order to identify one which would be best and require the minimum of modifications.

It helps efficiency if the different systems are linked (but with security barriers), so that they can 'talk' to one another and the financial services ombudsman scheme's staff do not have to take data from one system and enter it into another. For example, the complaint handling system could:

- tell the billing and collection system that a case fee has arisen
- give the management information system data on throughput and timeliness
- provide the data production system with most of the data that it requires.

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## Risk management

The financial services ombudsman scheme should have a risk management system that is periodically reviewed by the independent board. The system should identify:

- the key risks to which the financial services ombudsman scheme is exposed
- the extent and priority of those risks
- what it will do to mitigate those risks
- what it would do if the risk actually occurred.

Some of those risks will be practical (for example, the risk of the office burning down) and others will be reputational (for example, a leak of confidential information).

It is common to calculate the extent and priority of a risk by scoring:

- the likelihood of a risk occurring
- the severity of the consequences if it does occur

and multiplying the two scores to obtain an overall risk score.

Mitigating a risk may involve:

- actions to make it less likely that the risk will occur
- taking out insurance against the results if the risk does occur.



### Toolkit

In the toolkit that can be read with this guide, there are some potential risk areas for consideration. The identity of the key risks is likely to change over time (for example, as the financial services ombudsman scheme moves from the setup stage to the stage when it has become an accepted part of the landscape).

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## Quality systems

The financial services ombudsman scheme should have an internal system to oversee the quality of the work carried out by its staff and the way in which users are treated.

In the smallest of schemes, the financial services ombudsman will see most things anyway. But, as a financial services ombudsman scheme grows, that will change.

If the system is not overseen by the financial services ombudsman personally, it is best if it is overseen by someone who is not line manager of the caseworkers — in order to introduce a degree of independence.

The quality system could be supplemented by regular or periodic user surveys, to see what users think of the service they received. This can help the financial services ombudsman scheme to focus on improving areas that have most impact on its reputation.

The results need to be classified according to the outcome of a complaint, as users who lose their case typically have a worse view of other aspects of service than those who win their case.

Once the financial services ombudsman scheme is well established it should also consider whether to commission an appropriately qualified and independent third party to review aspects of its operations, such as:

- the effectiveness of its dispute resolution processes
- accessibility and transparency
- the scope and powers of the scheme
- the effectiveness of the documents establishing its functions, jurisdiction, rules and procedures.

The results of any independent review would be made available to relevant stakeholders and published.



### Toolkit

In the toolkit that can be read with this guide, there is an example of a user survey, to be sent out after a complaint has been resolved.

## Operation

### 12 Communication

This chapter covers:

- image
- awareness
- accessibility
- transparency and accountability
- website content
- annual report
- data
- guidance
- stakeholders.

There should be a structured approach to raising awareness of the financial services ombudsman scheme. Complainants also need to be able to access the financial services ombudsman scheme easily in order to submit their complaints.

The financial services ombudsman scheme should publish clear details about its scope, process and powers, on its own website and in any other way appropriate in the relevant country. The financial services ombudsman scheme should report on what it has done, in an annual report.

### Image

The financial services ombudsman scheme should achieve an appropriate balance among being:

- approachable
- credible
- authoritative.

This should be reflected in:

- its branding
- the style and content of its documents
- the 'tone of voice' used in its communications.

The appropriate balance may vary from one country to another, in the light of the national culture.

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### Awareness

There should be a structured approach to raising awareness of the financial services ombudsman scheme —with staff time and money devoted to it — particularly when the financial services ombudsman scheme is new. It can take some years to raise awareness to an acceptable level.

The financial services ombudsman scheme is pointless if consumers do not know:

- about the financial services ombudsman scheme
- how to access it
- what it does.

Untargeted promotion to consumers in general is expensive, and they may well have forgotten by the time a problem arises. But:

- It may be possible to generate free awareness-raising publicity by feeding information to the communications media. This works best once there are real (but anonymised) complaints to report — as the media like 'human interest' stories based on complaints about real people.
- Requirements for financial services businesses should include telling complainants about the existence of the financial services ombudsman scheme in contract documentation and/or at the point an account is opened or a product is sold.
- If there is a financial inclusion or financial education project in the relevant country, it may be possible to have the project include reference to the role of the financial services ombudsman scheme — especially as the financial services ombudsman scheme can help to underpin consumer confidence.

It is usually most productive to focus promotion on consumers who actually have a problem:

- Requirements for financial services businesses should include reference to the financial services ombudsman scheme in their complaints process and in their final response to any complaint.
- The financial services ombudsman scheme should foster good relations with advice agencies that are likely to be approached by consumers who have a problem.

The financial services ombudsman scheme also needs to ensure that financial services businesses know:

- their own obligations in handling complaints
- about the financial services ombudsman scheme
- what it does.

The financial services regulator and industry bodies may well be able to help with this.

As mentioned in chapter 10, the financial services ombudsman scheme should consider how far it can assist the early resolution of complaints by financial services businesses through:

- publishing details of its approach to common disputes
- giving advice to complainants and financial services businesses about its approach
- helping train consumer advice centres and financial services businesses' complaint departments.

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## Accessibility

It is not sufficient that complainants know about the financial services ombudsman scheme when they need it. Complainants also need to be able to access the financial services ombudsman scheme easily in order to submit their complaints.

The financial services ombudsman scheme should ensure that information is readily available to complainants who do not have access to the internet. Depending on national circumstances, this may also 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
- the media.

Complaints may be submitted online, by telephone, by post or (where the local culture requires it) in person. The complaint form should be as short and easy to complete as possible, so that the financial services ombudsman scheme does not appear bureaucratic.

The financial services ombudsman scheme's approach to accessibility will need to take account of any cultural differences that exist between:

- countries
- regions within a country
- different generations of consumers (old and young).

In many countries, complainants will be content to access the financial services ombudsman remotely — online, by phone or by post.

But the financial services ombudsman scheme should consider particularly the needs of complainants who may:

- be unable to express themselves clearly enough in writing
- not have online access either at home or at work
- be unable to afford phone calls unless there is a free-phone number
- have work patterns that prevent their phoning during normal office hours.

The financial services ombudsman scheme should consider extended hours for receiving phone calls, to:

- assist complainants who cannot phone during normal office hours
- (in some widely-spread countries) cover different time zones.

In some countries, provision will be needed for some initial face-to-face contact:

- Most complainants will not be able easily to visit the financial services ombudsman scheme.
- So it is helpful to provide regional/local points where complaints can be submitted.
- This may involve working with (for example) local authorities, the post office or advice agencies.
- But complaints should still be handled centrally, to ensure consistency.

The financial services ombudsman scheme should:

- ensure that all its communications (including its leaflets, letters and decisions) are in clear and jargon-free language
- make appropriate provision for consumers who are particularly vulnerable because of disability, age, language, literacy or other reasons.

Where more than one language is in common use in a particular country, the financial services ombudsman scheme should be able to deal with complaints and issue decisions in (at least) the language in which the complainant normally dealt with the financial services business.

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## Transparency and accountability

The financial services ombudsman scheme should publish clear details about:

- itself
- the scope of its jurisdiction
- its enquiry and complaint handling process
- its powers
- the status of its decisions
- the extent of confidentiality.

These details should be made available:

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

The financial services ombudsman scheme should report on what it has done, in an annual report.

The financial services ombudsman scheme should consult about major features of what it proposes to do, including:

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

## Annual report

The financial services ombudsman scheme should publish a report at least yearly, providing information about:

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

The report is an opportunity to:

- provide information and data
- underline the benefits of the financial services ombudsman scheme
- explain the financial services ombudsman's approach
- highlight issues that require attention by financial services regulators, the industry or others
- make suggestions for improvements
- promote the financial services ombudsman scheme nationally and internationally.

The report should be:

- easy reading and understandable
- attractive and accessible.

If the report is in a language other than English, it is helpful to provide a translation in English — as that is the international language of financial services ombudsmen.

The annual report should include details of the numbers and types of disputes that:

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

The annual report should also include:

- 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 financial services ombudsman scheme's governance arrangements
- how it preserves the independence of its decision-makers
- the financial services ombudsman scheme's arrangements for control of quality
- co-operation with other ombudsman schemes, nationally (where applicable) and internationally.

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

- the financial system
- individual financial services businesses.

The annual report should be made publicly available:

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

The financial services ombudsman scheme should promote the annual report and the work of the scheme through the media (including a press release and maybe a press conference). The scheme should also consider presenting the report at a meeting of stakeholders. It needs to be prepared for any surge in new complaints that might result.

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## Publishing data

Chapter 11 referred to recording of data. As well as publishing data in its annual report, the financial services ombudsman scheme should consider whether to publish some data more often — for example, every three months.

The quality of the data produced will depend on the quality of the information input to the computer system. So staff need to be trained and motivated to enter data correctly. And, if it is

intended to publish data about named financial services businesses, it is prudent to have that data checked before publication.

To make any data easy to understand and comparable with others:

- If data is in the form of tables, these should include both numbers and percentages. If data is in the form of graphs, these should include both numbers and percentages as data points.
- There should be an explanation of what is meant by expressions such as 'complaint' and 'case' — as definitions and boundaries vary from one financial services ombudsman scheme to another.
- Complaints should be classified (at least) both by the type of problem involved and by the financial services sector involved.

The financial services ombudsman scheme may want to go further, and break down financial services sectors by products (for example, bank current account, motor insurance).



### Toolkit

In the toolkit that can be read with this guide, there is an example of how complaints data might be classified by the type of problem involved and by the financial services sector involved.

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## Guidance

The financial services ombudsman scheme can assist early resolution of complaints by publishing:

- details of its approach to common disputes
- anonymised decisions or case studies<sup>30</sup>.

To facilitate consistency, it helps to integrate (so far as possible):

- external guidance for complainants
- external guidance for financial services businesses
- internal guidance for caseworkers
- internal training materials for caseworkers.

Each item should have a pre-set review date, so it is checked for any updating that is required.

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## Stakeholders

The financial services ombudsman will need to devote resources to building and maintaining relationships, notably with:

- government
- financial services regulators
- financial services industry bodies
- consumer bodies
- communications media (television, radio, newspapers etc.)
- other financial services ombudsman schemes internationally (through the INFO Network)
- other ombudsman schemes nationally in relevant sectors.

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<sup>30</sup> 'Case studies' are illustrative summaries based on complaints handled by a financial services ombudsman scheme.

A map of stakeholders helps to plan and prioritise activities.

Key principles for the financial services ombudsman include:

- engage at the appropriate level
- give consistent messages, expressed simply
- be patient and build trust, to generate frank and supportive feedback
- you may have to disagree (sometimes in public), but your views should not come as a surprise.

Particularly with a newer/smaller scheme, the liaison demands of stakeholders may outstrip the financial services ombudsman's resources — in which case the financial services ombudsman should prioritise those stakeholders with most impact.

It helps to provide a facility on the financial services ombudsman scheme's website where industry bodies, consumer bodies, financial services businesses and others can sign up to receive electronic alerts (for example, about reports and consultations).

Voluntary ombudsman schemes, and those hybrid schemes that depend on participating financial services businesses signing up, will also need arrangements to:

- sign up participating financial services businesses
- keep them engaged and persuaded of the benefits of the financial services ombudsman scheme.

## Government and financial services regulators

Boundaries between government and financial services regulators may vary from country to country. In many cases, government will leave systemic issues to the financial services regulator, and will only want to hear from the financial services ombudsman on issues that become major public concerns.

The financial services ombudsman and the financial services regulator need to liaise carefully about systemic issues, and to manage the tensions that inevitably arise from their differing roles.

Complaints received by the financial services ombudsman scheme may provide early warning of new and emerging issues where the financial services regulator needs to act — either in its supervision of particular types of financial services businesses or in making new rules.

In all engagement activities, it is important to be sensitive to not compromising perceptions of independence and impartiality.



### Toolkit

In the toolkit that can be read with this guide, there is an outline for a memorandum of understanding between the financial services ombudsman scheme and a financial services regulator. This is not a model document, but this example illustrates areas that may need to be considered. The actual form and content will depend on, amongst other things, the constitutional, legal and cultural circumstances in the country concerned and the scope and roles of the financial services ombudsman scheme and the financial services regulator.

## Financial services industry and consumer bodies

Where there is a major consultation, and especially while the financial services ombudsman scheme is being established, meetings (separately) with industry bodies and consumer bodies provide a good opportunity to:

- explain
- resolve misunderstandings
- get stakeholders to engage properly with the complexity of issues
- obtain feedback.

It can be helpful — and provide maximum contact for minimum effort — to produce a periodic electronic newsletter for all those who have signed up on the financial services ombudsman scheme's website to receive alerts.

## Communications media

Key principles for the financial services ombudsman include:

- be approachable
- ensure they know how to contact you, even outside office hours
- be ready with simple and consistent messages
- remember that they like 'human interest' stories
- do not let them corner you into breaching impartiality or confidentiality.

## Other ombudsman schemes

Ombudsman schemes are usually supportive of one another. They may be prepared to:

- give advice
- provide precedents
- recommend systems
- help with staff training.

So the financial services ombudsman scheme will benefit from becoming a member of the INFO Network and attending its annual conference — and from building relationships with:

- ombudsman schemes in other sectors in the same country
- any regional associations of financial services ombudsman schemes.

## Glossary

### Terms and abbreviations used in this guide

<b>Accounts</b>	Set out the actual expenditure and income of the financial services ombudsman scheme for the past financial year
<b>Agreed outcome</b>	An outcome agreed between the complainant and financial services business as a result of the financial services ombudsman scheme using alternative dispute resolution techniques such as mediation or conciliation
<b>Budget</b>	Sets out the planned expenditure and income of the financial services ombudsman scheme for the coming financial year
<b>Case</b>	Sometimes used to refer to an unresolved complaint that has been referred to a financial services ombudsman scheme
<b>Case fees</b>	Fees payable by financial services businesses for complaints about them that are handled by the financial services ombudsman scheme
<b>Case studies</b>	Illustrative summaries based on complaints handled by a financial services ombudsman scheme
<b>Caseworker</b>	A staff member of a financial services ombudsman scheme who deals with enquiries and complaints, but is not a financial services ombudsman — many financial services ombudsman schemes use other names (for example, conciliator, investigator or assessor)
<b>Compensation/indemnity fund</b>	A guarantee fund to provide appropriate protection to consumers if a financial services business becomes insolvent
<b>Complainant</b>	Someone who makes a complaint to a financial services business or refers a complaint to a financial services ombudsman scheme
<b>Complaint</b>	<p>The international standard: ISO 10002: Guidelines for complaint management in organizations defines a complaint as <i>'an expression of dissatisfaction made to an organization, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected'</i>.</p> <p>(In some countries, for complaints about financial services, it is common to include an explicit reference to services; make it clear that the expression of dissatisfaction can be oral or written; and/or require that there has been some loss or material inconvenience to the complainant.)</p>
<b>Conciliation</b>	An alternative dispute resolution technique used by a financial services ombudsman scheme to facilitate an agreed outcome
<b>Constitution</b>	Documents setting out the governance, scope and powers of the financial services ombudsman scheme and the complaint handling obligations of financial services businesses
<b>Consumer</b>	Someone who buys products or services mainly for personal or household use — rather than for use in their trade, business or profession. In this guide, it also includes small businesses, if the financial services ombudsman scheme covers complaints from them.

<b>Consumer body</b>	An association/agency that promotes the protection or interests of consumers
<b>Dispute</b>	Sometimes used to refer to a complaint or a case
<b>Direction</b>	An instruction issued by a financial services ombudsman, requiring a financial services business to take, or refrain from taking, steps (specified by the financial services ombudsman) in relation to a complainant
<b>Established by law</b>	A financial services ombudsman scheme established by law, which sets out its scope and powers and gives it a compulsory jurisdiction over specified types of financial services businesses
<b>Eligible complainant</b>	Someone who is entitled to refer a complaint to a financial services ombudsman scheme
<b>Enquiry</b>	A contact with a financial services ombudsman scheme that requests information
<b>EU ADR Directive</b>	European Union directive on alternative dispute resolution <sup>31</sup>
<b>Financial services business</b>	A person, business or institution that provides any kind of financial service (such as a bank, lender, insurer, investment-provider or intermediary)
<b>Financial controls</b>	Internal financial controls to demonstrate financial probity, covering both procurement and payment.
<b>Financial services ombudsman</b>	The person (or people) in a financial services ombudsman scheme, whatever their job title, with power to make final decisions on complaints. Sometimes used to refer to the overall financial services ombudsman scheme.
<b>Financial services ombudsman scheme</b>	The organisation within which the financial services ombudsman works
<b>Financial services regulator</b>	A regulator or supervisor of financial services, or a particular sector of financial services (such as banking, insurance or investments). For the purposes of this guide, it also includes any public body responsible for the protection of financial consumers.
<b>Financial services</b>	Services that are financial in nature — including deposits, loans, payments, electronic money, insurance, investments, capital markets, pensions, intermediation/advice for these, credit reference registers and debt collection
<b>Fundamental principles</b>	Unalterable foundation principles from which other principles can be derived
<b>Good character</b>	Used in the Anglophone sense (never having been subject to any sanction for criminal/professional/fiscal/financial conduct and free from any other blot on their reputation) though the Francophone sense (pleasant disposition) would also be helpful
<b>Governance</b>	The arrangements for the strategic management (rather than day-to-day management) of the financial services ombudsman scheme
<b>Industry body</b>	An association of financial services businesses

<sup>31</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

<b>Industry code</b>	Code of good conduct on treating consumers fairly, adopted by the members of an association of financial services businesses
<b>Jurisdiction</b>	The scope of the financial services ombudsman scheme, including: the financial services businesses and activities covered who is eligible to complain and time limits
<b>INFO Network</b>	International Network of Financial Services Ombudsman Schemes <sup>32</sup>
<b>Judicial review</b>	Where the financial services ombudsman's decision is reviewed by a court, the court does not make its own decision on the complaint against the financial services business — the court decides whether the financial services ombudsman followed a fair process. If the financial services ombudsman followed a fair process, the financial services ombudsman's decision stands; if the financial services ombudsman did not follow a fair process, they must decide the complaint afresh.
<b>Mediation</b>	An alternative dispute resolution technique used by a financial services ombudsman scheme to facilitate an agreed outcome
<b>Parties</b>	The complainant and financial services business involved in a particular complaint
<b>Redress</b>	Financial services ombudsman schemes provide individual redress to complaints by awarding compensation (payable by the financial services business) or other remedies. The aim is to put the complainant (so far as practicable) in the position they would have been in, but for the act/omission that gave rise to the complaint.
<b>Sectoral</b>	Relating to a sector of financial services (such as banking, insurance or investments)
<b>Terms of reference</b>	Sets out the jurisdiction and complaint handling processes of a financial services ombudsman scheme — commonly used in voluntary financial services ombudsman schemes. (The expression 'terms of reference' does not denote the same degree of official sanction as the equivalent expression in Francophone countries, which tend to use the term 'charter' instead.)
<b>Underpinned by law/regulator</b>	A financial services ombudsman scheme that meets minimum criteria specified by law, or by a regulator
<b>Voluntary</b>	A financial services ombudsman scheme established voluntarily (though sometimes after government/consumer pressure) by a particular industry association, but with independent governance

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<sup>32</sup> [www.networkfso.org](http://www.networkfso.org)



## Toolkit

### A. Law for a financial services ombudsman scheme

As referred to in chapter 3, this is an example of a law establishing a financial services ombudsman scheme. It assumes that, for flexibility, there will be separate rules on jurisdiction, complaint handling by financial businesses and complaint handling procedures of the financial services ombudsman scheme.

This is not a model law. The actual form and content of the law will depend on the intended distribution of governance functions, and on the legal drafting style and constitutional/legal/cultural circumstances in the country concerned.

But this example illustrates areas that will need to be considered.

#### 1. Ombudsman scheme operator

- 1.1. This law provides for a scheme under which certain complaints brought against financial services businesses may be resolved independently, promptly and with minimum formality.
- 1.2. The scheme (the 'ombudsman scheme') is to be called the '[Financial Services Ombudsman Scheme]' and is to be administered by a corporate body (the 'operator').
- 1.3. The operator is to be established by the [financial services regulator] (the 'regulator') but is to be operationally independent from the regulator.

#### 2. Board of directors

- 2.1. The constitution of the operator must provide for it to have a chairman and a board, who together comprise the operator's directors.
- 2.2. The directors are to be individuals appointed by the regulator for terms of not less than three years and not more five years. A director may be reappointed, but must not serve for a total of more than ten years.
- 2.3. The operator is to be established by the [financial services regulator] but is to be operationally independent from the regulator.
- 2.4. The regulator must appoint directors who collectively provide a balance of understanding in respect of:
  - (a) the regulation of financial services businesses
  - (b) the legitimate concerns of consumers of financial services
  - (c) the legitimate concerns of the financial services industry.

- 2.5. The chairman must not be:
- (a) a serving politician
  - (b) a serving financial regulator
  - (c) a person associated with the financial industry
- and only a minority of directors may be persons associated with the financial industry.
- 2.6. For this purpose, 'a person associated with the financial industry' means a person:
- (a) who works in a financial services business, or has done so in the previous three years
  - (b) who works in an association of financial services businesses, or has done so in the previous three[?] years
  - (c) who has, or has a close family member who has, a beneficial interest of more than five per cent in a financial services business.
- 2.7. The board and each of the directors must act independently in the public interest, irrespective of their background and experience.
- 2.8. Only the board may exercise the functions of:
- (a) appointing an ombudsman
  - (b) appointing a chief ombudsman
  - (c) adopting annual objectives
  - (d) adopting or varying a budget
  - (e) making rules.
- 2.9. The functions of the board include:
- (a) safeguarding the independence of the ombudsman scheme
  - (b) ensuring that the ombudsman scheme has sufficient resources to deal with its workload
  - (c) overseeing the effectiveness and efficiency of the ombudsman scheme.
- 2.10 The board must not involve itself in the resolution of complaints, which is the function of the ombudsman or ombudsmen.
- 2.11 The validity of any act of the operator is not affected by any vacancy in the membership of the board, or any defect in appointment.

### 3. Ombudsmen

- 3.1. The operator must appoint at least one person to act as ombudsman for the purposes of the ombudsman scheme.
- 3.2. If it considers it appropriate, the operator may appoint more than one ombudsman, but must then designate one of the ombudsmen as chief ombudsman.
- 3.3. The operator must only appoint as an ombudsman a person who appears to it to have suitable qualifications and experience.
- 3.4. The terms of appointment and security in office of an ombudsman (and any chief ombudsman) must be such as to ensure independence, including from the board.
- 3.5. The chief executive of the ombudsman scheme is the ombudsman (if there is only one ombudsman) or the chief ombudsman (if there is more than one ombudsman).

## 4. Public advertisement and consultation

- 4.1. Before appointing any director of the operator, the regulator must:
  - (a) consult those stakeholders that it considers to be relevant about the expertise required
  - (b) advertise the vacancy publicly.
- 4.2. Before appointing any ombudsman, the operator must advertise the vacancy publicly.
- 4.3. Before the regulator or the operator makes (or varies) rules under this law it must:
  - (a) publish a draft of the rules, and an invitation to comment on them by a specified date, in a way it considers will bring them to the attention of those likely to be affected
  - (b) have regard to any comments received by the specified date.

## 5. Jurisdiction rules

- 5.1. The regulator will make (and may vary) rules ('jurisdiction rules') specifying:<sup>33</sup>
  - (a) the financial services businesses and activities that are subject to the ombudsman scheme
  - (b) who is eligible to bring a complaint to the ombudsman scheme
  - (c) the time limits within which a complaint must be brought to the ombudsman scheme
  - (d) the maximum amount an ombudsman can award per complaint.
- 5.2. Jurisdiction rules may:
  - (a) specify types of financial services businesses and activities that are not licensed or registered by the regulator<sup>34</sup>
  - (b) provide that an ombudsman may extend a time limit in specified circumstances.

## 6. Complaint handling rules

- 6.1. The regulator will make (and may vary) rules ('complaint handling rules') specifying the way in which financial services businesses subject to the ombudsman scheme must deal with complaints received from eligible complainants.
- 6.2. Complaint handling rules may, amongst other things, require financial services businesses that are subject to the jurisdiction of the ombudsman scheme:
  - (a) to establish clear and simple procedures for handling complaints
  - (b) to ensure customers are made aware of them
  - (c) to make every effort to resolve complaints at an early stage
  - (d) to issue a final and reasoned written response within a specified time
  - (e) if a complaint is unresolved, to tell complainants they can go to the ombudsman scheme
  - (f) to tell a complainant about any applicable time limit
  - (g) to co-operate with the ombudsman scheme
  - (h) to provide a senior-level contact officer for the ombudsman scheme
  - (i) to provide specified complaints data to the ombudsman scheme or the regulator.
- 6.3. The regulator will oversee and enforce the complaint handling rules.

<sup>33</sup> The jurisdiction rules allow the regulator to set, and to extend, the scope of the ombudsman scheme.

<sup>34</sup> This allows the regulator to:

- cover non-regulated activities of regulated financial services businesses
- extend the scope of the ombudsman scheme to non-regulated financial services businesses, if circumstances warrant this.

## 7. Procedural rules

7.1. The operator will make (and may vary) rules ('procedural rules') that:

- (a) must specify the procedure for the submission, investigation, consideration and determination of complaints by an ombudsman
- (b) may specify matters that are to be taken into account in determining whether an act or omission was fair and reasonable
- (c) may specify circumstances in which an ombudsman can dismiss a complaint without further consideration
- (d) may allow an ombudsman to fix (and to extend) time limits for any stage of the procedure for consideration of a complaint
- (e) may allow an ombudsman to specify what evidence, in what form, a party should provide and also the consequences if it is not provided
- (f) may provide for parts of the procedure for the submission, investigation and consideration (but not the determination of complaints) to be done by a member of the operator's staff
- (g) may allow for the correction by an ombudsman of any clerical mistake in an ombudsman's determination
- (h) may provide that any failure to comply with the procedural rules does not, of itself, render a determination void.

7.2. The circumstances in which the procedural rules provide that an ombudsman can dismiss a complaint without further consideration may, amongst other things, include where an ombudsman considers:

- (a) the complaint is frivolous or vexatious or has no reasonable prospect of success
- (b) the complainant has not suffered (and is unlikely to suffer) material loss, distress or inconvenience
- (c) the complaint is about the legitimate exercise of the financial services business's commercial judgment
- (d) the subject matter of the complaint has already been decided by a court
- (e) the complaint is more suitable for the courts
- (f) there are other compelling reasons why the complaint should not be dealt with by the ombudsman scheme.

## 8. Funding rules

8.1. Subject to the approval of the regulator, the operator will make (and may vary) rules ('funding rules') that:<sup>35</sup>

- (a) may specify fees, levies, charges or amounts (or amounts calculated in a certain way) to be paid to the operator by financial services businesses that are subject to the ombudsman scheme
- (b) may provide for different fees, levies, charges or amounts (or amounts calculated in different ways) for different types of financial services businesses
- (c) may include (and may vary) additional amounts or interest or both that will become due in the event of late payment.

<sup>35</sup> The funding rules allow the ombudsman scheme, with the approval of the regulator, to set a funding formula that is appropriate in changing circumstances.

## 9. Jurisdiction

- 9.1. A complaint that relates to an act or omission by a financial services business (the 'respondent') will be dealt with under the ombudsman scheme if:
- (a) the financial services business is covered by the jurisdiction rules
  - (b) the act or omission occurred in carrying on an activity covered by the jurisdiction rules
  - (c) the complainant is eligible under the jurisdiction rules
  - (d) the complainant wishes to have the complaint dealt with under the ombudsman scheme<sup>36</sup> and a financial services business is to be liable for the acts and omissions of its agents.
- 9.2. Where:
- (a) a financial services business (the 'successor') has:
    - assumed a liability (including a contingent liability)
    - continued the business (or the relevant part of the business)of another financial services business (the 'predecessor') and
  - (b) the predecessor was, or (apart from this section) would have been, the respondent in respect of a complaint under the ombudsman scheme
- the ombudsman scheme may (but need not) deal with the complaint as if it were a complaint against the successor.<sup>37</sup>

## 10. Requiring information or documents

- 10.1. Where an ombudsman considers it necessary for the determination of a complaint that a party should produce any information or document:
- (a) The ombudsman may, by written notice to that party, require that party to:
    - provide specified information or information of a specified kind, or
    - produce specified documents or documents of a specified kind.
  - (b) Within a reasonable time limit specified in the notice, the party must:
    - provide the information, in the form and manner specified in the notice, or
    - produce the document and allow the ombudsman to make copies or extracts.
  - (c) The ombudsman may require the person producing a document to provide an explanation of it.
  - (d) It is for the ombudsman to decide whether information or a document is so confidential that it should not be disclosed to the other party.
  - (e) The production of a document under this section does not affect any lien on the document.
  - (f) For the purposes of this section and the following section, 'party' includes any financial services business that is covered by the jurisdiction rules, whether or not it is party to the particular complaint.
- 10.2. If any party fails to comply with a requirement under the previous section:
- (a) The ombudsman may require that party to state, to the best of their/its knowledge and belief, where the relevant information or document is.
  - (b) The ombudsman may certify the breach of the requirement to [the court] and [the court] may enquire into the case.

<sup>36</sup> Complainants remain free to take their complaints to court instead.

<sup>37</sup> This is to give the financial services ombudsman scheme jurisdiction where the predecessor financial services business (which did the act or omission) then sold the product and customer to the successor financial services business.

- (c) If [the court] is satisfied that the party had no reasonable excuse, [the court] may deal with that party (and, in the case of a corporate body, any director or other officer) as if he/she/it were in contempt of court.

## 11. Confidentiality

11.1. The ombudsman scheme will keep confidential all information that it receives in exercising its functions under this law, with the following exceptions:

- (a) The ombudsman scheme may disclose such information where:
- it has already been made public from another source
  - fairness requires disclosure to the other party
  - the information is disclosed in a public hearing
  - it is included in, or derived from, an ombudsman's determination
  - it is required to enforce an agreed outcome
  - it is required to enforce an ombudsman's determination in [the court]
  - it enables or assists the ombudsman scheme to discharge any of its functions
  - a provision of, or under, this law provides otherwise
  - any other law requires.
- (b) The ombudsman scheme may disclose such information to the following where it considers that appropriate to assist them in fulfilling their functions:
- the regulator
  - any body involved in investigating or prosecuting crime.

11.2. The complainant and the respondent will keep confidential all information and documents concerning the dispute between them received from or through the ombudsman, except so far as it is:

- (a) it is included in, or derived from, an ombudsman's determination
- (b) it is required to enforce an agreed outcome;
- (c) it is required to enforce an ombudsman's determination in [the court]
- (d) a provision of, or under, this law provides otherwise or any law requires.

## 12. Ombudsman determinations

12.1. If the complaint is not resolved by the ombudsman scheme through facilitating a fair outcome agreed between the parties:

- (a) An ombudsman is to determine what is, in the ombudsman's opinion, fair and reasonable in the circumstances of the complaint.
- (b) The ombudsman is to give the complainant and the respondent a signed written determination (with reasons).
- (c) The ombudsman must specify a date by which the complainant must notify the ombudsman that the complainant accepts the determination.
- (d) The ombudsman may extend the time for acceptance if, in the ombudsman's opinion, there was an exceptional reason why the complainant could not respond earlier.<sup>38</sup>
- (e) If the complainant accepts the determination in time, it is binding on the respondent and the complainant and final.
- (f) If the determination becomes binding on the respondent and the complainant and final, the complainant cannot pursue the subject matter of the complaint in court.

<sup>38</sup> For example, the complainant may have been ill or away when the determination was issued.

- (g) If the complainant does not accept the determination in time, the complainant is deemed to have rejected it.
- (h) The ombudsman scheme must notify the respondent of the outcome.

12.2. If a complaint is determined in favour of the complainant, the ombudsman's determination may include any or all of the following:

- (a) a money award
- (b) an interest award
- (c) a direction (that is not a money award).

12.3. A money award:

- (a) shall be such an amount as the ombudsman considers to be fair compensation for the complainant's loss or damage (or prospective loss or damage)
- (b) includes any direction that the respondent is to pay money to, or for the benefit of, the complainant
- (c) must not exceed the maximum amount specified in the jurisdiction rules, though this does not prevent an ombudsman making a non-binding recommendation for the excess.

12.4. An interest award:

- (a) may provide for a money award to carry interest at a rate (or rates), and from a date (or dates), specified in the determination
- (b) is to be disregarded in calculating the maximum amount specified in the jurisdiction rules.

12.5. A direction:

- (a) shall be that the respondent takes such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could or would do so)
- (b) so far as it requires the respondent to pay money to (or for the benefit of) the complainant, is to be treated as a money award
- (c) so far as it does not require the respondent to pay money to (or for the benefit of) the complainant, is to be disregarded in calculating the maximum amount specified in the jurisdiction rules.

12.6. A determination in favour of a complainant:

- (a) can be enforced by the complainant
- (b) if an ombudsman considers it appropriate, may be enforced by the ombudsman scheme<sup>39</sup> against the respondent in the same way as if it were [a judgment of the court].

12.7. In relation to proving the contents of a determination:

- (a) A copy of a determination certified by an ombudsman is sufficient evidence that the determination was made under the ombudsman scheme.
- (b) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

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<sup>39</sup> The ombudsman scheme may wish to step in and enforce in the case of a vulnerable consumer.

### 13. Objectives and budget

- 13.1. The operator must adopt objectives and a budget before the start of each financial year.
- 13.2. The operator may vary the budget after it has been adopted.
- 13.3. The budget, and any variation, must be approved by the regulator.

### 14. Reports

- 14.1. At least once per year the operator and the ombudsman (if there is only one ombudsman) or the chief ombudsman (if there is more than one ombudsman) must make and publish a report on the discharge of their respective functions.
- 14.2. The operator:
  - (a) may publish data and ombudsman determinations
  - (b) may identify respondents in published data and ombudsman determinations
  - (c) must not identify complainants nor publish information from which their identity is apparent.

### 15. Relationship with the regulator

- 15.1. The regulator must take such steps as are necessary to ensure that the operator is, at all times, capable of exercising its functions under this law.
- 15.2. The operator and the regulator must each take such steps as it considers appropriate to cooperate with the other in the independent exercise of their respective statutory functions.
- 15.3. If the operator has information in its possession that, in its opinion, would be of significant assistance to the regulator in advancing one or more of the regulator's functions:
  - (a) the operator must disclose that information to the regulator
  - (b) the regulator must have regard to that information
  - (c) save as required by law, the regulator must keep the information confidential.
- 15.4. If the regulator has information in its possession that, in its opinion, would be of significant assistance to the operator in advancing one or more of the operator's functions:
  - (a) the regulator must disclose that information to the operator
  - (b) the operator must have regard to that information
  - (c) save as required by law, the operator must keep the information confidential.

### 16. Data protection and freedom of information

- 16.1. [Give the ombudsman scheme the same exemptions as a court in respect of any data protection and freedom of information law.]<sup>40</sup>

<sup>40</sup> The appropriate wording will depend on the nature and terminology of any data protection law and freedom of information law in force in the relevant country at the relevant time.

## 17. Guidance

- 17.1. The operator may publish (either free or at a charge) such guidance, information or advice as it considers appropriate.

## 18. Exemptions

- 18.1. No person is to be liable in damages for any act or omission in the discharge (or purported discharge) of any functions under this law, unless the act or omission is shown to have been in bad faith.
  - 18.2. For the purposes of the law on defamation, proceedings in relation to a complaint under the ombudsman scheme are to be treated in the same way as if they were proceedings before a court.
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## Toolkit

### B. Constitution and terms of reference

As referred to in chapter 3, this is an example of a constitution and terms of reference for a voluntary financial services ombudsman scheme.

This is not a model. The actual form and content will depend on the constitutional, legal and cultural circumstances in the country concerned. But this example illustrates areas that will need to be considered.

If it is decided to establish the financial services ombudsman scheme as a corporate body, governance provisions could be moved to, or reflected in, the constitution of the corporate body.

#### General

##### 1 This constitution and terms of reference

###### Dates

- 1.1 This constitution and terms of reference:
- were adopted on (*date*) and
  - come into effect on (*date*).

###### Purpose

- 1.2 They establish a financial services ombudsman scheme, to be known as (*name*), to resolve financial services complaints:
- independently
  - impartially
  - fairly
  - promptly and
  - with minimum formality.

###### Definitions

- 1.3 In this constitution and terms of reference, where the context allows:

close relation      spouse, brother, sister, parent, child, child of the spouse, aunt, uncle, grandparent, and the spouse of any of these

complaint            any expression of dissatisfaction (oral or written):

- where loss, material distress or material inconvenience is explicitly or implicitly alleged and
- is within the scope of the ombudsman scheme under section 7

consumer	= someone who buys products or services mainly for personal or household use — rather than for use in their trade, business or profession
financial services business	= a financial service provider which, at the time of the act or omission about which the complaint was made, ... [define as appropriate, by reference to the type of financial service or regulated category. Potential types of financial businesses include: <ul style="list-style-type: none"> <li>- banks</li> <li>- payment service providers</li> <li>- electronic money issuers</li> <li>- lenders (secured or unsecured)</li> <li>- credit unions</li> <li>- financial cooperatives</li> <li>- microfinance businesses</li> <li>- insurers</li> <li>- microinsurance businesses</li> <li>- investment providers</li> <li>- pension providers</li> <li>- intermediaries for any of these (including deposit/loan/insurance brokers and investment advisers)</li> <li>- credit reference agencies</li> <li>- debt collectors.]</li> </ul>
industry person	= anyone who: <ul style="list-style-type: none"> <li>- is appointed by a financial services business or an association of financial services businesses</li> <li>- works in a financial services business, or has done so in the previous 3 years</li> <li>- works in an association of financial services businesses, or has done so in the previous 3 years</li> <li>- has (or has a close relation who has) a beneficial interest of more than 5 per cent in a financial services business</li> <li>-</li> </ul>
of good character	= never having been subject to any sanction for criminal/professional/fiscal/financial conduct and free from any other blot on their reputation
ombudsman	= an ombudsman, deputy ombudsman or assistant ombudsman appointed under section 4
ombudsman scheme	= the financial services ombudsman scheme established by this constitution and terms of reference, and known as ( <i>name</i> )
regulated activity	= a financial services activity for which it was compulsory to be regulated at the time of the act or omission about which a complaint is made, including an activity that becomes regulated after the date on which this constitution and terms of reference was adopted
section	= a section of this constitution and terms of reference
small business	= [ <i>Define according to assets, turnover and/or employees</i> ]

## Governance

### 2 Independent board

#### Functions

- 2.1 The ombudsman scheme has an independent board, whose functions are to:
- individually and collectively represent the public interest
  - approve and adopt this constitution and terms of reference
  - appoint the ombudsman and any deputy ombudsman or assistant ombudsmen
  - safeguard the independence of the ombudsmen and the ombudsman scheme
  - oversee the strategy, efficiency and effectiveness of the ombudsman scheme
  - approve and adopt any changes to this constitution and terms of reference
  - help to ensure that the ombudsman scheme has adequate resources to handle its work
  - approve the budget proposed by the ombudsman.
- 2.2 The independent board, its chair and its members must not be involved in:
- the day-to-day management of the ombudsman scheme
  - handling or deciding complaints.

#### Membership

- 2.3 The independent board comprises a chair and [?] other members, appointed as follows:
- the chair appointed by [?]
  - [?] members appointed by [?]
  - [?] members appointed by [?]
  - [?] members appointed by [?].
- 2.4 The independent board collectively should provide a balance of understanding in respect of:
- the regulation of financial services businesses
  - the legitimate concerns of consumers of financial services
  - the legitimate concerns of the financial services industry.
- 2.5 The chair and members of the independent board must:
- be chosen by a transparent process, following a public advertisement
  - be of good character
  - not be a serving politician or financial services regulator.
- 2.6 The chair of the independent board must not be an industry person, and no more than [?] members of the independent board may be industry persons.

#### Terms

- 2.7 The chair and members of the independent board must be appointed on terms that:
- secure their independence from those appointing them
  - require them to act in the public interest
  - require them to disclose any conflict of interest and not be involved in a connected discussion or decision

- protect them from removal — except for removal by a two-thirds majority of the rest of the independent board because of incapacity, misconduct or other just cause.
- 2.8 To ensure continuity, the first chair and members of the independent board are to be appointed for the following periods:
- the chair for five years
  - [?] members for four years
  - [?] members for three years
- 2.9 After that, the chair and members of the independent board are to be appointed for periods of four years. They may be reappointed, but only for one additional period.

### Meetings and decisions

- 2.10 In respect of meetings of the independent board and resolutions/decisions:
- the quorum for meetings is [?] of which only a minority may be industry persons
  - if the chair is unable to attend a meeting, those present shall choose a temporary chair for the meeting, who must not be an industry person
  - no resolution or decision by the independent board shall be effective unless a majority of those voting are not industry persons
  - a resolution or decision may be passed/reached without a meeting if the chair and all the members approve it in writing.

## 3 Ombudsmen

### Appointment

- 3.1 The independent board:
- must appoint an ombudsman
  - may appoint a deputy ombudsman and one or more assistant ombudsmen.
- 3.2 The ombudsman is the chief executive of the ombudsman scheme, responsible for day-to-day management (including recruitment and management of the ombudsman scheme's staff).
- 3.3 Any ombudsman must:
- be chosen by a transparent process, following a public advertisement
  - be of good character
  - not be a serving politician or financial services regulator
  - not be an industry person.
- 3.4 Being an ombudsman can be a lonely role, involving difficult decisions. Anyone chosen needs the strength of character and the personal authority required to decide contentious complaints.
- 3.5 Additionally, the ombudsman needs the strength of character and personal authority to balance:
- deciding contentious complaints
  - acting as chief executive of the ombudsman scheme
  - being the ombudsman scheme's chief public representative.

- 3.6 An ombudsman does not necessarily have to be a lawyer, but should:
- have the necessary knowledge and skills in resolving disputes
  - have a general understanding of relevant law
  - have knowledge of relevant financial services (or gain it before taking up the post)
  - undergo appropriate training.

## Terms

- 3.7 An ombudsman must be appointed on terms that secure his/her independence from:
- those who appointed the ombudsman
  - the financial services industry and consumer bodies
  - the financial services regulator(s) and the government.
- 3.8 An ombudsman must:
- be appointed (or reappointed) for a period of five years (to ensure independence)
  - be told within four years whether or not he/she is to be reappointed
  - not be removable — except for removal by a two-thirds majority of the independent board because of incapacity, misconduct or other just cause.
- 3.9 An ombudsman's pay must be linked:
- in the case of the ombudsman, to [?]
  - in the case of any deputy or assistant ombudsman to [?].
- 3.10 In any event, an ombudsman's pay is not to be:
- subject to reduction or suspension
  - influenced by the outcome of complaints.
- 3.11 Exceptionally, where every ombudsman has a conflict of interest in respect of a particular complaint, the following provisions apply:
- The independent board may appoint a suitable person to be a temporary assistant ombudsman in order to handle that particular complaint.
  - The following provisions in this section will not apply to that temporary assistant ombudsman:
    - 3.3: first bullet point
    - 3.8: first and second bullet points
    - 3.9.
  - All the remaining provisions in this section will apply to that temporary assistant ombudsman.

## 4 Reporting

- 4.1 The ombudsman and independent board will publish a report at least yearly, providing information about:
- the complaints that the ombudsman scheme has handled and
  - the way in which it has handled them.
- 4.2 The report will include details of the numbers and types of complaints that were:
- received
  - outside the ombudsman scheme's scope
  - dismissed without further consideration (even though in scope)
  - discontinued by the complainant
  - resolved by the ombudsman scheme

- resolved in favour of the complainant
  - resolved in favour of the financial services business.
- 4.3 A complaint resolved 'in favour of the complainant' means a complaint where the outcome was more favourable to the complainant than the redress (if any) offered by the financial services business in its final written response.
- 4.4 A complaint resolved 'in favour of the financial services business' means a complaint where the outcome was not more favourable to the complainant than the redress (if any) offered by the financial services business in its final written response.
- 4.5 The report will also include:
- 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 the ombudsmen
  - the ombudsman scheme's arrangements for control of quality
  - co-operation with other ombudsman schemes, nationally (where applicable) and internationally.

## 5 Financial services business participants

- 5.1 By applying to participate in the ombudsman scheme, a financial services business enters into a legally binding agreement to comply with this constitution and terms of reference, including to:
- co-operate with the ombudsman scheme
  - comply with any agreed outcomes and binding decisions
  - pay whatever is payable under the funding structure referred to in section 6.
- 5.2 By applying to participate in the ombudsman scheme, a financial services business also enters into a legally binding agreement that its responsibilities under 5.1 above continue even if it ceases to participate in the ombudsman scheme.

## 6 Finance

### Budget

- 6.1 The ombudsman scheme has, and controls, its own budget. The budget is intended to provide adequate resources to handle the ombudsman scheme's work, including:
- sufficient funding to ensure that the ombudsman scheme is accessible to complainants
  - adequate cash flow
  - prudent reserves.
- 6.2 The ombudsman scheme's budget is:
- proposed by the ombudsman
  - approved by the independent board
  - not part of the budget of any other body
  - not subject to approval by any other body.

## Funding

- 6.3 There is to be no charge to complainants.
- 6.4 The total budget is to be funded by financial services businesses in accordance with a funding structure to be decided by the independent board, having regard to:
- the ombudsman scheme's need for certainty that:
    - its budget will be funded in full and on a timely basis
    - the funding structure cannot be used to influence its work
  - financial services businesses' need for:
    - a degree of stability and predictability in the amounts payable
    - the ability to budget ahead
  - the desirability of a funding structure that:
    - is based on public data
    - is easy to explain and understand
    - is economical to assess and operate
    - is fair to different types of financial services businesses and reflects their ability to pay
    - relieves those that only do business outside the scope of the ombudsman scheme
  - the benefit that all financial services businesses derive from the increased trust in financial services created by the existence of the ombudsman scheme.

## Scope

### 7 General

- 7.1 The ombudsman scheme covers a complaint about an act or omission by a financial services business if:
- the financial services business's activity is covered under section 8
  - the complainant is eligible under section 9
  - the complaint is referred to the ombudsman scheme within the time limits in section 10.

### 8 Financial services business activities covered

- 8.1 The ombudsman scheme can only consider complaints that relate to an act or omission by a financial services business in carrying on, in or from *[country]*:
- *[a regulated activity]*
  - *[any other financial services activity]*
  - *[accepting deposits]*
  - *[lending (secured or unsecured)]*
  - *[issuing credit/debit/charge cards]*
  - *[providing other payment services]*
  - *[issuing electronic money]*
  - *[insurance]*
  - *[providing investments]*
  - *[providing pensions]*
  - *[running a credit reference register]*
  - *[debt collection]*
  - *[advising on, or arranging, any of the above]*
  - *[any ancillary activities]*

- 8.2 A financial services business is liable for the acts/omissions of its agents.
- 8.3 Where a financial services business ('the successor financial services business') has:
- assumed a liability (including a contingent liability), or
  - continued the business (or the relevant part of the business)
- of another financial services business (the 'predecessor financial services business') that was responsible for the act or omission about which a complaint is made, the ombudsman may (but need not) deal with the complaint as a complaint against the successor financial services business rather than the predecessor financial services business.

## 9 Complainants covered

- 9.1 The ombudsman can consider complaints from:
- a consumer
  - a small business
  - any other body (such as, but not limited to, a charity) that, if it had been a business, would have been a small business.
- 9.2 The complaint must arise from the complainant having one (or more) of the following relationships with the financial services business:
- customer (including a client/investor/member)
  - prospective customer (including a prospective client/investor/member)
  - payment system user
  - prospective payment system user
  - guarantor or surety for lending
  - beneficiary under an insurance policy
  - beneficiary under a collective investment or open ended investment company
  - beneficiary under a pension
  - someone on whom information is held by a credit reference bureau
  - someone from whom a debt is/was being claimed by, or on behalf of the financial services business.
- 9.3 If a complainant is eligible under section 9, a complaint may be brought:
- by the complainant
  - on behalf of the complainant (including a deceased complainant) by a person:
    - authorised by the complainant
    - authorised by law.

## 10 Time limits

- 10.1 A complaint may be about an act or omission before:
- the date when this constitution and terms of reference was adopted or came into force
  - the date the financial services business became covered by the ombudsman scheme.
- 10.2 A complaint must be received by the ombudsman scheme within:
- (6) years of the act/omission complained about or (if later)
  - (2) years of when the complainant ought reasonably to have become aware that he/she had a reason to complain.

- 10.3 If the complaint was first submitted to the financial services business after this constitution and terms of reference came into effect, the complaint must also be received by ombudsman scheme within (6) months of the financial services business telling the complainant in writing all of the following, in the same communication:
- the complaint has reached the end of the financial services business's complaints procedure
  - the complainant may refer the complaint to the ombudsman scheme within (6) months
  - the full contact details for the ombudsman scheme
  - the effect of the time limit
  - the date when the time limit would expire.
- 10.4 An ombudsman may extend any time limit if, in the ombudsman's opinion, there was an exceptional reason (for example, serious illness) why the complainant could not act earlier.

## Complaint handling by financial services businesses

### 11 Financial services business's complaint handling procedure

- 11.1 A financial services business must have a complaint handling procedure which:
- is published in writing
  - is widely and clearly available (including on its website and in branches and outlets)
  - allows a complaint to be made by any reasonable means
  - is clearly accessible by phone from anywhere within the country at the local rate (at most)
  - includes reasonable adaptations to assist complainants with disabilities
  - is transparent, effective, prompt, fair and free
  - does not have more than two stages
  - includes that, at the end of the financial services business's complaint handling procedure, a complainant who remains dissatisfied can refer his/her complaint to the ombudsman scheme.
- 11.2 A financial services business must tell customers in writing about the availability of its complaint handling procedure, and the ultimate availability of the ombudsman scheme:
- at the point of sale
  - if no sale is involved, immediately after the first contact with the customer.
- 11.3 A financial services business must give written details of its complaint handling procedure to complainants, at no charge:
- on request
  - (automatically) when acknowledging a complaint.
- 11.4 A financial services business must fulfil its obligations under section 11 in:
- *[official national language(s)]*
  - the languages in which its customers usually deal with the financial services business.
- 11.5 Additionally, financial services businesses must:
- make a single member of senior management responsible for overseeing complaint handling
  - give that single member of senior management full authority to settle complaints
  - record the number, types and outcome of complaints
  - identify and remedy any recurring or systemic problem
  - consider whether to redress similarly affected customers who have not complained
  - use the outcome of complaints to inform staff training.

## 12 Financial services business's handling of complaints

- 12.1 If a financial services business receives a complaint, the financial services business must:
- aim to resolve the complaint at the earliest opportunity, and so minimise the number of unresolved complaints referred to the ombudsman scheme
  - investigate and assess the complaint competently, diligently, impartially, fairly, consistently and promptly — obtaining relevant additional information where necessary
  - assess whether the complaint should be upheld, and what redress and/or remedy may be appropriate
  - have that investigation and assessment carried out by someone who was not involved in the complaint
  - take account of the law, any regulatory rules and guidance, good industry practice and any published guidance from the ombudsman scheme
  - explain its decision, and any proposed redress or remedy, to the complainant in a way that is fair, clear and not misleading
  - offer redress and/or remedy where that is appropriate, and comply promptly if the redress and/or remedy is accepted by the complainant.
- 12.2 Unless it resolves the complaint to the complainant's satisfaction within (2) business days, the financial services business must:
- send the complainant a written acknowledgement within (5) business days
  - keep the complainant informed of progress
  - send the complainant a final written response within [?] weeks.
- 12.3 The financial services business's 'final response' must:
- accept the complaint and offer any appropriate redress and/or remedy, or
  - offer redress and/or remedy without accepting the complaint, or
  - reject the complaint and give clear reasons for doing so.
- 12.4 A 'final response' must also tell/remind the complainant in writing that, if he/she remains dissatisfied, he/she:
- can refer the complaint to the ombudsman scheme (giving its complete contact details)
  - must refer the complaint to the ombudsman scheme within (6) months of the final response, giving the date that expires and the contact details of the ombudsman scheme
  - must refer the complaint to the ombudsman scheme within (6) years of the event complained about or (if later) (2) years of when the complainant ought reasonably to have become aware that he/she had a reason to complain.
- 12.5 A financial services business must fulfil its obligations under section 12 in:
- *[official national language(s)]*
  - (if different) the language in which the complainant usually dealt with the financial services business.
- 12.6 A clear and comprehensive 'final response' is more likely to assist the financial services business's position if the complainant later refers the complaint to the ombudsman scheme.

## Complaint handling by the ombudsman scheme

### 13 General

- 13.1 An ombudsman will act impartially and fairly. An ombudsman must disclose any conflict of interest in relation to a complaint, and cease to be involved in the complaint.
- 13.2 Only an ombudsman can issue a final decision:
- that a complaint is outside the scope of the ombudsman scheme
  - that a complaint should be dismissed, without further consideration
  - on the merits and outcome of a complaint.
- 13.3 The ombudsman:
- may delegate any other part of complaint handling to members of the ombudsman scheme's staff
  - will decide the ombudsman scheme's procedures in accordance with this constitution and terms of reference.
- 13.4 The ombudsman scheme will receive and handle complaints, and issue any decision in:
- *[official national language(s)]*
  - (if different) the language in which the complainant usually dealt with the financial services business.
- 13.3 Complainants must (on request by the ombudsman scheme) provide any necessary waiver of the financial services business's duty of confidentiality.

### 14 Complaining first to financial services business

- 14.1 The ombudsman scheme will not consider a complaint unless:
- the financial services business has issued a final written response, or
  - the financial services business has not issued a final written response to the complaint within [?] working days of first receiving the complaint.
- 14.2 Otherwise, the ombudsman scheme will:
- refer the complaint direct to the financial services business's internal complaints procedure and require the financial services business to deal with it promptly in accordance with section 12
  - ask the complainant to tell the ombudsman scheme if:
    - he/she remains dissatisfied after receiving the financial services business's final response, or
    - the financial services business does not issue a final written response within [?] working days of first receiving the complaint.

### 15 Early dismissal

- 15.1 An ombudsman has discretion to dismiss a complaint, without further consideration, if the issue:
- was the subject of court proceedings in which a judgement on the merits was given
  - is or becomes the subject of court proceedings (unless the court stays the proceedings so that the ombudsman scheme can consider the issue), or

- was previously considered by the ombudsman scheme, unless material new evidence (that would change the outcome) has since become available.
- 15.2 An ombudsman also has discretion to dismiss a complaint, without further consideration, if the ombudsman considers:
- it is about a legitimate exercise of commercial judgement made without maladministration
  - there has been no loss, material distress or material inconvenience to the complainant
  - the financial services business is already offering adequate compensation
  - the complainant is acting frivolously, vexatiously or unreasonably
  - the complaint is about investment performance (rather than suitability of an investment)
  - only a court could deal with the complaint properly.
- [15.3 An ombudsman also has discretion to dismiss a complaint, without further consideration, if the complaint is by a financial services business against another financial services business in relation to a financial service activity of a type that the first financial services business itself carries on.]
- 15.4 It is for an ombudsman to decide whether or not complaints are within scope or should be dismissed.
- 15.5 Where a complaint is outside scope or is dismissed, the ombudsman will give reasons to the complainant.

## 16 Resolution and investigation

- 16.1 Where the ombudsman scheme considers it to be practicable, the ombudsman scheme will try to resolve complaints by agreement, through advice/conciliation/mediation.
- 16.2 If a complaint is not resolved by agreement, through advice/conciliation/mediation, the ombudsman scheme will:
- investigate it
  - consider any representations from the complainant and the financial services business.
- 16.3 An ombudsman can require financial services businesses and complainants to provide all documents and information that the ombudsman considers to be relevant, unless the law requires otherwise — and may set a time limit for this. This power includes any financial services business covered by the ombudsman scheme that an ombudsman considers may hold relevant documents and information, even if it is not a party to the individual complaint.
- 16.4 It is for an ombudsman to decide whether a document or information is so confidential that it should not be disclosed to the other party.
- 16.5 An ombudsman is entitled (but not obliged) to disclose such documents and information to the other party unless the ombudsman considers there is good reason why not (for example, that it discloses security systems).

## 17 Issuing decisions

- 17.1 Following any investigation, an ombudsman (or a member of staff on behalf of the ombudsman) will provide the complainant and the financial services business with a written recommendation with reasons.
- 17.2 Within one month, either the complainant or financial services business can make a written request for the recommendation to be reviewed.
- 17.3 The ombudsman may extend this time limit if, in the ombudsman's opinion, there was an exceptional reason why the party concerned could not respond earlier.
- 17.4 If no such request is received, the recommendation becomes final and binding on the financial services business.
- 17.5 If such a request is received, an ombudsman will:
- review the complaint
  - consider any further representations from the complainant and financial services business
  - provide a written final decision with reasons
  - set a reasonable time limit (not less than *[one]* month) for the complainant to accept it.
- 17.6 Exceptionally, the ombudsman may decide that he/she needs to hold an informal oral hearing before reaching a final decision.
- 17.7 The ombudsman may extend the time for acceptance of the final decision if, in the ombudsman's opinion, there was an exceptional reason why the complainant could not respond earlier.

## 18 Basis and effect of decisions

### Basis

- 18.1 Recommendations and final decisions will be based on the ombudsman's opinion of what is fair in the circumstances, taking into account (but not being bound by):
- legal principles (apart from the rules of evidence)
  - any breach of an obligation imposed by law, rule or contract
  - any unfair treatment or maladministration
  - any relevant code of conduct and good industry practice
  - the ombudsman's opinion of what was good industry practice at the relevant time
  - any relevant advertisement or communication with the complainant.
- 18.2 An ombudsman is not bound by any previous final decisions.
- 18.3 An ombudsman's decision can require the financial services business:
- to pay compensation
  - to do, or not do, something in relation to the complainant
  - to pay interest (for a period and at a rate specified by the ombudsman).

- 18.4 In assessing redress, the ombudsman:
- may provide redress for loss, proven consequential loss, material distress or material inconvenience to the complainant
  - so far as practicable, shall aim to put the complainant in the position in which, in the ombudsman's opinion, the complainant would have been but for the act or omission that gave rise to the complaint
  - shall not seek to penalise the financial services business.
- 18.5 The total of any money payable to, or for the benefit of, the complainant (excluding any interest) cannot exceed *[amount]* — but the ombudsman can make a non-binding recommendation for any excess.

### Effect

- 18.6 If the complainant accepts a final decision within the time specified by the ombudsman:
- the final decision is final and legally binding on the financial services business and the complainant
  - the binding redress is in full and final settlement of the complainant's claim.
- 18.7 If the complainant does not accept a final decision within the time specified by the ombudsman, the final decision is not binding on either the financial services business or the complainant.
- 18.8 There is no appeal to court.

## 19 Confidentiality and disclosure

- 19.1 Information collected by the ombudsman scheme in dealing with complaints is to be treated as confidential, save where:
- the information has already been made public from another source
  - fairness requires disclosure of the information to the opposing party
  - the information is disclosed in an oral hearing
  - it is included in an ombudsman's decision
  - it is required to enforce a decision or an agreed outcome
  - it is required to obtain payment from a compensation fund covering insolvent financial services businesses
  - disclosure is required under the requirements of any law
  - an ombudsman considers that:
    - a serious regulatory breach should be disclosed to the relevant regulator
    - a crime should be disclosed to any body involved in investigating or prosecuting crime.
- 19.2 The ombudsman will report to the *[financial services regulator]*:
- if the ombudsman knows that a regulated financial services business has not complied with a binding decision
  - any major or systemic concerns disclosed by complaints
  - suggestions about desirable improvements in industry practice.



## Toolkit

### C. Simple initial funding structures

As referred to in chapter 5, these are examples of comparatively simple funding structures used in the beginning. That initial funding structure can be developed gradually, in the light of experience of the actual circumstances and workload faced by the financial services ombudsman scheme.

Based on real examples, they are grouped according to whether the example scheme was:

- established by law
- established to standards set by a financial services regulator
- voluntary.

#### Examples from schemes established by law

##### Example 1

###### Start-up funding

The financial services regulator pays the start-up costs of the financial services ombudsman scheme.

###### Operational funding

The total operating costs (including repayments and interest on the start-up loan) are raised by a yearly levy paid by all financial services businesses:

- Banks pay a specified percentage of total assets.
- Insurers pay a specified percentage of insurance premium income.
- Other financial services businesses pay a specified flat fee based on the type of financial services business.

##### Example 2

###### Start-up funding

The government provides a loan to cover the start-up costs of the financial services ombudsman scheme, to be repaid (with interest) out of the operational funding within five years.

###### Operational funding

The total operating costs (including repayments and interest on the start-up loan) are raised by a yearly levy paid by regulated financial services businesses.

- Half of the total levy is shared equally among the banks.
- The other half is shared equally among all other types of regulated financial services businesses.

Financial services businesses also pay case fees on complaints found to be within the financial services ombudsman scheme's jurisdiction, in order to build up a financial reserve:

- Those financial services businesses that are regulated (and so pay the levy) pay a lower case fee.
- Those that are not regulated (and so do not pay the levy) pay a higher case fee.

### Example 3

#### Start-up funding

The financial services regulator pays the setup costs, and provides an initial grant to tide the financial services ombudsman scheme over until it prepares and adopts its first budget.

#### Operational funding

The financial services regulator pays the operational costs until one year after the financial services ombudsman scheme opens for business. After that the operating costs are raised by a yearly levy paid by regulated financial services businesses:

- The total cost is divided amongst the industry sectors according to an agreed percentage that is intended to reflect which sectors:
  - are expected to gain from an increase in consumer confidence
  - are expected to produce complaints
  - can afford to pay
  - perform a socially useful purpose for poorer consumers.
- The agreed percentage for each sector is then shared among the regulated financial services businesses in that sector according to size, but limited to three tiers: small, medium and large.

Financial services businesses also pay case fees on those complaints which are found to be within the financial services ombudsman scheme's jurisdiction and are not subjected to early dismissal. Case fees accrued in each year go to reduce the levy in the following year.

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## Examples from schemes established to standards set by a financial services regulator

### Example 4

#### Start-up funding

The financial services regulator pays the start-up costs.

#### Operational funding

The financial services regulator pays the operating costs (less any case fees received) for the first five years.

Financial services businesses pay case fees on complaints found to be within the financial services ombudsman scheme's jurisdiction.

## Example 5

### Start-up funding

The financial services regulator pays the start-up costs.

### Operational funding

For the first year, the financial services regulator pays the operating costs. After the first year, the operating costs are shared among the financial services businesses:

- First, the total is divided among sectors (for example, banking, insurance) in proportion to the number of in-jurisdiction complaints referred to the financial services ombudsman scheme about that sector in the previous year.
- Second, the amount for each sector is divided among the financial services businesses in that sector according to data about those businesses already collected by the regulator for other purposes (for example, net assets in banking, gross income in insurance).

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## Examples from voluntary schemes

### Example 6

#### Start-up funding

The largest retail financial services businesses pay the start-up costs.

#### Operational funding

For the first year, the largest retail financial services businesses pay all the operating costs.

All but the largest financial services businesses pay case fees on complaints referred to the financial services ombudsman scheme, whether or not in jurisdiction.

After the first year, the operating costs (less any case fees received in the previous year) are paid by the largest retail financial services businesses.

The total is divided in proportion to the number of complaints about them referred to the financial services ombudsman scheme in the previous year, whether or not in jurisdiction.

### Example 7

#### Start-up funding

The industry body pays the start-up costs.

#### Operational funding

Each financial services business pays a flat-level membership fee.

For the first year, the rest of the operating costs are shared among the financial services businesses in proportion to the estimated workload of complaints about them referred to the financial services ombudsman scheme, whether or not in jurisdiction.

After the first year, the rest of the operating costs are shared among the financial services businesses in proportion to the actual workload of complaints about them referred to the financial services ombudsman scheme in the previous year, whether or not in jurisdiction.

Workload of complaints is based on the number of complaints, weighted as follows:

- Resolved before advice/conciliation/mediation = 1
  - Resolved by advice/conciliation/mediation = 5
  - Resolved by financial services ombudsman decision = 10
-



## Toolkit

### D. Job descriptions

As referred to in chapter 8, these are examples of job descriptions for:

- a financial services ombudsman
- a caseworker.

They assume that the financial services ombudsman scheme is small and new, so that:

- there is only one financial services ombudsman
- caseworkers both handle enquiries and resolve complaints.

### Financial services ombudsman

**Main functions** include:

- leading the office
- managing the budget
- appointing and managing our staff
- maintaining constructive relations with the independent board and stakeholders
- establishing systems to handle our work — including enquiries, casework and finance
- making final decisions in complaints (on jurisdiction and on merits)
- helping caseworkers to resolve complaints at the earliest opportunity
- acting as a role model and guide for staff.

**Main responsibilities** include:

- demonstrable commitment to our values and objectives
- leading and inspiring our staff
- establishing efficient and effective systems and controls
- continuously improving the way we work
- understanding our jurisdiction and powers
- making final decisions in complaints, in a way that is fair to both parties
- preparing internal and external guidance on our approach
- coaching staff to help them take the correct approach
- maintaining expertise in relevant areas of law, regulation and good industry practice
- acting as a key knowledge-sharer
- working constructively with others
- recognising and communicating systemic issues that arise from complaints
- representing us externally with confidence and enthusiasm
- effective liaison with government/regulators/industry/consumers/communications media
- performing well under pressure and staying well organised.

**Skills and experience needed** include:

- degree level or relevant professional qualification
- leadership success in your career to date
- demonstrating independence and impartiality
- ability to work under pressure and meet deadlines

- approachability, flexibility and pragmatism
- analytical skills and problem solving ability
- making difficult, fair and evidence-based decisions
- ability to get to the heart of a problem
- tactfully holding your own in difficult conversations
- focus on results in both quality and quantity
- computer skills
- developing systems and approaches to handle new issues
- excellent communication skills and the ability to influence others
- understanding the use of information systems
- willingness to keep learning
- recruiting, motivating, coaching and mentoring others
- providing empathetic customer service.

---

## Caseworker

**Main functions** include:

- handling enquiries
- checking, investigating and resolving complaints
- preparing complaints for consideration by the financial services ombudsman.

**Main responsibilities** include:

- demonstrable commitment to our values and objectives
- working autonomously
- responding sensitively to enquiries, focusing on the essentials
- redirecting enquiries if another body is better placed to help
- give clear guidance on referring a complaint to us
- drawing new and emerging issues to the attention of the financial services ombudsman
- understanding our jurisdiction and powers
- checking whether complaints fall within our jurisdiction
- identifying key issues and facts, investigating if necessary
- managing external experts
- resolving complaints fairly at the earliest opportunity (by conciliation/mediation/recommendation)
- presenting unresolved complaints to the ombudsman for decision
- clear communication and empathetic customer service
- remembering that you are dealing with people, rather than cases
- developing your skills
- building your knowledge of financial services
- helping colleagues and sharing your knowledge
- helping in communication and administration as required
- acknowledging when you are unsure, and seeking advice
- managing and prioritising your work, meeting targets and deadlines and
- identifying ways to improve our systems and processes.

**Skills and experience needed** include:

- interacting with people from a range of different backgrounds
- good customer service
- team working

- common sense
  - good analytical and problem solving skills
  - being a good listener
  - computer skills
  - good written and oral communication, and readiness to phone when appropriate and
  - willingness to keep learning.
-



## Toolkit

### E. Headings for budgeting

As referred to in chapter 9, these are example headings for budgeting.

The actual form and content will depend on, amongst other things, accounting conventions in the country concerned. But this example illustrates expenditure that may need to be budgeted for.

### Working assumptions for budget purposes

#### Workload:

- number of enquiries to be received
- number of complaints to be handled
- proportion of complaints outside jurisdiction or subject to early termination
- proportion of complaints resolved by advice/conciliation/mediation
- proportion of complaints requiring ombudsman final decision
- number of caseworkers required

#### Income:

- number and types of financial services businesses liable to pay the levy
- number of case fees payable
- allowance for bad debts

### Income

- Levy
- Case fees
- Bank interest
- Other income

### Expenditure

#### Salaries:

- directors
- financial services ombudsman
- other staff
- social security and pensions costs

#### Staff-related expenses:

- recruitment
- personnel advice
- training
- professional subscriptions
- welfare
- meeting expenses

- directors' travel
- financial services ombudsman's travel
- other staff travel
- outsourced payroll cost
- travel insurance
- indemnity insurance
- employer's liability insurance

**Office expenses:**

- rent
- property taxes
- maintenance and repairs
- cleaning
- lighting
- heating
- property insurance

**Administration:**

- website services
- other information services
- phones
- postage
- annual report
- stationery/leaflets/forms
- public relations
- technical resources
- outsourced billing/collection fees
- accountancy/book-keeping fees
- audit fees
- legal fees
- other external experts
- bank charges/interest
- general administration
- allowance for bad debts
- contingency
- depreciation

**Reserves**

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## Toolkit

### F. Complaint handling by financial businesses

As referred to in chapter 10, this shows example guidance on complaint handling by financial services businesses.

This model procedure describes how financial services businesses that are covered by the (name of financial services ombudsman scheme) should:

- handle complaints, promptly and fairly
- tell complainants about the (name of financial services ombudsman scheme).

A complaint is any oral or written expression of dissatisfaction:

- whether or not the financial services business considers that it is justified
- about providing, or failing to provide, a financial service in or from (the country)
- from, or on behalf of, a complainant covered by the (name of financial services ombudsman scheme), and
- where actual/prospective loss or material distress/inconvenience is explicitly or implicitly alleged.

Financial services businesses should publish written information about their complaint handling procedure, and make it widely and clearly available (notably, on websites and in branch offices). This should include that, at the end of the financial services business's complaint handling procedure, complainants who remain dissatisfied can refer their complaints to the (name of financial services ombudsman scheme).

Financial services businesses should tell customers in writing about the availability of their complaint handling procedure, and the ultimate availability of the (name of financial services ombudsman scheme):

- on the home page of their website
- by prominent notices in branches
- at the point of sale or, if no sale is involved, immediately after the first contact with the customer.

Financial services businesses should give written details of their complaint handling procedure, free-of-charge, to complainants:

- on request
- (automatically) when acknowledging a complaint.

A financial services business's complaint handling procedure should:

- allow a complaint to be made by any reasonable means
- be clearly accessible by phone from anywhere within (name of country) at the local rate
- include reasonable adaptations to assist complainants with disabilities
- be transparent, effective, prompt, fair and free
- not have more than two stages.

If a financial services business receives a complaint, the financial services business should:

- aim to resolve the complaint at the earliest opportunity, and so minimise the number of unresolved complaints referred to the (name of financial services ombudsman scheme)
- investigate and assess the complaint competently, diligently, impartially, fairly, consistently and promptly — obtaining relevant additional information where necessary
- assess whether the complaint should be upheld, and what individual redress and/or remedy may be appropriate
- have that investigation and assessment carried out by someone who was not involved in the complaint
- take account of the law, any regulatory rules and guidance, good industry practice and any published guidance from the (name of financial services ombudsman scheme)
- explain its decision, and any proposed redress or remedy, to the complainant in a way that is fair, clear and not misleading
- offer redress and/or remedy where that is appropriate, and comply promptly if the redress and/or remedy is accepted by the complainant.

The financial services business should follow the procedure in the next paragraph unless:

- within [?] business days following the business day on which the complaint was received, the complainant has confirmed (orally or in writing) that the complaint has been resolved to his/her satisfaction, and
- the financial services business has sent the complainant written confirmation that it considers the complaint to be resolved, but that, if the complainant remains dissatisfied, he/she may be able to refer the complaint to the (financial services ombudsman scheme) (giving its complete contact details)

The financial services business should:

- send the complainant a written acknowledgement, confirming that it is dealing with the complaint, promptly – and, in any event, within [?] business days
- keep the complainant informed about the progress of the steps the financial services business is taking to resolve the complaint.

The financial services business should send the complainant a written 'final response' promptly. This should usually be within [?] weeks of first receiving the complaint — and, in any event, within [?] weeks of first receiving the complaint.

A 'final response' should:

- accept the complaint and offer any appropriate redress and/or remedy, or
- offer redress and/or remedy without accepting the complaint, or
- reject the complaint and give clear reasons for doing so.

A 'final response' should also tell/remind the complainant in writing that, if he/she remains dissatisfied, he/she:

- can refer the complaint to the (name of financial services ombudsman scheme) (giving its complete contact details)
- must refer the complaint to the (name of financial services ombudsman scheme) within [?] months of the final response, giving the date that expires
- must do so within [?] years of the event complained about or (if later) [?] years of when the complainant could reasonably have been expected to become aware that he/she had a reason to complain.

A clear and comprehensive 'final response' is more likely to assist the financial services business's position if the complainant later refers the complaint to the (name of financial services ombudsman scheme).

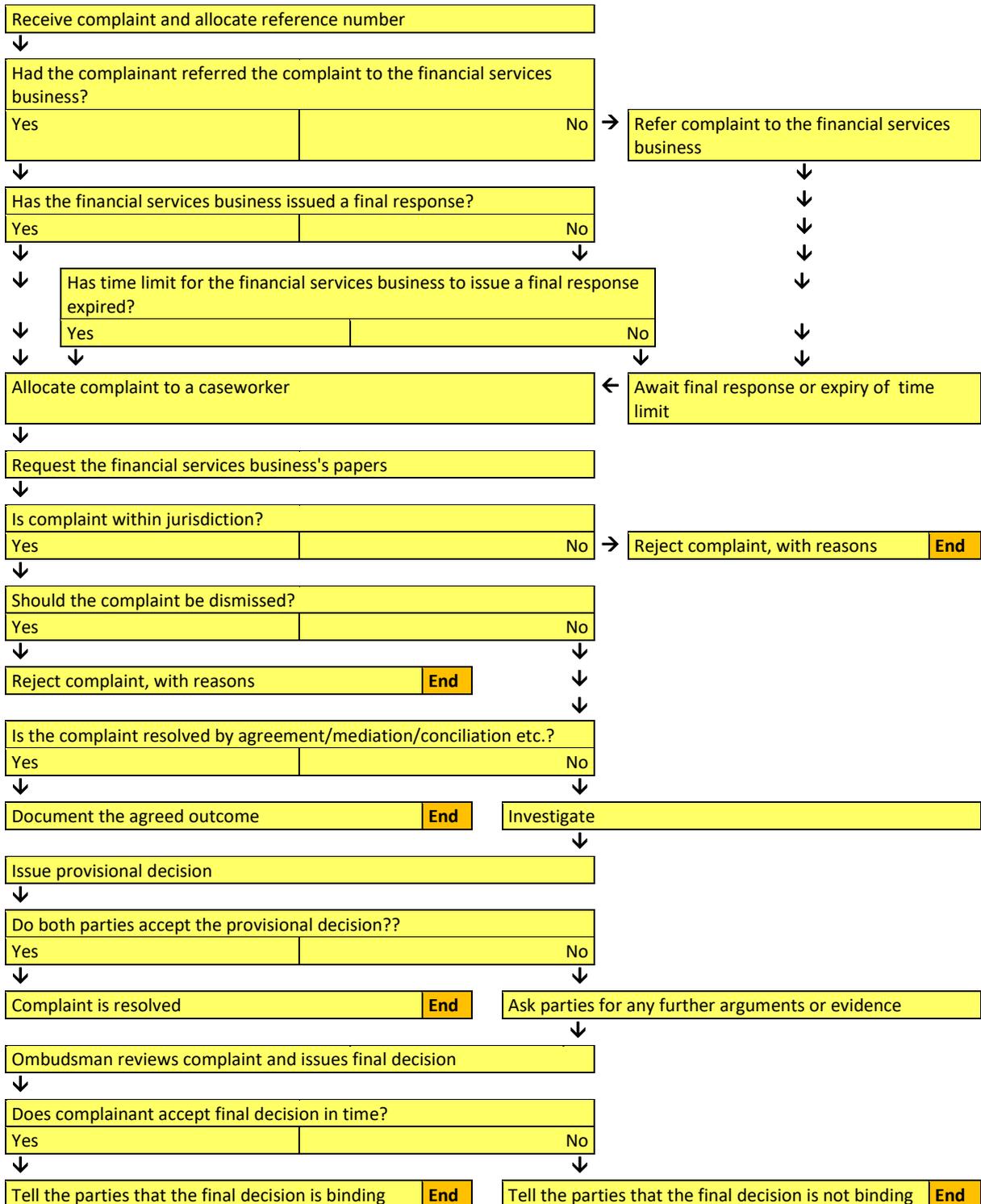
Additionally, financial services businesses should:

- make a single member of senior management responsible for complaint handling
  - give that single member of senior management full authority to settle complaints
  - record the number, types and outcome of complaints
  - identify and remedy any recurring or systemic problem
  - consider whether to redress similarly affected customers who have not complained
  - use the outcome of complaints to inform staff training.
-

 **Toolkit**

**G. Process map for complaint handling by scheme**

As referred to in chapter 10, this is an example of a process map for complaint handling.





## Toolkit

### H. Service standards

This annex shows an example of brief published service standards.

#### Our service standards

We are independent and impartial. We aim to provide a high quality service.

We publish information, including:

- who we are
- how our independence is guaranteed
- what complaints we can deal with
- our powers and how we handle complaints
- statistics about the complaints we have resolved.

If your complaint is one that we cannot handle, we will tell you why. If there is another body that may be able to help you, we will tell you.

We will:

- tell you who to contact if you have any questions
- treat you politely
- make our service available and accessible
- make reasonable adjustments for any disability
- ensure that we understand your complaint
- explain our process
- deal with your complaint in a timely way
- let you know if we need more time than usual
- keep you updated about the progress of your complaint
- communicate with you clearly, avoiding jargon.

If we think that we can help you and the financial services business to reach a prompt and fair agreed outcome, we will use our specialist knowledge and skills to try and achieve this. If that is not possible, we will make a decision — based on the relevant evidence. We will:

- consider the information provided by you and the financial services business
- use our specialist knowledge to seek out anything else that is relevant
- give you an opportunity to comment before we reach a final decision
- reach a fair decision, and explain the reasons for it.

We will use the outcomes of complaints to identify common problems and recommend improvements in the financial services industry.

We will:

- keep accurate records and hold data securely
- apologise for any mistakes, and put them right
- learn lessons to improve our service and performance.



## Toolkit

### I. Service complaints

As referred to in chapter 10, this annex shows examples of:

- a process for service complaints
- terms of reference for an independent service complaint reviewer

These are not model documents. But these examples illustrate areas that will need to be considered.

#### Process for service complaints

We aim to provide our users with a good standard of service. If we fail to do so, you can make a service complaint — by letter, email or phone.

A service complaint covers things like how we communicated with you, how long we took to deal with your complaint and how you were treated by our staff.

A service complaint cannot be made about our decision on the scope of our jurisdiction or the outcome of a complaint against a financial services business.

Normally, you must make a service complaint within [six months] of the event that you want to complain about.

In exceptional circumstances, we may be able to extend the time. If you think we should extend the time limit, please explain why you could not complain sooner.

Please direct your service complaint to the person dealing with your case, so they have an opportunity to put things right.

If you are still unhappy after that, you can refer your service complaint to [the financial services ombudsman]. It will be acknowledged within [three working days].

[The financial services ombudsman] will look into your service complaint as soon as possible and send you a written final response.

If you are still unhappy after the final response from [the financial services ombudsman], you can refer your service complaint to [the independent service complaint reviewer] within [two months].

The final response from [the financial services ombudsman] will tell you how to contact (the independent service complaint reviewer) and about the time limit.

You can find the terms of reference of [the independent service complaint reviewer] on our website at [link], or we will send you a copy on request.

## Terms of reference for an independent service complaint reviewer

A service complaint:

- is a complaint (by someone directly affected) about the standard of service provided by [the financial services ombudsman scheme] in handling a complaint against a financial services business
- excludes the merits of any decision on issues about jurisdiction or about the outcome of the complaint about the financial services business.

If the complainant is still dissatisfied after a written final response from [the financial services ombudsman], the complainant can refer the service complaint to the Independent Service Delivery Reviewer (the Reviewer).

The complainant must refer the service complaint to the Reviewer within [two months] of the written final response from [the financial services ombudsman], if it told the complainant about the Reviewer and the time limit.

The Reviewer cannot consider the merits of any decision on issues about jurisdiction or about the outcome of the complaint about the financial services business.

Usually, the Reviewer will only consider the service complaint after [the financial services ombudsman scheme] has completed its consideration of the complaint about the business.

In exceptional cases, the Reviewer may ask [the financial services ombudsman scheme] to suspend investigation of the complaint against the financial services business under its jurisdiction while he/she reviews and reports on a service complaint.

[The financial services ombudsman scheme] will promptly provide the Reviewer with all its files and records relating to the service complaint, and promptly respond to enquiries from the Reviewer.

The Reviewer may seek any further information that he/she considers necessary, either from the complainant or [the financial services ombudsman scheme].

The Reviewer will send his/her findings in writing to the complainant and [the financial services ombudsman scheme]. There is no further review after the Independent Reviewer's opinion and recommendations.

If the Reviewer considers that a service complaint should be wholly/partly upheld, he/she may recommend:

- an apology
- an explanation
- (compensation)
- consideration of a process change
- consideration of staff training.

If (the financial services ombudsman) accepts the Reviewer's recommendation, he/she will:

- tell the complainant and the Reviewer in writing
- carry out the recommendation.

If (the financial services ombudsman) does not accept the Reviewer's recommendation:

- he/she will tell the complainant and the Reviewer in writing, with their reasons
- the Reviewer will notify [the independent board], which will consider the issue at its next meeting.

If, following the meeting of [the Independent Board], [the financial services ombudsman scheme] still does not accept the Reviewer's recommendation, it will publish its reasons in its annual report.

[The financial services ombudsman scheme]'s annual report will include:

- a summary from the Reviewer of the nature of complaints received and recommendations made
  - a formal response from [the financial services ombudsman scheme].
-



## Toolkit

### J. Website contents

As referred to in chapter 11, this annex shows material that should be included in the website.

#### **The financial services ombudsman scheme should publish on its website (at least) details about:**

##### **The financial services ombudsman scheme:**

- its website address
- its email address
- its phone number
- its postal address
- the basis of its authority
- the financial services ombudsman (including how appointed and term of office)
- the members of the independent board (including how appointed and term of office)
- its most recent annual report
- any current consultations
- the outcome of any recent consultations
- its membership of any national or international network.

##### **The scope of its jurisdiction, including:**

- the financial services 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
- any grounds on which the ombudsman scheme may decline to deal with a dispute that is within its jurisdiction.

##### **Its enquiry and complaint handling processes, including:**

- a complaint form
- whether the complainant must first complain directly to the financial services business
- any requirements on how financial services businesses handle complaints
- anything else the complainant must do before referring a dispute to the ombudsman scheme
- whether or not the financial services ombudsman scheme handles enquiries
- whether or not the ombudsman scheme uses conciliation/mediation
- whether or not the ombudsman scheme actively investigates complaints
- the language(s) in which disputes can be submitted and can be handled
- whether or not bringing a dispute to the ombudsman scheme suspends any time limit for taking the dispute to court.

**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 services business can be required to do anything else to put things right
- whether or not the financial services business can be required to change its processes.

**Details of the status of its decisions, including:**

- whether or not they are published
- whether or not they bind the financial services business
- if binding, how they can be enforced
- if non-binding, the percentage of complaints in which they are followed by financial services businesses
- if non-binding and not followed, whether there are consequences (e.g. publicity)
- whether or not they bind the complainant
- whether or not there is the possibility of review by, or appeal to, the courts.

**Details of whether or not:**

- the identities of the parties are kept confidential
- other information about disputes is kept confidential
- a party can use information from the investigation/decision in subsequent court proceedings.

**The financial services ombudsman scheme should have a policy on website links:**

- Links to the financial services ombudsman scheme's website on the websites of other bodies may enhance accessibility to the financial services ombudsman scheme, but consider carefully whether the financial services ombudsman scheme wants to be publicly associated with the other body.
- Links from the financial services ombudsman scheme's website to the websites of other bodies may facilitate access to information and/or referral of enquiries, but consider carefully whether the financial services ombudsman scheme wants to be publicly associated with the other body.



## Toolkit

### K. Website structure

As referred to in chapter 11, this is an outline of a website structure for a financial services ombudsman scheme. The information could be structured in many other ways. Annex J shows material that should be included in the website.

#### Home

##### > About us

- > What we do
- > Who we are
  - > Our ombudsman
    - > identity and background
    - > method of appointment and term of office
  - > Our staff
  - > Governance
  - > Our board
    - > identities and background
    - > method of appointment and terms of office
- > Contact us
  - > When we are open
  - > Email, phone, fax and address
- > Accessibility
  - > Adjustments
  - > Languages
- > Our service standards
  - > Our values
  - > Privacy and confidentiality
  - > Your feedback
    - > Complaints about our service
- > Membership of the INFO Network
- > Careers (including current vacancies)

##### > For complainants

- > Complaining to the financial services business
- > Referring your complaint to us
  - > Online complaint form
    - > About you
      - > Using a representative
    - > About your complaint
    - > Additional information
    - > Declaration and submission
  - > *Link to Our scope, process and powers (see below)*
  - > *Link to Accessibility (see above)*
  - > *Link to Our service standards (see above)*
  - > Effect on time limits for going to court
- > Frequently asked questions

- > **For financial services businesses**
    - > How you handle complaints
    - > If the complaint is referred to us
      - > *Link to Our scope, process and powers [see below]*
      - > *Link to Accessibility [see above]*
      - > *Link to Our service standards [see above]*
    - > Funding
      - > Yearly levies
      - > Case fees
    - > Frequently asked questions
  - > **Our scope, process and powers**
    - > Our scope
      - > Who can complain to us
      - > Who they can complain about
      - > Types of dispute we can consider
      - > Types of dispute we might not consider
      - > Time limits
    - > Our process and powers
      - > Enquiries
      - > Jurisdiction and dismissal
      - > Conciliation/mediation
      - > Investigation
        - > Power to demand information/documents
      - > Decision
        - > Basis of our decisions
        - > Remedies we can award
        - > Effect of our decisions
      - > Confidentiality
  - > **Information**
    - > News releases
    - > Events
    - > Our publications
      - > Newsletters; online registration for alerts and newsletters
      - > Statistics
      - > Annual report
      - > Complaints data
      - > Leaflets and factsheets
      - > Guidance on our approach
      - > Decisions and case studies
    - > Constitutional documents
      - > Law/constitution/charter
      - > Rules/terms of reference/code of practice
      - > Memoranda of understanding
    - > Consultations
      - > Our consultations; consultation papers; replies received; our feedback statements
      - > Our replies to consultations by others
    - > Useful links
  - > **Site map**
-



## Toolkit

### L. Risk areas

As referred to in chapter 11, this is a list of potential risk areas to consider in a financial services ombudsman scheme's risk management arrangements.

The identity of the key risks is likely to change over time (for example, as the financial services ombudsman scheme moves from the setup stage to the stage when it has become an accepted part of the landscape).

#### **Particular risk mitigation issues that the financial services ombudsman should consider include:**

- data integrity and security (they are correct and kept safely)
- a 'firewall' against computer hacking
- daily backup of in-house computer systems to an off-site location
- a disaster recovery plan to continue the operation if the office burns down or is not accessible.

#### **Possible areas that the financial services ombudsman scheme might wish to review for risks include:**

- political:
  - legislation delays
  - changes in economic environment
  - relations with stakeholders
  - political lobbying by opponents
  - stronger financial services industry voice versus weaker consumer voice
- legal:
  - gaps/defects in law/rules
  - legal challenges to decisions
- staff:
  - availability of suitable recruits
  - morale and turnover
  - impact on small staff of illness, maternity leave or departures
  - succession planning for key roles
  - health and safety plan and (medical) first aid
- operational:
  - insufficient implementation time before opening for business
  - complaint numbers significantly above/below projections
  - delays
  - resistance to innovation
  - controversy over decisions
  - security impact of working from home

- financial:
    - start-up funding insufficient
    - slow payment of levies and/or case fees
    - insufficient reserves
    - cashflow difficulties
    - fraud/carelessness
  - facilities:
    - support and maintenance of information systems
    - office security
    - security of post
    - office evacuation procedure.
-



## Toolkit

### M. User survey

As referred to in chapter 11, this is an example of a user survey — to be sent out after a complaint has been resolved.

**Please complete this anonymous and confidential survey.  
We will use the results to help assess and improve our service.**

**1 Was our process easy to understand?**

Very easy to understand

Quite easy to understand

Neither easy nor hard to understand

Quite hard to understand

Very hard to understand

**2 Was the complaint resolved in a reasonable time?**

Strongly agree

Slightly agree

Neither agree nor disagree

Slightly disagree

Strongly disagree

**3 Were our caseworkers polite and professional?**

Strongly agree

Slightly agree

Neither agree nor disagree

Slightly disagree

Strongly disagree

**4 Was the service we provided satisfactory?**

Strongly agree

Slightly agree

Neither agree nor disagree

Slightly disagree

Strongly disagree

**5 What did you like best?**

**6 What did you like least?**



## Toolkit

### N. Complaint classification

As referred to in chapter 12, this is an example of how complaints data might be classified by the type of problem involved and by the financial sector involved.

#### The type of problem involved could be classified as:

- refusal of service
- mis-selling
- disputed payment in
- disputed payment out
- charges
- interest
- proceeds
- enforcement
- poor administration or delay.

#### The financial sector involved could be classified as:

- banking and payment services
- lending for house purchase:
- other lending and credit cards
- insurance
- investments/securities
- private pensions.

#### So, for example:

- A dispute about the amount paid into a bank account would be classified as:
  - disputed payment in / banking and payment services
- A dispute about whether a credit card payment was made/authorised by the customer would be:
  - disputed payment out / other lending and credit cards
- A dispute about an insurer's refusal to pay out on an insurance claim would be:
  - proceeds / insurance
- A dispute about whether a recommended investment was unsuitable would be:
  - mis-selling / investments/securities

The financial services ombudsman scheme may want to go further, and break down financial sector by financial product (for example, bank current account, motor insurance, etc).



## Toolkit

### O. Memorandum of understanding with regulator

As referred to in chapter 12, this is an outline for a memorandum of understanding between the financial services ombudsman scheme and a financial services regulator.

This is not a model document. The actual form and content will depend on, amongst other things:

- the constitutional, legal and cultural circumstances in the country concerned
- whether the financial services ombudsman scheme is statutory, hybrid or voluntary
- the scope and roles of the financial services ombudsman scheme and the financial services regulator.

But this example illustrates areas that may need to be considered.

## Memorandum of understanding

Date

Parties:

- the financial services regulator
- the financial services ombudsman scheme.

Definitions (including scope of regulation)

Brief summary of main functions of:

- the financial services regulator
- the financial services ombudsman scheme.

The financial services regulator and financial services ombudsman scheme wish to cooperate, so far as consistent with:

- applicable laws
- their different and independent functions.

The memorandum of understanding:

- will be published on the parties' websites
- does not create legally enforceable rights
- does not modify or supersede any applicable law
- applies only so far as it is consistent with the independent roles of the parties
- may be terminated by [?] days' written notice from one party to the other.

The parties will maintain a constructive relationship. In particular, they will:

- seek to:
  - dispel confusions and misunderstandings about their different roles
  - achieve a complementary and consistent approach
  - assist one another with in-house training on their respective roles
  - facilitate direct transfer of relevant phone enquiries from one to the other
- provide each other with a list of contacts to whom information exchanged under this memorandum of understanding should be directed
- communicate regularly and meet at least quarterly (at appropriate and equivalent levels of seniority) to discuss matters of mutual interest
- consult one another at an early stage about any issue or proposal that might have significant implications for the other party
- keep the operation of this memorandum of understanding under review, and consult one another as appropriate on improving its operation and resolving any matters that arise.

If a persistent, systemic and/or serious pattern of complaints indicates that action may be required to protect consumers of financial services, the parties will consult one another at an early stage – including, where applicable, to discuss potential:

- regulatory action by the financial services regulator
- public statements by either party or by both parties jointly.

The financial services regulator will provide the financial services ombudsman scheme, in a timely way, with details about regulated financial services businesses that are required by the financial services ombudsman scheme to enable it to calculate its funding.

The parties can only provide information to the other if permitted, or not prevented, under applicable law. Subject to this, they will seek to share information that will enable or assist them to exercise their respective functions. In particular:

- They will exchange, at least every six months, information relevant to past, current and potential future financial complaints, including:
  - material changes in the identities of regulated financial services businesses
  - the numbers of complaints handled by regulated financial services businesses
  - the standards of complaint handling in regulated financial services businesses
  - the intent behind actual and proposed rules from the financial services regulator
  - the outcomes of complaints resolved by the financial services ombudsman scheme
  - trends
  - persistent, systemic and/or serious issues.
- The financial services ombudsman scheme will notify the financial services regulator where, in the opinion of the financial services ombudsman scheme, it may be appropriate for the financial services regulator to consider using any of its regulatory powers — including because of concerns about a regulated financial services business relating to:
  - its fitness and probity
  - the fitness and probity of someone connected with it
  - its complaint handling
  - its failure to cooperate with the financial services ombudsman scheme
  - its failure to comply with a financial services ombudsman decision or agreed outcome
  - its failure to pay any levy or case fee due to the financial services ombudsman
  - its significant contravention of regulatory laws, rules or code of practice.

In respect of any non-public information supplied under this memorandum of understanding, the receiving party will:

- not disclose the information to any third party without the prior consent of the sending party in writing (which includes email and fax) unless required by law
- notify the sending party of any legally enforceable demand for disclosure of the information, unless this is not practicable because of urgency
- assert any legal exemptions or privileges against disclosure on behalf of the sending party.

Even if this memorandum of understanding is terminated, the duty of non-disclosure in respect of non-public information supplied under this memorandum of understanding will continue.

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