

# SOUTH AFRICA

## Financial Ombud System Diagnostic



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1818 H Street NW, Washington DC 20433, USA.  
Telephone: +1 202-473-1000  
Internet: [www.worldbank.org](http://www.worldbank.org)

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# TABLE OF CONTENTS

ACKNOWLEDGMENTS.....	VII
GLOSSARY.....	IX
LEGISLATION CONSULTED.....	XIII
INTRODUCTION.....	XV
SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS .....	XIX
<b>DETAILED FINDINGS AND RECOMMENDATIONS</b>	
<b>Financial Ombud System Role and Standards</b>	
<b>1 ROLE OF A FINANCIAL OMBUD SYSTEM.....</b>	<b>1</b>
1.1 CONSUMER TRUST AND CONFIDENCE IN FINANCIAL SERVICES .....	1
1.2 WHAT A FINANCIAL OMBUD SYSTEM DOES .....	3
<b>2 INTERNATIONAL GOOD PRACTICE FOR FINANCIAL OMBUDS .....</b>	<b>5</b>
2.1 GUIDANCE ON GOOD PRACTICE.....	5
2.2 KEY ATTRIBUTES.....	5
2.3 EFFECTIVENESS .....	6
2.4 INDEPENDENCE .....	6
2.5 ACCESSIBILITY.....	7
2.6 FAIRNESS .....	7
2.7 EFFICIENCY .....	8
2.8 OPENNESS .....	8
<b>Current Position in South Africa</b>	
<b>3 FINANCIAL MARKET .....</b>	<b>11</b>
3.1 RELATIONSHIP WITH THE FINANCIAL OMBUD SYSTEM .....	11
3.2 FINANCIAL-SECTOR MARKET OVERVIEW.....	11
3.3 BANKING AND CREDIT .....	11
3.4 INSURERS .....	14
3.5 FRIENDLY SOCIETIES .....	16
3.6 RETIREMENT FUNDS AND UNIT TRUSTS.....	17
3.7 FINANCIAL SERVICES INTERMEDIARIES .....	19

<b>4</b>	<b>FINANCIAL REGULATION .....</b>	<b>21</b>
4.1	RELATIONSHIP WITH THE FINANCIAL OMBUD SYSTEM .....	21
4.2	FINANCIAL SECTOR REGULATION ACT .....	21
4.3	NATIONAL CREDIT ACT.....	22
4.4	PROPOSED CONDUCT OF FINANCIAL INSTITUTIONS BILL.....	23
<b>5</b>	<b>FINANCIAL OMBUD SCHEMES .....</b>	<b>27</b>
5.1	FINANCIAL OMBUD SCHEMES .....	27
5.2	SIZE AND SCOPE OF THE FINANCIAL OMBUDS .....	30
5.3	NATIONAL TREASURY 2017 CONSULTATION.....	31
<b>6</b>	<b>OMBUD OVERSIGHT LEGISLATION.....</b>	<b>35</b>
6.1	OVERVIEW .....	35
6.2	FINANCIAL SERVICES OMBUD SCHEMES ACT .....	35
6.3	FINANCIAL SECTOR REGULATION ACT .....	37
<b>Assessment</b>		
<b>7</b>	<b>ASSESSMENT PROCESS .....</b>	<b>45</b>
7.1	OVERVIEW .....	45
7.2	FACT-FINDING WITH OMBUD SCHEMES.....	45
7.3	FACT-FINDING WITH STAKEHOLDERS.....	47
<b>8</b>	<b>EFFECTIVENESS OF SCOPE .....</b>	<b>57</b>
8.1	CRITERIA.....	57
8.2	FINANCIAL PROVIDERS AND ACTIVITIES COVERED.....	57
8.3	COMPLAINANTS COVERED, INCLUDING RELEVANT NON-CUSTOMERS.....	63
8.4	TIME LIMITS.....	65
8.5	STAKEHOLDER VIEWS .....	68
8.6	CONCLUSIONS .....	68
<b>9</b>	<b>EFFECTIVENESS OF INTERACTION AND POWERS .....</b>	<b>71</b>
9.1	CRITERIA.....	71
9.2	DEFINITION OF WHAT CONSTITUTES A COMPLAINT .....	71
9.3	RELEVANT OBLIGATIONS FOR PROVIDERS.....	72
9.4	REFERRALS BY OMBUD SCHEMES TO PROVIDERS .....	75
9.5	REDRESS A FINANCIAL OMBUD CAN AWARD.....	76
9.6	EFFECT AND ENFORCEMENT OF FINANCIAL OMBUD DECISIONS.....	77
9.7	STAKEHOLDER VIEWS .....	80
9.8	CONCLUSIONS .....	80
<b>10</b>	<b>INDEPENDENCE .....</b>	<b>83</b>
10.1	CRITERIA.....	83
10.2	BANKING OMBUD .....	84
10.3	CREDIT OMBUD .....	86

10.4	LTI OMBUD .....	88
10.5	STI OMBUD .....	90
10.6	JSE OMBUD .....	93
10.7	FAIS OMBUD .....	93
10.8	PFA .....	94
10.9	STAKEHOLDER VIEWS .....	96
10.10	CONCLUSIONS .....	96
<b>11</b>	<b>ACCESSIBILITY .....</b>	<b>103</b>
11.1	CRITERIA .....	103
11.2	FRAGMENTATION .....	103
11.3	VISIBILITY .....	104
11.4	ACCESSIBILITY .....	106
11.5	REGIONAL DIFFERENCES .....	108
11.6	STAKEHOLDER VIEWS .....	108
11.7	CONCLUSIONS .....	110
<b>12</b>	<b>FAIRNESS .....</b>	<b>113</b>
12.1	CRITERIA .....	113
12.2	INFORMAL, EASY-TO-UNDERSTAND, AND FLEXIBLE PROCESS .....	113
12.3	PROCEDURAL FAIRNESS .....	115
12.4	BASIS OF DECISION .....	116
12.5	COMPLAINT OUTCOMES .....	118
12.6	APPEAL MECHANISMS .....	119
12.7	STAKEHOLDER VIEWS .....	122
12.8	CONCLUSIONS .....	123
<b>13</b>	<b>EFFICIENCY .....</b>	<b>127</b>
13.1	CRITERIA .....	127
13.2	EFFICIENT AND DOCUMENTED COMPLAINT-HANDLING PROCESSES .....	127
13.3	RESOURCES FOR TIMELY RESOLUTION OF CASES .....	130
13.4	APPROPRIATE SKILLS AND EXPERTISE OF CASE-HANDLING STAFF .....	131
13.5	ROBUST QUALITY ASSURANCE OF THE SERVICE .....	131
13.6	CLEAR PERFORMANCE AND SERVICE STANDARDS THAT ARE PUBLICLY REPORTED .....	132
13.7	PERIODIC INDEPENDENT REVIEWS .....	133
13.8	CONSISTENCY OF APPROACH ACROSS OMBUD SYSTEM .....	133
13.9	STAKEHOLDER VIEWS .....	134
13.10	CONCLUSIONS .....	134
<b>14</b>	<b>OPENNESS .....</b>	<b>137</b>
14.1	CRITERIA .....	137
14.2	ANNUAL REPORT .....	137
14.3	OTHER PUBLISHED INFORMATION .....	139
14.4	CASE-HANDLING INFORMATION AND DATA .....	139

14.5	COMMUNICATING WITH THE FINANCIAL REGULATORS .....	140
14.6	STAKEHOLDER VIEWS .....	141
14.7	CONCLUSIONS .....	141
<b>15</b>	<b>OMBUD COUNCIL .....</b>	<b>143</b>
15.1	CRITERIA.....	143
15.2	EMERGING POSITION .....	143
15.3	INDEPENDENCE.....	144
15.4	EFFECTIVENESS.....	145
15.5	STAKEHOLDER VIEWS .....	146
15.6	CONCLUSIONS .....	147
<b>16</b>	<b>ASSESSMENT SUMMARY .....</b>	<b>149</b>
16.1	OVERVIEW .....	149
16.2	CONCLUSIONS .....	150

## Detailed Recommendations

<b>17</b>	<b>RECOMMENDATIONS FOR REFORM.....</b>	<b>159</b>
17.1	OPTIONS FOR REFORM.....	159
17.2	A NEW MODEL .....	161
17.3	RECOMMENDATIONS .....	163

## Appendixes

APPENDIX A:	OVERVIEW OF OMBUD SYSTEM DATA .....	185
APPENDIX B:	QUESTIONNAIRE FOR EXISTING OMBUD SCHEMES .....	189
APPENDIX C:	ISSUES PAPER FOR STAKEHOLDERS .....	217
APPENDIX D:	LIST OF STAKEHOLDERS THAT RESPONDED TO THE ISSUES PAPER.....	221
APPENDIX E:	COMPLAINT DEFINITIONS .....	223
APPENDIX F:	OVERVIEW OF COMPLAINT-HANDLING PROCESSES OF OMBUD SCHEMES.....	227
APPENDIX G:	IMPLEMENTATION OF THE PROPOSED NEW OMBUD SYSTEM.....	239

<b>ENDNOTES.....</b>	<b>247</b>
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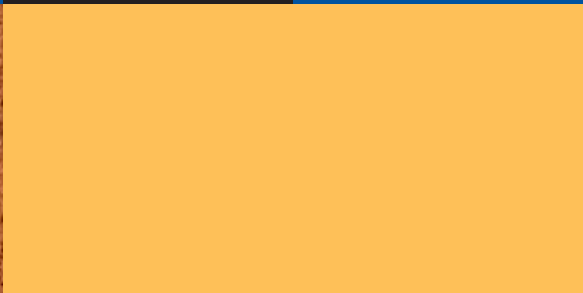
## LIST OF FIGURES

Figure A.	Structure before the Recommended Reforms.....	XXVI
Figure B.	Structure after the Recommended Reforms .....	XXVII
Figure G.	Outline Transition Flowchart, Showing Where Legislation Is Required .....	240

## LIST OF TABLES

Table C.	Key to Detailed Recommendations.....	XXVII
Table 3A.	Financial Inclusion .....	12
Table 3B.	Top 10 Banks in South Africa.....	13
Table 3C.	Distribution of Credit Provided in Fourth Quarter, 2019.....	13
Table 3D.	Top 10 Long-Term Insurers in South Africa .....	14

Table 3E.	Top 10 Short-Term Insurers in South Africa .....	15
Table 3F.	Top 20 Friendly Societies in South Africa .....	16
Table 3G.	Top 10 Retirement Funds in South Africa .....	17
Table 3H.	Retirement Funds: Number of Funds by Administrator on March 31, 2019 .....	18
Table 3I.	Top 10 Unit-Trust Managers in South Africa.....	18
Table 3J.	Categories of Financial Service Providers Registered under the FAIS Act.....	19
Table 5A.	Key Features of the Financial Ombud Schemes in South Africa.....	29
Table 5B.	Summary of the Activities of the Financial Ombuds for 2019.....	30
Table 7A.	Summary of Stakeholder Comments on Key Themes .....	49
Table 7B.	Summary of Key Themes in Comments on 2017 NT Reform Options .....	52
Table 8A.	Providers Covered by Existing Ombud System .....	57
Table 8B.	Products Covered by Existing Ombud System.....	61
Table 8C.	Complaints Referred between Ombud Schemes .....	62
Table 8D.	Customers Covered by Existing Ombud System.....	63
Table 8E.	Whether Prospective Customers Are Covered.....	65
Table 8F.	Other Non-Customers Covered .....	65
Table 8G.	Time Limits in the Existing Ombud System.....	66
Table 9A.	Premature Complaints Referred by Ombud Schemes to Financial Providers.....	75
Table 9B.	Redress Provisions in the Existing Ombud System .....	76
Table 9C.	Illustration of Differences: Complaint about Loan Plus Advised Sale of Credit Insurance .....	78
Table 9D.	Effect and Enforcement of a Financial Ombud Final Decision—Overview .....	78
Table 9E.	Effect and Enforcement of a Financial Ombud Final Decision—by Scheme.....	79
Table 10A.	Independence—Company/Association/Statutory Body .....	96
Table 10B.	Independence—Board/Council .....	97
Table 10C.	Independence—Ombud.....	98
Table 10D.	Independence—Budget/Funding .....	99
Table 11A.	Visibility of the Existing Ombud System .....	105
Table 11B.	Ways of Contacting Existing Ombud Schemes.....	106
Table 11C.	Percentage of Population Who Speaks English Inside/Outside Home .....	107
Table 11D.	Complaint Distribution Compared to Population Distribution (1 of 2).....	109
Table 11E.	Complaint Distribution Compared to Population Distribution (2 of 2).....	110
Table 12A.	Decision-Making Criteria of Each Existing Ombud Scheme.....	116
Table 12B.	Complainant Achieved a Better Outcome Than That Offered by Financial Provider, 2018–19 .....	119
Table 12C.	Comparison of Review, Reconsideration, and Appeal Mechanisms.....	119
Table 12D.	Bindingness/Review/Reconsideration/Appeal .....	121
Table 13A.	Time Limits for Financial Providers to Respond .....	128
Table 13B.	Staffing, Costs, and Time Frames in 2019.....	133
Table 14A.	Contents of Ombud Schemes Annual Reports .....	138





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This diagnostic report was prepared by a World Bank Group Finance, Competitiveness & Innovation Global Practice team that was jointly led by Nina Mocheva (Senior Financial Sector Specialist) and Claudia Meek (Financial Sector Specialist), included David Thomas (Senior Alternative Dispute Resolution Consultant) and Shane Tregillis (Senior Alternative Dispute Resolution Consultant), and was overseen by Julian Casal (Senior Financial Sector Economist).

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# GLOSSARY

<b>ADR</b>	alternative dispute resolution (out-of-court redress)
<b>ASIC</b>	Australian Securities and Investments Commission
<b>Banking Ombud</b>	Ombudsman for Banking Services <sup>1</sup>
<b>BASA</b>	Banking Association South Africa
<b>Case</b>	An unresolved complaint against a financial provider, which has been referred to a financial ombud scheme
<b>COFI Bill</b>	(September 2020 draft of proposed) Conduct of Financial Institutions Bill <sup>2</sup>
<b>Complainant</b>	Someone who makes a complaint to a financial provider or refers a complaint to a financial ombud scheme
<b>Complaint</b>	An oral/written expression of dissatisfaction made to a financial provider related to its services or its complaint-handling process, where there has been some loss or material inconvenience to the complainant and a response or resolution is explicitly or implicitly expected
<b>Conciliation</b>	The financial ombud service actively reviewing the circumstances (as an independent third party) and helping the complainant and the financial provider to agree on a fair outcome (sometimes called mediation)
<b>Consumer</b>	Someone who buys a financial service mainly for personal or household use, rather than for use in their trade, business, or profession. It also includes small businesses, if the financial ombud scheme covers complaints from them.
<b>Credit Ombud</b>	Office of the Credit Ombud <sup>3</sup>
<b>Direction</b>	A requirement, issued by an ombud, that a financial provider must put things right by doing, or not doing, something (specified by the ombud) in relation to a particular complainant
<b>Enquiry</b>	A contact with a financial ombud scheme that requests information
<b>EU</b>	European Union
<b>FAIS Act</b>	Financial Advisory and Intermediary Services Act (Act 37 of 2002) <sup>4</sup>
<b>FAIS Ombud</b>	Office of the Ombud for Financial Services Providers <sup>5</sup>
<b>FCA</b>	Financial Conduct Authority (in the United Kingdom)
<b>Financial provider</b>	A provider of financial services or credit

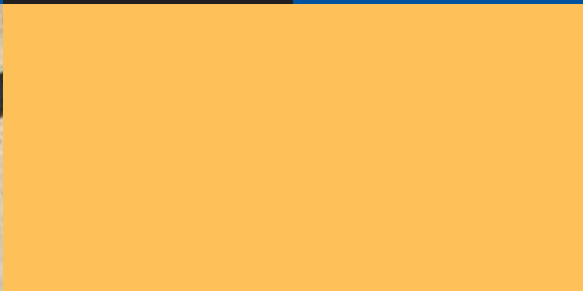
<b>FM Act</b>	Financial Markets Act (Act 19 of 2012) <sup>6</sup>
<b>FOS</b>	Financial Ombudsman Service (in the United Kingdom)
<b>FSB</b>	Financial Services Board (predecessor of the Financial Sector Conduct Authority)
<b>FSB Act</b>	Financial Services Board Act (Act 97 of 1990) <sup>7</sup>
<b>FSCA</b>	Financial Sector Conduct Authority <sup>8</sup>
<b>FSDRP</b>	South Africa Financial Sector Development and Reform Program
<b>FSOS Act</b>	Financial Services Ombud Schemes Act (Act 37 of 2004) <sup>9</sup>
<b>FSOS Council</b>	Financial Services Ombud Schemes Council (under the Financial Services Ombud Schemes Act)
<b>FSP</b>	financial service provider
<b>FSR Act</b>	Financial Sector Regulation Act (Act 9 of 2017) <sup>10</sup>
<b>FTE</b>	Full-time equivalent (staff numbers)
<b>G20</b>	Group of 20 Finance Ministers and Central Bank Governors
<b>INFO Network</b>	International Network of Financial Services Ombudsman Schemes <sup>11</sup>
<b>JSE</b>	Johannesburg Stock Exchange
<b>JSE Ombud</b>	Johannesburg Stock Exchange Ombud <sup>12</sup>
<b>LTI Ombud</b>	Ombudsman for Long-Term Insurance <sup>13</sup>
<b>Mediation</b>	The financial ombud scheme actively reviewing the circumstances (as an independent third party) and helping the complainant and the financial provider to agree on a fair outcome (sometimes called conciliation)
<b>MIO</b>	Motor Industry Ombud
<b>NC Act</b>	National Credit Act (Act 34 of 2005) <sup>14</sup>
<b>NCR</b>	National Credit Regulator <sup>15</sup>
<b>NFO</b>	National Financial Ombud (proposed new body; see chapter 17)
<b>NT</b>	National Treasury
<b>OECD</b>	Organisation for Economic Co-operation and Development <sup>16</sup>
<b>Ombud</b>	A person (or people) in a financial ombud scheme, whatever their job title, with power to make final decisions on cases (sometimes called an ombudsman or adjudicator)
<b>PA</b>	Prudential Authority (within the South African Reserve Bank) <sup>17</sup>
<b>PAJ Act</b>	Promotion of Administrative Justice Act 3 of 2000 <sup>18</sup>
<b>PFA</b>	Pension Funds Adjudicator <sup>19</sup>

<b>PF Act</b>	Pensions Funds Act of 1956 (Act 24 of 56), as amended <sup>20</sup>
<b>PFM Act</b>	Public Finance Management Act (Act 1 of 1999) <sup>21</sup>
<b>Premature complaint</b>	A complaint that the complainant refers to a financial ombud scheme without first having raised it with the financial provider
<b>R</b>	South African rand
<b>Redress</b>	Compensation (payable by the financial provider) or other remedies awarded by a financial ombud scheme in favor of a complainant
<b>RFO</b>	Retirement Funds Ombud (proposed new name; see chapter 17)
<b>SAIA</b>	South African Insurance Association
<b>SARB</b>	South African Reserve Bank <sup>22</sup>
<b>STI Ombud</b>	Ombudsman for Short-Term Insurance <sup>23</sup>
<b>WBG</b>	World Bank Group



# LEGISLATION CONSULTED

<b>COFI Bill</b>	(September 2020 draft of proposed) Conduct of Financial Institutions Bill <sup>24</sup>
<b>FAIS Act</b>	Financial Advisory and Intermediary Services Act (Act 37 of 2002) <sup>25</sup>
<b>FM Act</b>	Financial Markets Act (Act 19 of 2012) <sup>26</sup>
<b>Friendly Societies Act</b>	Friendly Societies Act (Act 25 of 1956) <sup>27</sup>
<b>FSB Act</b>	Financial Services Board Act (Act 97 of 1990) <sup>28</sup>
<b>FSOS Act</b>	Financial Services Ombud Schemes Act (Act 37 of 2004) <sup>29</sup>
<b>FSR Act</b>	Financial Sector Regulation Act (Act 9 of 2017) <sup>30</sup>
<b>NC Act</b>	National Credit Act (Act 34 of 2005) <sup>31</sup>
<b>PAJ Act</b>	Promotion of Administrative Justice Act 3 of 2000 <sup>32</sup>
<b>PF Act</b>	Pensions Funds Act of 1956 (Act 24 of 56) as amended <sup>33</sup>
<b>PFM Act</b>	Public Finance Management Act (Act 1 of 1999) <sup>34</sup>
<b>Prescription Act</b>	Prescription Act (Act 68 of 1969) <sup>35</sup>





# INTRODUCTION

## BACKGROUND

The Finance, Competitiveness & Innovation Global Practice of the World Bank Group (WBG) aims to help countries build financial systems that are deep, diversified, inclusive, efficient, and stable—essential to promoting economic growth, reducing poverty, and increasing shared prosperity.

One core activity is supporting national authorities to achieve their objectives for financial inclusion, by supporting policy, legal, regulatory, and supervisory reforms in areas such as financial consumer protection, including financial-sector alternative dispute resolution (ADR).

Through the South Africa Financial Sector Development and Reform Program, the WBG is supporting the national reform process, which includes achieving an efficient and effective ADR system, so that financial customers can hold financial institutions to account if there is a dispute.

ADR in the South African financial sector is provided through an ombud system. A 2017 National Treasury (NT) consultation policy document—*A Known and Trusted Ombud System for All* (2017 Consultation Document)—did the following:

- Described the historic development of the financial-sector ombud system
- Explained reforms to the system through the Financial Sector Regulation Act 9 of 2017 (FSR Act)
- Described three possible alternative models
- Identified that further research should be conducted into the current operation of the system

In order to make progress on that work, the NT and Financial Sector Conduct Authority (FSCA) requested that the WBG undertake this diagnostic report into South Africa’s financial-sector ombud system and to make recommendations.

## SCOPE OF THIS REPORT

This diagnostic review

- Evaluates the current financial-sector ombud system in South Africa;
- Compares it against international good practice; and
- Recommends reforms to provide good-quality outcomes and good value for money for the future.

This diagnostic does not cover internal complaint handling by financial providers (except where it interacts with the ombud system).

The financial-sector ombud system comprises the following seven ombud schemes:

- Two statutory ombud schemes:
  - FAIS Ombud = Office of the Ombud for Financial Services Providers
  - PFA = Pension Funds Adjudicator
- Five industry ombud schemes:
  - Banking Ombud = Ombudsman for Banking Services
  - Credit Ombud = Office of the Credit Ombud
  - LTI Ombud = Ombudsman for Long-Term Insurance

- STI Ombud = Ombudsman for Short-Term Insurance
- JSE Ombud = Johannesburg Stock Exchange Ombud

In 2019, the financial ombud system as a whole

- Handled 92,273 enquiries;
- Received 80,512 complaints;
- Opened 42,089 new cases; and
- Closed 38,792 cases.

The system also includes a dedicated oversight regulator for financial ombud schemes: the newly established statutory Ombud Council.

## LEGISLATIVE BACKGROUND

The diagnostic took into account the relevant legislation, and the following in particular:

- The Financial Sector Regulation Act 9 of 2017 (FSR Act), which introduced major changes to the regulation of financial services, and created
  - The Prudential Authority (PA), a juristic person operating within the administration of the South African Reserve Bank;
  - The FSCA as conduct regulator; and
  - The Ombud Council as oversight regulator of financial ombud schemes.
- The National Credit Act 34 of 2005 (NC Act), which established the National Credit Regulator (NCR) to regulate the provision of credit by credit providers.
- The proposed Conduct of Financial Institutions Bill<sup>36</sup> (COFI Bill), which will
  - Significantly change existing regulatory boundaries;
  - Affect the legislative underpinnings, jurisdiction, and role of the FAIS Ombud; but

- Not fully resolve the respective roles of the NCR and FSCA concerning conduct matters in relation to provision of credit.

## METHODOLOGY

The diagnostic involved both primary and secondary research plus extensive consultations with the existing ombud schemes and key stakeholders through video conferences and e-mail. The COVID-19 pandemic prevented the WBG team from visiting the existing financial ombud schemes and speaking to stakeholders face to face.

The diagnostic carefully considered the following:

- Prior research
- Responses to the 2017 Consultation Document
- Published documentation relating to the ombud system
- Responses from the ombud schemes to a detailed questionnaire and many follow-up questions
- Unpublished scheme documentation and process manuals supplied by the ombud schemes
- Two rounds of detailed video discussions with ombud schemes
- Responses from stakeholders to an issues paper
- A round of detailed video discussions with relevant stakeholders

The WBG team is grateful to all respondents. They were generous with their time, notwithstanding the difficulties caused to their operations by the pandemic.

The diagnostic also took the following into account:

- The specific context in which the ombud system operates in South Africa, including the challenges faced in relation to financial inclusion
- Existing and proposed reforms in the financial sector described in documents shared with the WBG or publicly available

- The wide range of published international guidance on good practice relevant to a financial ombud system

The key attributes distilled from that international good-practice guidance, which this report uses as benchmarks to evaluate the existing ombud system and potential reforms, comprise the following:

- Effectiveness  
*Consistent redress in all appropriate sectors of financial services*
- Independence  
*Visibly objective, impartial, and unbiased*
- Accessibility  
*Well known, easy to use, and free for consumers*
- Fairness  
*Processes and decisions that are visibly fair and equitable*
- Efficiency  
*Good quality of service and value for money*
- Openness  
*Clear and open to scrutiny about its work and the lessons that can be drawn from it*

## STRUCTURE OF THIS REPORT

The Summary of Key Findings and Recommendations, which follows this introduction, is based on detailed findings and recommendations set out in the following chapters:

- The first section (Financial Ombud System Role and Standards) comprises chapters 1 and 2 and describes the role of a financial ombud system, the available international guidance on good practice for financial ombuds, and the key attributes that can be distilled from that guidance.
- The second section (Current Position in South Africa) comprises chapters 3 to 6 and describes the financial market in South Africa, the arrangements for financial regulation, the existing ombud system, and the legislation for the oversight of the ombud system.
- The third section (Assessment) comprises chapters 7 to 16 and describes the assessment process and sets out detailed assessments of the different aspects of the existing system against the criteria distilled from international good-practice guidance.
- The fourth section (Detailed Recommendations) comprises chapter 17 and sets out detailed recommendations for reform.



# SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

## KEY FINDINGS

This report focuses on the role and reform of the financial-sector ombud system in South Africa. In assessing the financial-sector ombud system, this report takes into account both international good practice and local conditions in South Africa.

Financial ombuds are well established in many jurisdictions throughout the world. They aim to do the following:

- Resolve complaints fairly, using all appropriate means
- Operate flexibly and with minimum formality
- Be accessible to all consumers
- Work with a wide range of industry, community, regulatory, and governmental bodies

They form part of the arrangements to underpin consumer confidence in financial services. When effectively organized, they are well suited to support broader efforts to enhance financial inclusion in addressing structural issues for vulnerable and disadvantaged consumers.

### Upsides

The current financial ombud system in South Africa provides an important ADR service for many consumers of financial services, as detailed in subsequent chapters. In a complex environment, the existing system

- Provides free access to out-of-court dispute resolution for many consumers;
- Is generally seen by stakeholders as independent, professional, expertise based, and engaged; and

- Has rules and processes that incorporate fair and equitable principles.

The professionalism and commitment of those involved with the work and governance of the existing schemes are well respected by stakeholders.

### Downsides

Current arrangements, based on sector-specific schemes plus piecemeal statutory reforms, have resulted in an ombud system that is fragmented and lacks overall coherence. The more deeply the WBG team looked, the more complex and inconsistent it appeared.

Issues include the following:

- Jurisdictional boundaries that are unclear
- Overlaps in jurisdiction, including between industry and statutory ombud schemes
- Gaps in coverage and mismatches with new products
- Significantly differing rules, eligibility, processes, powers, and appeal mechanisms across schemes
- Differing governance arrangements
- Differing funding, with some duplication of levies
- Outreach and accessibility activities that, because they are uncoordinated, are less effective in supporting financial inclusion

Gaps, overlaps and inconsistencies create the following:

- Confusion for consumers and consumer advisers, and delay— about 12 percent of complaints have to be referred from one ombud scheme to another

- Serious risk that some consumers may be so discouraged by the complexity that they may be deterred from pursuing their complaint at all or may give up prematurely
- Additional work for financial providers—training staff, understanding the requirements applicable to different ombud schemes, and correct signposting
- Additional work for the initial stages of ombud schemes—training staff, understanding eligibility/limits/gaps/overlaps, and referring complainants to other schemes

The fragmentation of the system hampers improvements in visibility and accessibility, especially for geographically remote and disadvantaged consumers, and it hampers developments in staff training and operational systems.

The issues are analyzed in detail in chapters 8 to 16. The following are just examples.

### Scope of Ombud System

Overlaps and gaps are created because the scope of some ombud schemes depends on the activity involved and the scope of other ombud schemes depends on the type of financial provider involved.

- Most mixed complaints (partly about the product and partly about the advice to buy it) fall into the jurisdiction of two different ombud schemes—one covers the advice, while the other covers the product.
- Complaints about bundled products (for example, a loan coupled with loan insurance) may fall across the different jurisdictions of two or three ombud schemes, or parts of them may not be covered by an ombud scheme at all.
- Some financial products may be covered by one to five different ombud schemes or not be covered by an ombud scheme at all. Provision of credit is outside the gap-filling jurisdiction of the FAIS Ombud (so the only gap filling is by the NCR).

### Who Can Use the Ombud System

Who is allowed to refer a complaint to the different ombud schemes varies significantly.

- Consumers:
  - All of the ombud schemes will accept complaints from consumers who have become customers of the financial providers.
  - Only two of the ombud schemes, however, will take complaints from prospective customers (for example, about discrimination); the other five ombud schemes will not.
- Businesses:
  - Four of the ombud schemes take complaints from businesses of any size.
  - One of the ombud schemes takes complaints from unincorporated businesses of any size but has a R 1 million turnover limit for incorporated businesses.
  - One of the ombud schemes takes complaints from businesses of any size in its main jurisdiction but has an R 8 million turnover and net assets limit for businesses in its backup jurisdiction.
  - One of the ombud schemes has an R 10 million turnover limit for all businesses.

### What Constitutes a Complaint

Differently worded definitions of what constitutes a complaint—used by different ombud schemes and by regulators—create gaps, could lead to confusion, and make inconsistent application more likely.

Despite the extent of poor literacy levels in South Africa, none of the definitions provides that an oral complaint has the same validity as a written complaint.

### What Redress Can Be Awarded

There are significant differences and gaps in the redress that the different financial ombuds can award, even relating to one product or arising out of a single transaction.

- Power to award compensation and/or make a direction (requiring the provider to do something).<sup>37</sup>
  - One of the ombud schemes can award compensation for loss but cannot make a direction.
  - Two cannot award compensation for loss but can make a direction.
  - Four can do both.
- Consequential loss:
  - Four of the ombud schemes can award redress for consequential loss.
  - Three cannot award such redress.
- Distress/inconvenience:
  - Three of the ombud schemes can award redress for material distress/inconvenience.
  - Two of the ombud schemes can award such redress up to a maximum of R 50,000.
  - Two cannot award such redress.
- Maximum amount of redress that the ombud schemes can award:
  - One ombud scheme has a maximum of R 800,000.
  - One ombud scheme has a maximum of R 2 million.
  - One ombud scheme has a maximum of R 3.5 million or R 6.5 million (depending on the product).
  - Four ombud schemes have no maximum limit.

## Visibility and Accessibility

The ombud schemes have increased their efforts to promote awareness but still do so largely separately. Consequently, the visibility and accessibility of the ombud system are less than they would be if the resources were combined and operated behind a

common brand, including an enhanced program to promote better access to the ombud system across all socioeconomic groups.

All of the ombud schemes (apart from the JSE Ombud) are free to consumers. But there are significant differences, and some deficiencies, in the ways in which complaints can be submitted to the different schemes, and in whether or not a signature or written confirmation is required.

The amount of help available to vulnerable/disadvantaged/disabled complainants is variable (and, in some instances, lacking). Most but not all schemes make some ad hoc provision for them—but documented policies and procedures required to train staff appropriately are lacking.

The different ombud schemes do not collect socioeconomic data on the consumers who use them, so it is difficult to identify what types of consumers access (or are unable to access) the ombud system. But there appear to be wide regional disparities.

There are striking differences in the numbers of complaints received from different provinces. For example, the ombud system received almost four times as many complaints per one million of population from Gauteng than from Limpopo.

The multiplicity of official languages in South Africa presents challenges for all agencies that deal with the public, including the ombud system. English is the principal language used in financial products, but they are promoted in local languages.

Only 8.1 percent of the population of South Africa speaks English at home, and only 16.6 percent speaks English outside home. All of the existing ombud schemes work primarily in English. Their facilities for dealing with other languages are variable and largely ad hoc.

## Openness

The ombud schemes are generally open to public scrutiny about the work that they have done, though they are less open publicly about their proposed plans for future changes and about their sharing of information with regulators.

Differences in content and terminology in published data and information, however, hamper system-wide comparisons and conclusions—making it difficult to compare the performance of the different parts of the ombud system and to analyze its effectiveness as a whole.

These differences also make it more difficult to reduce the causes of complaints and improve consumer outcomes through identification of trends across the financial system, including new and emerging issues.

### Ombud Council

There is a continuing role for a reformed Ombud Council as an oversight regulator of the ombud system. But its current governance is not sufficiently independent to act as an intrusive regulator of independent ombud schemes, and still less to become the governing body of a consolidated system.

The title “Chief Ombud” is likely to create confusion over the true role and responsibilities of the chief executive of the Ombud Council. The title should be replaced by another title more consistent with the role—such as Chief Executive or Director-General.

The functions and powers designed to encourage standardization and cooperation may be appropriate for the currently fragmented system but will become unnecessary (and cease to be cost effective) if there is a significant consolidation of the ombud system, as this report recommends.

Some of the Ombud Council’s intrusive/coercive powers over ombud schemes may damage the perceived independence of the ombud system.

## KEY RECOMMENDATIONS

The development of the individual financial ombud schemes has involved many success stories, but the overall system and its components will need significant changes to make it fit for purpose now and in coming years.

Most stakeholders acknowledge the need for reform, but there is little consensus on what

those reforms should be. There are legitimate concerns about disruption during the transition to a reformed system—and that changes might mean less independence, more bureaucracy, less professionalism and expertise, and loss of stakeholder support.

In recommending reform, the WBG team has not sought to transplant a model from another jurisdiction. Rather, the team has applied the principles of good ombud practice to the particular circumstances found in South Africa—including the existence of a sophisticated financial sector but also a lack of financial inclusion among some segments of the population.

The WBG team is not starting with a blank sheet of paper; there is already a system in place. So this report places a high priority on the importance of keeping the ombud system operational (retaining existing personnel and expertise) while retaining the stakeholder support that underpins it through the transition to a reformed system.

This report seeks to avoid the risks of either a “big bang” or an incremental approach that are sometimes presented as alternatives. Both, in their own ways, risk disrupting the current operation of the system, loss of expertise, and a failure to properly implement reforms.

Rather, we propose early action to set clear directions for the reforms and to put in place a clear independent governance framework to manage a staged implementation plan with a clear timetable—to reduce uncertainty for the current schemes and their staffs and manage the transition risk.

### Previous Proposals

The 2017 Consultation Document discussed the following three potential models:

- Model 1: A hybrid model building on current FSR Act provisions
- Model 2: A centralized model, establishing a single statutory ombud scheme
- Model 3: Industry ombuds with strong oversight by the Ombud Council



The report does not recommend adoption of any of these three models. While each model has some benefits, the best of which we have sought to retain in our recommendations, they all have significant disadvantages. This is confirmed by the divergent stakeholder comments we received on the three models.

Models 1 and 3 retain multiple schemes with an overlay of more consistent standards and rules, along with an enhanced single entry point that would direct complainants to one or more existing schemes.

- We do not consider this to be a viable end point. The shared call center established by the existing schemes failed in practice. International experience is that getting real consistency across separate schemes is unlikely to be possible, and that just adding a single entry point on top of the current multiple-scheme structure will not be effective.
- Recently, four of the industry schemes began discussions about moving toward a gradual merger of the four schemes between 2021 and 2024. We do not consider that this gradualist approach, which will not tackle some fundamental issues at the beginning of the process, provides a sufficient platform for reform.

Model 2 was a single statutory scheme. Although we consider consolidation an important element of the recommended reforms, we do not support consolidation through a single statutory scheme.

- While a single statutory ombud scheme might (at first sight) appear straightforward as a policy option, we consider that it would not be consistent with international good practice; it lacks critical stakeholder support and poses material risks to a smooth transition to a new reformed ombud system.
- The framework for statutory ombuds in South Africa (with no independent governing body and appointment of the ombud by a politician) lacks independence—and, in view of past events, stakeholders in South Africa are very cautious about appointments made by politicians.

- Additionally, stakeholders consider that statutory bodies tend to be bureaucratic, inflexible, and more expensive. The 2017 Consultation Document conceded that statutory ombuds show significantly higher costs, explained to some extent by the statutory inflexibility afforded to running these schemes, especially governance requirements imposed by the PFM Act.
- It is essential that there is a smooth transition from the existing system to the new one, in order to ensure that complaints from consumers are still being handled throughout the change, and to preserve existing knowledge, expertise, and stakeholder goodwill.
- Even in countries where a fully statutory ombud was established (such as the United Kingdom), a smooth transition would have been impossible without the active support of stakeholders (including the governing bodies of the existing ombud schemes).
- Forcing existing schemes into a fully statutory ombud would not secure the cooperation of essential stakeholders. Without stakeholder cooperation, there is a significant risk of a worse outcome—because the handling of cases would not proceed smoothly through the transition and knowledge, expertise, and goodwill would be lost.

## Recommendations

We recommend a new model that builds on the strengths of the existing ombud system; avoids the risks and disadvantages of the models in the 2017 Consultation Document; and addresses the complexity and other weaknesses we have identified.

Detailed recommendations are set out in chapter 17. They are interrelated and should be considered as a whole. Without a coherent approach, the reformed system would be unbalanced. While we have set out a possible phased approach, we have not recommended an interim set of reforms.

- The reforms will work to create a system that works across sectors only if there are clear decisions at the outset about what the end point looks like.

- In part, the piecemeal reforms of the past have resulted in the complexity and lack of coherence of the current system described in this report.
- Once a policy decision on the end point of a reformed ombud system is made, the transition can take place in the phases described below, with earlier progress on those aspects that do not require statutory changes.

Broadly, the report recommends the following:

- A new National Financial Ombud
- A reformed Retirement Funds Ombud
- A modified Ombud Council

### New National Financial Ombud

- A new National Financial Ombud (NFO), independent of both industry and government, should be established to cover the whole of the financial sector (including credit)<sup>38</sup>—apart from retirement funds (as explained below).
- It should absorb the work of all the industry ombud schemes (the Banking, Credit, LTI, STI, and JSE Ombuds), plus that of the statutory FAIS Ombud, and be extended to cover all financial providers regulated by the PA/FSCA and NCR.
- The consolidation should be managed by the new NFO board—which should be appointed at the earliest possible opportunity, so that it can establish the NFO, oversee the consolidation process, and make any necessary design decisions.
- The NFO should be demonstrably independent—not only from the industry but also from the government. It should have the governance arrangements set out in our recommendations and preferably take the corporate form of a nonprofit company without members.
- The NFO should not be a statutory body. This will make it easier to undertake the transition, retain the flexibility to adapt to future changing circumstances and products, retain the support of existing stakeholders, and avoid bureaucracy.

- The NFO will need to obtain recognition from the Ombud Council. It will require some statutory underpinning (through extending the powers of the Ombud Council) in order to ensure that its coverage is comprehensive.
- The NFO would handle all complaints that seek redress from providers of financial services including credit, to enable the NCR and the FSCA to focus on dealing with enforcement, systemic sector-wide issues, and broader financial-literacy efforts.

### Reformed Retirement Funds Ombud<sup>39</sup>

- The statutory PFA, reformed and renamed, should continue to have jurisdiction over pension funds. It should add to its jurisdiction complaints about advice/intermediary services concerning retirement funds where the service is provided by any person or entity that is otherwise within its jurisdiction.
- Retaining a separate scheme for retirement funds at this stage will avoid adding further complexity to what will already be a complex transition. This can be reviewed five years after full implementation of the NFO.
- The major issue in the retirement-funds sector is employers not paying over contributions. This is primarily an issue for regulators that will not be solved by changing the ombud system—and it would be helpful to focus on resolving this issue before focusing on any possible consolidation with the NFO.
- Pending future consideration of its relationship with the NFO, the PFA's governance should be enhanced in order to underpin its independence, including creation of an independent board, with power to appoint the ombuds.
- The PFA should be renamed “Retirement Funds Ombud” (RFO). The name change (contingent on the recommended governance changes) will make its role and range of processes clearer to consumers and also facilitate working jointly with the NFO to enhance the outreach and accessibility of the ombud system.

## Modified Ombud Council

- The existing statutory provisions relating to the Ombud Council should be modified in order to increase its independence, give its chief executive a name more appropriate than “Chief Ombud,” and modify its powers in order to facilitate (and then adapt to) the new structure that is recommended.
- This includes giving it powers that will enable it to authorize the new NFO to handle complaints about advice/intermediary services and give the NFO automatic jurisdiction, as well as making binding decisions of recognized ombud schemes enforceable in the same way as a court judgment.
- It also includes reviewing its statutory powers with a view to repealing any intrusive or coercive powers that are no longer appropriate or cost effective in the light of the reform of the ombud system arising from this report.

## Transition

A carefully planned and managed transition to a reformed system is crucial to achieving the benefits of reform without disrupting the ongoing work of handling complaints.

- The reform process is inherently complex. It is important to retain the expertise of all the existing personnel and to keep broad stakeholder support for the work of the ombuds.
- It will help to minimize uncertainty if as much as possible can be done early—with cooperation from the ombud schemes, under existing legislation, and with the support of the Ombud Council.
- Cooperation would be facilitated if the South African authorities were to share this report in full with the relevant stakeholders. The WBG may be able to provide further assistance with the transition.
- However, some reforms, primarily affecting the statutory ombud schemes and the Ombud Council, will ultimately require legislative changes (possibly through the forthcoming COFI Bill).

Further detailed work on the operational details of transition will be required once a formal policy decision is made on the main reform proposals. However, we contemplate that from the time a formal policy decision is made, transition will involve the following three stages (with the following indicative time frames):

- **Stage 1 (within six months):** Establish the NFO board—with power to decide on the new constitution, single rulebook, funding model, operational systems, and transitional plans. Once this has been done, seek approval for the NFO from the Ombud Council.
- **Stage 2 (within 12 months):** Progressively transfer staff and assets to the NFO. As in other countries that have undergone a similar process, this may involve ombuds and staff holding dual appointments for a period so the NFO can continue the work of the current schemes until the formal handover.
- **Stage 3 (within two years):** Formal handover to the NFO, which would handle all new complaints under the NFO rules, process, and powers.

Additional clarification on the implementation of the proposed new ombud system—including the order of events and the many steps that do not require legislation—is set out in appendix G to this report.

The existing ombud schemes have been living in the shadow of proposed reforms for a long time. To their credit, they have continued to focus on resolving complaints and improving the service they provide. But early decisions and action on reform are now more pertinent than ever—to avoid creating further uncertainty and destabilizing the system, which would damage its effectiveness.

## Diagrams of Structure before and after the Recommended Reforms

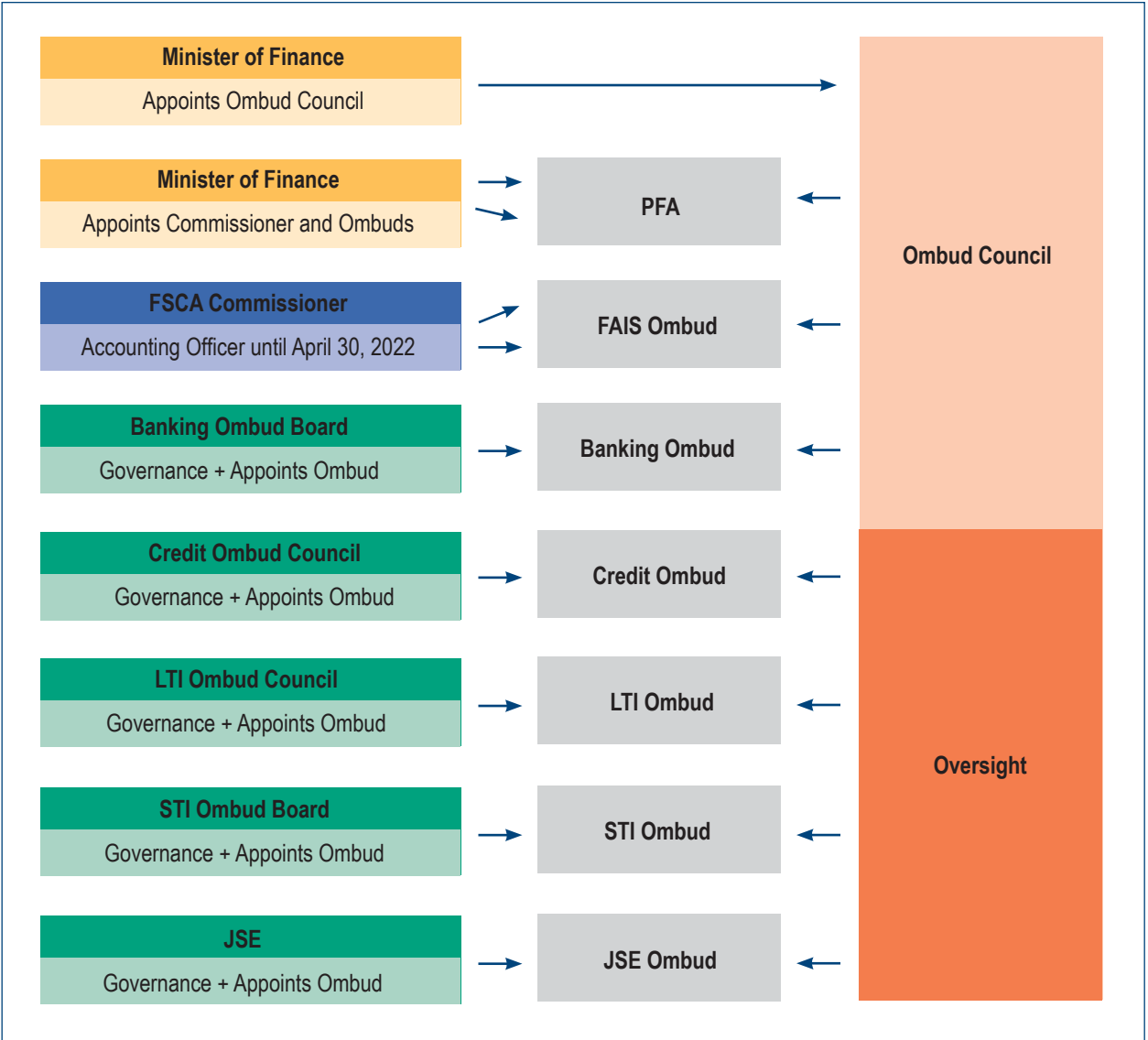
Figure A shows the structure before the recommended reforms. Note the following:

- There are some differences from figure 3 in the 2017 Consultation Document (notably the absence of new governance committees for the statutory ombuds) because the FSR Act did not incorporate all of the provisions expected at the time of the consultation paper.
- The commissioner of the FSCA is currently the PFM Act accounting officer for the two statutory

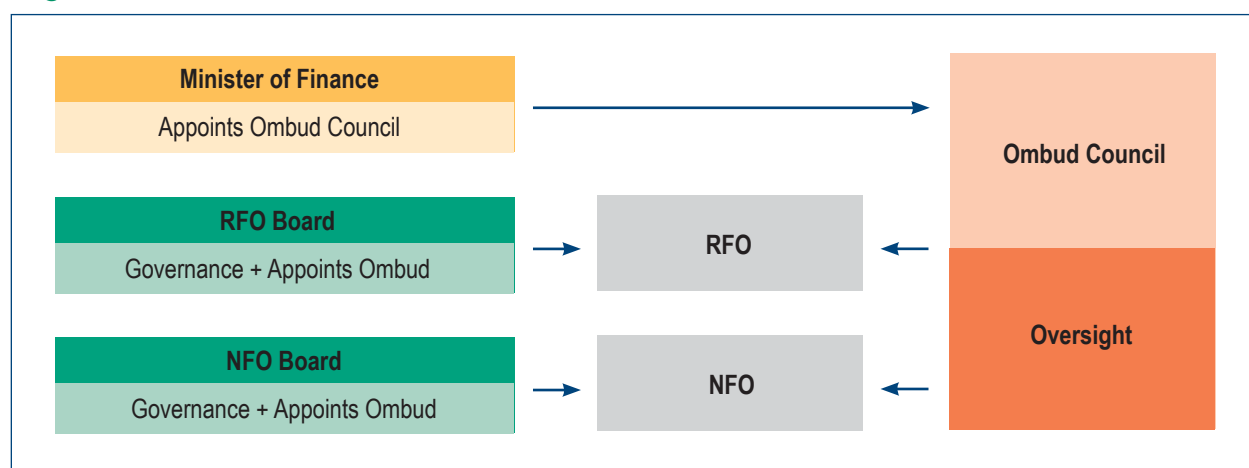
ombud schemes. Once relevant provisions of the FSR Act come into force, expected on April 1, 2022,<sup>40</sup> the Pension Funds Adjudicator and FAIS Ombud become the accounting officers for their schemes.

Figure B shows what the structure would be after the recommended reforms.

**Figure A. Structure before the Recommended Reforms**



**Figure B. Structure after the Recommended Reforms**



**Key to Detailed Recommendations**

**Table C. Key to Detailed Recommendations**

No	Recommendation	Page
<b>General</b>		
A1	Standard definition of complaints	164
A2	Requirements for financial providers	164
A3	Consequences for financial providers	164
<b>National Financial Ombud (NFO)</b>		
B1	Establishment	165
B2	Providers covered	165
B3	Products/services covered	165
B4	Complainants covered—consumers and businesses	166
B5	Complainants covered—non-customers	166
B6	Maximum compensation limits	167
B7	Speedy appointment of governing body	167
B8	Corporate form	167
B9	Functions of NFO board	168
B10	Funding	168
B11	Size of NFO board	169
B12	Appointment of initial NFO board members	169
B13	Appointment of subsequent NFO board members	170
B14	Expertise of NFO board	170

B15	Basis of complaint resolution	170
B16	Processes and procedures	171
B17	Appeals	171
<b>Retirement Funds Ombud (RFO)</b>		
C1	Continuation and renaming	172
C2	Jurisdiction	172
C3	Complainants covered—non-customers	172
C4	Governing body	172
C5	Functions of RFO board	172
C6	Size of RFO board	173
C7	Appointment of initial RFO board members	173
C8	Appointment of subsequent RFO board members	173
C9	Expertise of RFO board	173
C10	Basis of complaint resolution	173
C11	Processes and procedures	174
C12	Appeals	174
<b>NFO and RFO</b>		
D1	Referral of complaints to one another	174
D2	Time limits for complainants	175
D3	Referral of complaints to the provider	175
D4	Redress	175
D5	Effect of an ombud final decision	176
D6	Enforcement of a binding ombud final decision	176
D7	Restrictions on membership of board	176
D8	Terms of appointment of board	177
D9	Functions of ombuds	177
D10	Appointment of ombuds	177
D11	Restrictions of appointment of ombuds	177
D12	Terms of appointment of ombuds	178
D13	Free for complainants	178
D14	Cross-sector points of entry	178
D15	Receiving complaints	178
D16	Accessibility	178
D17	Resources and expertise	179
D18	Performance and quality	179

D19	Annual report	180
D20	Quarterly reports	180
D21	Consultation	181
D22	Relations with regulators	181
	<b>Ombud Council</b>	
E1	Modified statutory provisions	181
E2	Appointment of council members	181
E3	Appointment of Chief Ombud	182
E4	Renaming the Chief Ombud	182
E5	Extension to powers	182
E6	Common points of entry to the system	182
E7	Review of powers	182
E8	Reports	182

The background features a teal-to-green gradient. A horizontal blue band is positioned in the middle. On the right side, there is a vertical stack of three colored rectangles: orange at the top, black in the middle, and yellow at the bottom. The text is overlaid on these elements.

# **DETAILED FINDINGS AND RECOMMENDATIONS**

## **Financial Ombud System Role and Standards**



# 1

## ROLE OF A FINANCIAL OMBUD SYSTEM

This chapter explains the role and advantages of an effective and efficient financial ombud system in helping to increase consumer confidence in financial services.

### 1.1 CONSUMER TRUST AND CONFIDENCE IN FINANCIAL SERVICES

#### Overview

**A growing and efficient market in financial services depends on, among other things, consumer confidence.** Developing consumer trust and confidence requires the following:

- Effective prudential regulation and supervision by a financial regulator to ensure that financial providers are financially sound and run by fit-and-proper persons
- Effective conduct-of-business requirements, set by a financial regulator or by an industry code, so that financial providers are required to treat consumers fairly
- User-friendly ADR, to resolve disputes between consumers and solvent financial providers
- A compensation/indemnity system, to provide appropriate protection to customers if a significant financial provider becomes insolvent
- Consumer education/information, to increase consumers' understanding of relevant financial issues and consumer rights and liabilities

**The form of ADR adopted in South Africa, as in many countries throughout the world, is an ombudsman system.** As requested by the South African authorities, this report focuses on the role and reform of that system.

- Financial ombuds are well established in many jurisdictions throughout the world. They aim to resolve complaints fairly, using all appropriate

means; operate flexibly and with minimum formality; be accessible to all consumers; and work with a wide range of industry, community, regulatory, and governmental bodies.

- They form part of the arrangements to underpin consumer confidence in financial services. When organized effectively, they are well suited to support broader efforts to enhance financial inclusion by addressing structural issues for vulnerable and disadvantaged consumers.

#### Official Recommendations

**The high-level principles on financial consumer protection<sup>41</sup> published by the Organisation for Economic Co-operation and Development (OECD)<sup>42</sup> and approved by the G20<sup>43</sup> include the following:**

*Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient ... Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial service providers' and authorized agents' internal dispute resolution mechanisms ...*

**The World Bank's good practices for financial consumer protection<sup>44</sup> include the following recommended good practices:**

*a. If consumers are unsatisfied with the decision resulting from the internal complaint handling at the financial service provider, they should be given the right to appeal, within a reasonable time frame (for example, 90–180 days), to an out-of-court ADR<sup>45</sup> mechanism that:*

- i. *has powers to issue decisions on each case that are binding on the financial service provider (but not binding on the consumer);*
  - ii. *is independent of both 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.*
- b. *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, including when a complaint is finalized at the provider level.*
- c. *If the ADR mechanism has a member-based structure, all financial service providers should be required to be members.*

**The consultation policy document *A Known and Trusted Ombud System for All*<sup>46</sup> issued by the NT includes the following:**

*An empowered consumer can be thought of as someone who is able to make informed financial decisions and can hold his or her financial institution to account for poor service or broken commitments. Accountability measures available to consumers should include the ability to have complaints against a financial institution fairly and effectively resolved by the institution, and in instances where such resolution isn't possible, the availability of an alternative impartial third party to resolve the dispute. In South Africa, this is mainly provided through the ombud system. Effective financial sector ombud schemes are needed to drive the financial sector to serve South Africans better.*

*There are currently six different schemes, each providing an impartial dispute resolution platform that is free to consumers and external to financial institutions. There are many differences in how these ombud schemes are established and how they operate, including the fact that some are established through statute while others are established through industry initiative. While the system has provided vital assistance in resolving the disputes of many customers, it has been identified that there are weaknesses, inconsistencies and inefficiencies in its operation that may be hampering the achievement of good customer outcomes. The system is underutilized and is insufficiently known or trusted ...*

*These trends support previous research suggesting that South Africans have a low knowledge and understanding of financial ombuds, through the twin challenges of low awareness and access. Awareness refers to a consumer knowing his or her rights, as well as knowing the channels available to exercise those rights. Access refers to the ready availability of services. In other words, even if a consumer wants to exercise his or her rights, there may be barriers to doing so, like an illiterate person having to submit a complaint in writing when living in a different province from the complaints center. The effectiveness of outreach initiatives by the ombuds is arguably constrained by insufficient budget and brand fragmentation.*

## **Benefits of a Financial Ombud System**

**Experience shows that an effective financial ombud system benefits not only consumers but also financial providers and the state.**

- All of them benefit if consumers have greater confidence in financial services because they know that, if anything goes wrong, they will be able to take their dispute to an independent body that will resolve the issue quickly and informally, without the consumer needing a lawyer.
- Financial providers benefit because consumers are more likely to buy financial products, the cost of resolving disputes with consumers is kept to a minimum, and unscrupulous competitors who act unfairly are held to account.

- The state benefits because redress<sup>47</sup> can be provided at minimal cost, feedback from a financial ombud system can help improve future regulation, and confident consumers are more likely to play their part in helping to develop a sound financial market.

**An effective financial ombud system can fulfill a wider role than the courts.** Like the courts, a financial ombud system resolves individual cases. Unlike the courts, a financial ombud system can also deal with enquiries and proactively share the lessons from its work to help governments, regulators, financial providers, and consumers improve for the future. A financial ombud system's role in underpinning consumer confidence in financial services includes the following:

- Helping to support improvements, and reduce disputes, in financial services
- Helping financial providers themselves to resolve disputes with consumers
- Resolving consumer disputes that financial providers fail to resolve themselves
- Reducing the burden on the courts
- Increasing financial inclusion by providing a visible and accessible route to redress

## 1.2 WHAT A FINANCIAL OMBUD SYSTEM DOES

### Out-of-Court Redress

**A financial ombud system provides independent, impartial, and fair out-of-court ADR through one or more financial ombud schemes.** It resolves complaints by consumers (and, in some cases, small businesses) against financial providers. It provides consumers (including disadvantaged consumers) with a quicker, cheaper, more accessible, and less formal way of resolving financial-services disputes than the courts.

**A financial ombud scheme differs from the courts in the following ways:**

- It is free for complainants.
- It handles enquiries<sup>48</sup> from both financial consumers<sup>49</sup> and financial providers.
- It triages complaints<sup>50</sup> from the outset.
- Complaints arising from misunderstandings can be resolved straightaway.
- Many other complaints can be resolved by actively facilitating an agreed fair outcome.<sup>51</sup>
- Typically, only a minority of cases<sup>52</sup> require investigation and a formal decision.
- The ombud scheme knows what information to ask for and asks for it.
- The ombud scheme decides the case on the basis of what is fair in the circumstances.
- The financial ombud scheme produces an annual report on the cases it has handled.
- The annual report includes recommendations on how complaints could be reduced in the future.
- The financial ombud scheme engages with stakeholders to discuss new and emerging issues.

A financial ombud scheme is not a regulator, and it does not penalize financial providers.

**The financial ombud scheme actively investigates the case and uses its specialist knowledge of financial services.** This means that the consumer is not disadvantaged by the financial provider's greater resources and technical knowledge. Neither the consumer nor the financial provider needs to employ a lawyer to make the arguments for them (though they are not prevented from doing so).

### Complaining First to the Financial Provider

**Financial ombud schemes expect consumers to take their complaint first to the financial provider, giving it an opportunity to put things right.** Financial ombud schemes also expect financial providers to look into complaints properly

and to provide a prompt and clear response to the consumer. If the consumer is dissatisfied with the response from the financial provider, or if the financial provider fails to respond to the complaint within a reasonable time, then the consumer can refer the complaint to the ombud for independent consideration.

### Case Handling by the Financial Ombud Scheme

**The financial ombud scheme will look into the circumstances of the case and see if it is possible to facilitate a fair outcome** that both the consumer and the financial provider accept. Worldwide experience is that the majority of cases are likely to be resolved by actively facilitating an agreed fair outcome through the intervention of the impartial and specialist financial ombud scheme.

**Where an agreed fair outcome is impossible, the financial ombud scheme will take account of all the evidence and the arguments and issue a decision, giving reasons for the decision.** It is usual for the financial ombud scheme to issue a provisional decision and give the parties a final opportunity to comment before the financial ombud<sup>53</sup> issues a final decision. If the decision is in favor of the consumer, it will go on to say what the financial provider should do to put things right.

**The decision will be based on what is fair and reasonable (equitable) in the circumstances of the case.** The financial ombud will take into account the law, financial regulations, any industry code, and industry good practice but is not bound by them. This means that the financial ombud can

deliver a fair outcome even if the law and financial regulations have not kept up with developments in financial services.

### Handling Enquiries

**Many of the contacts financial ombud schemes receive are enquiries from consumers.** Some financial providers are not good at explaining things to their customers, even when those customers complain. An independent explanation from the financial ombud can often sort things out straightaway. So, by handling enquiries effectively, the ombud can prevent many enquiries from turning into complaints while playing a role in consumer financial education.

**Financial ombud schemes receive enquiries from financial providers as well.** A provider may receive a complaint and accept that it has not treated the customer well but be unsure what redress would be fair. Advice from the financial ombud scheme can often help settle things there and then.

### Providing Feedback

The financial ombud scheme, by reporting regularly on the trends that it sees in its work, can provide independent insight, enabling governments and regulators to supervise financial services more effectively, and enabling financial businesses and consumers to avoid problems. The reports can be used by consumer advisers and the media to help improve the financial capability of the public by explaining to consumers in plain language what financial issues to be careful about, what their rights and liabilities are, and how they can seek redress.

# 2

## INTERNATIONAL GOOD PRACTICE FOR FINANCIAL OMBUDS

This chapter lists and describes key attributes for an effective financial ombud system, based on international guidance and experience.

### 2.1 GUIDANCE ON GOOD PRACTICE

The NT's 2017 consultation policy document *A Known and Trusted Ombud System for All*<sup>54</sup> identifies the benefits of learning from international best practice. There is a wide range of published international guidance on good practice relevant to a financial ombud system. Such guidance includes the following:

- *On the role of a financial ombud system in the wider context of financial consumer protection:*
  - World Bank good practices for financial consumer protection<sup>55</sup>
  - OECD high-level principles on financial consumer protection<sup>56</sup>
  - OECD effective approaches to implementing those high-level principles<sup>57</sup>
- *On the principles and practices relating to a financial ombud system specifically:*
  - World Bank report on fundamental principles for financial ombudsmen<sup>58</sup>
  - INFO Network<sup>59</sup> guide on effective approaches to fundamental principles<sup>60</sup>
  - INFO Network guide on setting up a financial ombudsman<sup>61</sup>
- *On the principles and practices relating to ombud systems in general:*
  - EU<sup>62</sup> recommendation 1998/257/EC on out-of-court settlement of consumer disputes<sup>63</sup>
  - EU directive 2013/11/EU on ADR for consumer disputes<sup>64</sup>

- Ombud Association<sup>65</sup> guide to principles of good governance<sup>66</sup>
- Ombud Association guide to principles of good complaint handling<sup>67</sup>
- Australia and New Zealand benchmarks for industry-based customer dispute resolution<sup>68</sup>
- Australia and New Zealand key practices for industry-based customer dispute resolution<sup>69</sup>

### 2.2 KEY ATTRIBUTES

A number of key common attributes can be distilled from this guidance concerning the overall financial ombud system and individual financial ombud schemes. The different guidance uses varying terminology, but the key attributes are the following:

- Effectiveness  
*Consistent redress in all appropriate sectors of financial services*
- Independence  
*Visibly objective, impartial, and unbiased*
- Accessibility  
*Well known, easy to use, and free for consumers*
- Fairness  
*Processes and decisions visibly fair and equitable*
- Efficiency  
*Good quality of service and value for money*
- Openness  
*Clear and open to scrutiny about its work and the lessons that can be drawn from it*

**In considering these, it is necessary to take account of differing national circumstances while remaining true to the key attributes.** For example:

- The appropriate arrangements need to take into account the constitutional, legal, cultural, and economic circumstances in the relevant country.
- They also need to take into account the nature of the relevant country's financial services and the circumstances of citizens throughout the country.
- Particular difficulties may arise where consumers are disadvantaged because of poor literacy, poverty, limited understanding of financial services, and/or poor travel/communications infrastructure.
- A financial ombud system will work most effectively where consumers have rights, know they have rights, and have the confidence to assert their rights.

**We use these key attributes to identify criteria by which to assess the existing financial ombud system in South Africa, the individual financial ombud schemes, the statutory Ombud Council, and alternative structures** in seeking to ensure that any potential future scheme architecture efficiently delivers good quality outcomes for consumers and represents good value for money for the country. We set out below issues to be looked at in that assessment. These are reflected in the questionnaire that we sent to the existing ombud schemes, a copy of which is in appendix B.

## 2.3 EFFECTIVENESS

**This involves assessing whether there is consistent redress in all appropriate sectors of financial services.** Issues to consider on effectiveness of scope include the following:

- Which financial providers are covered by the financial ombud system?
- Which activities are covered by the financial ombud system?

- Which complainants are covered?<sup>70</sup>
- Does that include non-customers who have been affected by a financial provider?
- Are there time limits for a complaint to be referred to the relevant financial ombud scheme?

Issues to consider on effectiveness of interaction and powers include the following:

- Is there a clear and sufficient definition of what constitutes a complaint?
- Are there clear obligations on financial providers to deal with complaints fairly?
- Is there a process for referring cases to the provider if it has not previously seen them?
- What redress can a financial ombud award if they uphold a complaint?
- What is the effect of a financial ombud decision on the financial provider and the consumer?
- How, and by whom, can a binding decision by a financial ombud be enforced?
- In all these, is there consistency across the financial ombud system?

## 2.4 INDEPENDENCE

**This involves assessing whether there are independent structures to ensure redress that is visibly objective, impartial, unbiased, and consistent.** Issues to consider include the following:

- Is the independence of any financial ombud scheme established by its constitutional rules, to ensure its impartiality?
- Does any financial ombud scheme have an independent board, to provide the financial ombud with essential support and accountability?
- Are the members of the independent board chosen in a way that instills public confidence?

- Are the members of the independent board appointed on terms that secure their independence from those who appointed them, the financial industry, consumer bodies, financial regulators, and politicians?
- Does the independent board have the power to make changes to the scope and powers of the financial ombud scheme without the financial industry or consumer bodies having a veto?
- Does any financial ombud scheme have, and control, its own resources and funding?
- Is any financial ombud chosen in a way that instills public confidence?
- Is any financial ombud appointed on terms that secure its independence from those who appointed it, the financial industry, consumer bodies, financial regulators, and politicians?
- In all these, is there consistency across the financial ombud system?
- Does the financial ombud scheme take active steps to make its services visible and accessible to consumers (especially vulnerable and disadvantaged consumers)?
- Can consumers refer a case to the financial ombud free of charge, so that cost does not form a barrier to access?
- Is any financial ombud scheme easily available and accessible to complainants for submission of disputes and information?
- Does the financial ombud scheme make appropriate provision for consumers who are more vulnerable or disadvantaged?
- In all these, is there consistency across the financial ombud system?

## 2.5 ACCESSIBILITY

**This involves assessing whether the financial ombud system is well known, easy to use, and free for all types of consumers. Issues to consider include the following:**

- Are financial providers required to tell customers in writing about the relevant financial ombud scheme?
- Does any financial ombud scheme provide comprehensive information on its own website?
- Does the financial ombud scheme ensure that information is also readily available to potential complainants who do not have access to the internet?
- Does this information enable the parties to understand the financial ombud scheme's enquiry and case-handling process?
- Does the financial ombud scheme have rules and processes that apply the principles of procedural fairness (otherwise known as “due process” or “natural justice”) in handling complaints.
- Does the financial ombud scheme have rules and processes that apply fairness and equitable principles in achieving their complaint-resolution outcomes?
- Is a decision by a finance ombud protected from being overturned except by the courts (or a tribunal with equivalent independence and standing)?
- In all these, is there consistency across the financial ombud system?

## 2.6 FAIRNESS

**This involves assessing whether the financial ombud system has processes and decisions that are visibly fair, equitable, and consistent. Issues to consider include the following:**

## 2.7 EFFICIENCY

**This involves assessing whether the financial ombud system provides a consistently good quality of service and value for money.** Issues to consider include the following:

- Does any financial ombud scheme have efficient and documented complaint-handling processes?
- Does it have sufficient resources (staffing and funding) for the timely resolution of cases?
- Does its case-handling staff have the necessary skills and expertise?
- Does it have robust quality assurance of its service?
- Does it have clear performance and service standards that are publicly reported?
- Are there periodic independent reviews of the ombud scheme?
- In all these, is there consistency across the financial ombud system?

## 2.8 OPENNESS

**This involves assessing whether the financial ombud system is clear and open to scrutiny about its work and the lessons that can be drawn from it.** Issues to consider include the following:

- Does any financial ombud scheme publish a report, at least yearly, providing information about the cases it has handled and the way in which it has handled them?
- Does any financial ombud scheme publish other information about its work or plans?
- Does any financial ombud scheme provide generic information to assist early resolution of complaints?
- Does any financial ombud scheme's case-handling system record all the relevant information about each case?
- Is information collected by any financial ombud scheme in dealing with complaints treated as confidential, subject to specified exceptions?
- Does it identify systemic issues, and new/emerging issues, that may require action by regulators?
- In all these, is there consistency across the financial ombud system?
- Does it provide industry-wide information, to reduce complaints and improve market outcomes for consumers?





# DETAILED FINDINGS AND RECOMMENDATIONS

Current Position in South Africa

# 3

## FINANCIAL MARKET

This chapter briefly reviews the current structure of the South African financial market relevant to the operation of the financial ombud system.

### 3.1 RELATIONSHIP WITH THE FINANCIAL OMBUD SYSTEM

Ombud schemes deal with issues relating to interactions between financial service providers (FSPs) and retail customers (consumers and, to varying extents, some businesses). The nature of financial products and the structure of financial providers influence the use by consumers of the financial ombud system. So the structure of the retail financial-services sectors is relevant to a review of current and future ombud arrangements. Factors include the following:

- The differing levels of access to the different types of financial products and services within different segments of society
- The types of issues or concerns that might arise for consumers in their dealings with financial providers that give rise to a complaint
- The number, types, and patterns of complaints relating to sectors of the financial market, types of financial providers, and individual financial providers

### 3.2 FINANCIAL-SECTOR MARKET OVERVIEW

The formal financial sector in South Africa is a well-developed, sophisticated, and liberalized financial sector with high levels of concentration among key institutions. There is also a significant informal financial sector, which is unregulated and outside the ombud system. The activities of the following key sectors of the formal sector are relevant for this ombud system diagnostic:

- Banks and non-bank credit providers
- Insurers

- Friendly societies
- Retirement funds and unit trusts
- Financial service intermediaries

Nevertheless, there are continuing and significant challenges for financial inclusion among segments of its population. Some of these segments use the informal sector alongside, or in preference to, the formal sector. The data in table 3A show that financial inclusion is higher for wealthier, older South Africans. The FinScope SA 2018 Fact Sheet showed the following:

- Thirty-six percent of the overall population was formally employed.
- Thirty-two percent of the youth population was unemployed.
- Forty-two percent of the population depended on grants and money from others.
- Twenty-three percent of the population borrowed to buy food.

### 3.3 BANKING AND CREDIT

The banking sector is highly concentrated; the four largest domestic banks account for some 82 percent of total banking assets.

- There are 19 registered banks, three mutual banks, four cooperative banks, 15 local branches of foreign banks, and 30 foreign bank representatives.
- The largest four banks (measured by assets) are Standard Bank of South Africa, FirstRand, Absa, and Nedbank. These four banks plus Investec account for the majority of the banking customer base.

**Table 3A. Financial Inclusion**

Financial institution account:		
• All	(% age 15+)	67%
• Male	(% age 15+)	67%
• Female	(% age 15+)	68%
• Young adults	(% age 15–24)	61%
• Older adults	(% age 25+)	70%
• Income, poorest 40%	(% age 15+)	61%
• Income, richest 60%	(% age 15+)	72%
• Rural	(% age 15+)	67%
Borrowed from a financial institution:		
• All	(% age 15+)	9%
• Male	(% age 15+)	11%
• In labor force	(% age 15+)	11%
• Young adults	(% age 15–24)	6%
• Older adults	(% age 25+)	11%
• Income, poorest 40%	(% age 15+)	7%
• Income, richest 60%	(% age 15+)	11%
• Rural	(% age 15+)	9%
Source: World Bank Findex Database 2017		

- While ranked sixth in terms of assets, Capitec Bank has grown rapidly and is now the largest bank in terms of retail customer base; it had some 11.6 million customers in early 2019.<sup>71</sup>

**New entrants with lower-cost and technology-based solutions are seeking to enter specific segments of the banking market.** These include entities such as Tyme Bank, which was granted a full banking license in 2017, and potential new entrants, such as Discovery Bank and Bank Zero.<sup>72</sup> Post Bank, a state-owned institution, is in the process of seeking a full banking license.

**The NCR’s 2018–19 annual report<sup>73</sup> states that, as of March 31, 2019, a total of 6,895 credit providers, 33 credit bureaus, four payment**

**distribution agents, six ADR agents, and 1,495 debt counsellors were registered.** Table 3C shows the distribution of the provision of credit in the fourth quarter of 2019.

Other credit providers consist primarily of pension-backed lenders, developmental lenders, microloan lenders,<sup>75</sup> agricultural lenders, insurers, non-bank mortgage lenders, and securitized debt.<sup>76</sup> Consumer goods retailers also extend credit to their customers for the purchase of goods and services.<sup>77</sup>

**Various reports also highlight that many South Africans use formal banking services inconsistently, given costs and concerns about fraud and security.**

**Table 3B. Top 10 Banks in South Africa**

Name of Institution	License	Total Assets	Total Loans	Total consumer deposits	Shareholder's equity	Net interest income
Standard Bank of SA	Locally Controlled	1,317,950	974,935	265,089	876,735	96,999
FirstRand	Locally Controlled	1,186,573	859,634	253,667	860,654	90,724
Absa	Locally Controlled	1,077,155	819,035	191,51	780,763	81,574
Nedbank	Locally Controlled	952,606	719,164	174,092	744,81	73,573
Investec	Locally Controlled	450,409	324,782	107,390	324,058	35,309
Capitec	Locally Controlled	97,246	75,837	10,953	69,362	20,022
Citibank	Foreign	60,362	25,149	25,527	45,597	9,07
HSBC Bank	Foreign	59,163	36,508	21,094	49,147	6,10
JPMorgan Chase	Foreign	45,031	13,905	29,646	7,90	6,47
Bank of China	Foreign	44,494	36,186	7,28	14,450	7,82
National totals		5,290,989	3,885,135	887,458	3,020,766	398,201

Source: Baseline data.

**Table 3C. Distribution of Credit Provided in Fourth Quarter, 2019**

Provided by:	Amount in R 1,000	Percentage
Banks	115,934,808	79.74%
Non-bank vehicle financiers	11,887,962	8.18%
Retailers	6,180,329	4.25%
Other credit providers	11,379,144	7.83%

Source: NCR, Consumer Credit Market Report, Fourth Quarter, December 2019<sup>74</sup>

- According to the WBG Global Findex 2017, 67 percent of adults had access to banking services, but product usage was low among the banked population: Only 22 percent of adults saved at a financial institution, and 10 percent borrowed from a financial institution.
- The FinScope SA 2018 Fact Sheet showed the following:
  - Ninety percent of adult population was formally served (80 percent with bank accounts and 74 percent with other formal accounts), 63 percent was informally served, and 7 percent was excluded.
  - In relation to the actual use of bank accounts, 7 percent had not been used for a month, and 33 percent were used to receive money that was withdrawn immediately.
  - Thirty-five percent had some form of savings (25 percent in the formal sector and 18 percent in the informal sector).

- There has been limited success in reaching “last-mile” consumers and grant recipients. The informal (unregulated) sector provides an alternative or complement to the formal banking system for those in the lower-income segments of the population.

### 3.4 INSURERS

**The insurance industry provides long-term insurance, short-term insurance, and reinsurance and is dominated by a small number of providers.** Long-term insurers deal primarily with life insurance for death and disability claims. Short-term insurers provide business general insurance and personal insurance cover for households and motor vehicles. Such insurance products are used mainly by middle- and higher-income consumer segments, but funeral insurance is widespread among all consumers.

Figures in the 2018–19 report of the FSCA show that there were 170 registered insurers comprising

- 74 life insurance companies;
- 91 non-life insurance companies; and
- Five composite insurance companies licensed for both life and non-life products.

There were nine reinsurers and 156 section 13B administrators (which provide administration services to retirement funds, administering the benefits owed to members).<sup>78 79</sup>

**Funeral insurance is by far the most widely held insurance product among consumers in South Africa.**

**Table 3D. Top 10 Long-Term Insurers in South Africa**

R 1,000; financial years ending in December 2019 unless otherwise indicated						
Insurer	Net Premium Income	Net Investment Income	Net Policyholder Benefits under Insurance Contracts	Net Profit	Total Assets	Total Shareholders' Funds
Sanlam Ltd.	72,038,000	76,067,000	45,057,000	8,805,000	900,229,000	79,360,000
Old Mutual Life Assurance (South Africa)	53,365,000	59,005,000	67,895,000	367,000	707,603,000	53,988,000
Liberty Group*	37,223,000	32,717,000	37,153,000	3,348,000	399,016,000	27,614,000
MMI Group*	25,105,000	20,495,000	20,421,000	2,943,000	404,040,000	15,311,000
Hollard Life Assurance*	5,024,891	254,177	3,036,658	569,293	21,729,756	1,244,877
Professional Provident Society Insurance	4,272,893	2,253,456	3,263,219	36,023	35,521,252	470,310
AVBOB Mutual Assurance Society*	4,156,125	863,718	1,700,222	2,865	18,476,041	6,185,740
Absa Life	3,355,482	2,074,590	1,310,705	904,302	31,137,011	1,546,094
Assupol Holdings*	3,356,749	292,830	985,235	907,039	8,669,944	4,267,422
Nedgroup Life Assurance	2,068,984	725,483	1,757,931	783,536	12,322,267	1,344,996

\* As of end June 2019

Source: KPMG, Resilience: The South African Insurance Industry Survey 2020 (KPMG, September 2020).

The FinScope SA 2018 Fact Sheet showed the following:

- Sixty-one percent had some form of insurance.
- Fifty-six percent had funeral insurance.
- Thirteen percent had life insurance.
- Twelve percent had asset insurance.
- Eight percent had medical insurance.
- Eight percent had income insurance.

**Both the long-term and short-term insurance industries are highly concentrated.**

- The long-term insurance industry is dominated by four insurers that account for 65.4 percent of total market assets, and the top 10 insurers account for almost 90 percent of total market assets.<sup>80</sup>
- The short-term insurance industry is also concentrated; with a large number of providers, the top five insurers still account for 43.6 percent of market share.<sup>81</sup>

**The amendments to the Insurance Act of 2017, effective from July 1, 2018, provide for microinsurance.** Once an entity is licensed by the PA, the FSCA will supervise it from a market-conduct perspective.

**Table 3E. Top 10 Short-Term Insurers in South Africa**

R1,000; financial years ending in December 2019 unless otherwise indicated						
Insurer	Gross Premiums	Net Premiums	Net Claims Incurred	Net Profit	Total Assets	Total Shareholders' Funds
Sanlam	28,431,000	22,591,000	13,860,000	1,871,000	30,343,000	8,501,000
Hollard Assurance Co.*	10,856,041	8,573,189	4,374,371	544,852	10,427,042	2,939,620
Old Mutual Insure	10,660,000	9,015,000	5,788,000	150,000	10,546,000	4,044,000
Guardrisk Insurance*	9,983,925	4,126,144	1,119,290	77,256	14,125,478	574,008
OUTsurace Insurance*	8,380,352	8,251,617	4,104,481	1,807,293	6,088,355	3,728,341
Bryte Insurance	4,528,179	3,692,299	2,375,360	100,020	6,672,312	1,272,259
Mutual and Federal Risk Financing	3,221,478	46,311	4,566	14,927	2,893,340	206,244
Absa	3,093,306	2,990,721	1,888,445	319,771	2,960,979	1,349,040
Standard Insurance	2,758,516	2,640,257	1,306,843	463,744	1,889,792	2,656,429
Auto and General Insurance*	2,993,006	613,725	480,041	34,389	1,697,928	597,240

\*As of end June 2019

Source: KPMG, Resilience: The South African Insurance Industry Survey 2020 (KPMG, September 2020).

### 3.5 FRIENDLY SOCIETIES

**Friendly societies are nonprofit entities established to provide relief or maintenance for members (or persons related to members) in childhood, old age, widowhood, or illness, including burial/funeral expenses.** There are 196 registered friendly societies.<sup>82</sup> Friendly societies are prohibited from advertising for business and may be promoted only by word of mouth within the

community for whose benefit such society has been established.<sup>83</sup> Friendly societies may be exempt from the provisions of the Long-Term Insurance Act of 1998, or they may have to provide only statistical information, if they were established by industrial agreement, have an annual income of less R 100 000, and are operating exclusively by means of policies of insurance issued by an insurance company registered under the Friendly Societies Act (Act No. 25 of 1956).<sup>84</sup>

**Table 3F. Top 20 Friendly Societies in South Africa**

Ranked in terms of asset value for the year ending on December 31, 2017				
2017	2016	Soc. No.	Society Name	Assets (R 1,000)
1	2	138747	New Apostolic Church Burial Fund	219,160
2	1	138445	Groep-Begrafnisassosiasie	209,626
3	3	1381109	Printing Industry Employee Benefit Fund for Satu Members	106,860
4	4	138760	Sterftefonds Van Die ATKV	55,669
5		1381253	OAC Burial Society	50,593
6	5	138411	National Mutual Aid Association of Railway, Airways and Harbour Servants (SA)	41,981
7	6	1381255	OAC Burial Society: District Western Cape	39,125
8	7	138354	Union Corporation Mines Death Benefit Fund	35,155
9	8	1381250	OAC Burial Society: District Gauteng	21,473
10	9	138813	Feltex Sick Pay Fund	18,293
11		138422	Amalgamated Union of Building Trade Workers of SA Benefits Fund	16,904
12	10	1381267	Lebowa Friendly Society	15,887
13	11	1381254	OAC Burial Society: Northern District	15,411
14	12	1381251	OAC Burial Society: District Eastern Cape	12,319
15	13	138942	Leather Workers Death Society	10,406
16	16	138539	Pinetown Textile Mills Medical Benefit Society	7,836
17	15	1381266	Ledwaba Friendly Society	7,631
18	-	1381011	Arme Muslim Burial Society	6,763
19	19	1381096	Philarold Funerals Friendly Society	5,924
20	18	1381256	OAC Burial Society: District Free State	5,901

Source: Registrar of Friendly Society, Annual Report 2017



### 3.6 RETIREMENT FUNDS AND UNIT TRUSTS

Retirement funds, with about 16.9 million members in the public and private sectors, hold around R 2.6 trillion in fund assets. As of June 30, 2019, there were approximately 5,140 registered retirement funds; 1,528 of these were active (meaning they had members for whom they receive contributions and/or pay benefits).

A number of retirement funds are not subject to regulation and supervision under the PFA, including the Government Employees Pension Fund, established by separate statutes. All other funds must be registered in terms of the Pension Funds Act of 1956 (as amended) and are regulated and supervised by the FSCA Retirement Fund Supervision Division. Total membership of retirement funds in South Africa on December 31, 2018, stood at 17,522,325, of whom 11,447,361 were active members and 6,074,964 were pensioners,

deferred pensioners, dependents, and unclaimed-benefit members.<sup>85</sup>

Unit trusts also hold sizable amounts of total assets in South Africa. The FSCA registers and supervises unit trust managers. There were 70 registered domestic collective investment schemes (52 in securities, one collective investment scheme in property, two collective investment schemes in participation bonds, and 15 collective investment schemes in hedge funds). There were also 171 registered foreign collective investment schemes. Foreign collective investment schemes in securities are offshore schemes authorized for promotion in the Republic of South Africa, subject to certain prescribed conditions. Only authorized foreign collective investment schemes can be marketed to South African investors.<sup>86</sup> Details of the top 10 pension funds, retirement fund administrators, and unit trust managers are shown in tables 3G, 3H, and 3I.

**Table 3G. Top 10 Retirement Funds in South Africa**

Latest fund fiscal year-ends				
Fund*	Fund Class	Benefit Structure	Fund Assets (R 1 million)	No. Members
Eskom Pension and Provident Fund	Pension fund	Benefit	141,206	86,728
South Africa Retirement Annuity Fund	Retirement annuity	Contribution	112,151	1,407,129
Central Retirement Annuity Fund	Retirement Annuity	Contribution	104,584	842,166
Sentinel Retirement Fund	Pension fund	Contribution	85,198	80,281
Lifestyle Retirement Annuity Fund	Retirement annuity	Contribution	76,208	631,950
Engineering Industries Pension Fund	Pension fund	Benefit	72,443	1,566,998
Momentum Retirement Annuity Fund	Retirement annuity	Contribution	57,190	402,468
Old Mutual Superfund Provident Fund	Provident fund	Contribution	55,962	294,503
Old Mutual Superfund Pension Fund	Pension fund	Contribution	53,800	146,551
Sasol Pension Fund	Pension fund	Contribution	50,855	27,459

\* Funds' latest valuation reports to the FSCA as of June 5, 2019

Source: FSCA via Economist Intelligence Unit

**Table 3H. Retirement Funds: Number of Funds by Administrator on March 31, 2019**

Administrator	Active Funds*	Other Funds	Total Funds
Liberty Group	114	993	1,107
MMI Group	58	742	800
Alexander Forbes Financial Services	269	477	746
Sanlam Life Insurance	114	222	336
Absa Consultants and Actuaries	122	168	290
Old Mutual Life Assurance Company (South Africa)	23	164	187
NBC Fund Administration Services	79	57	136
NMG Consultants and Actuaries Administrators	59	59	118
Own administrator	37	62	99
All other administrators	653	668	1,321
<b>Total</b>	<b>1,528</b>	<b>3,612</b>	<b>5,140</b>

\* Includes funds that have informed the FSCA that they intend to stop conducting business after their liquidations, or transfer their assets and liabilities to other funds or other entities, such as insurers.

Source: Economist Intelligence Unit, 2019

**Table 3I. Top 10 Unit-Trust Managers in South Africa**

Manager	Total Assets (R 1 million)	No. Funds
Allan Grat Unit Trust Management	299,328	11
Coronation Management	254,291	28
Nedgroup Collective Investments	173,624	26
Investec Collective Investments	171,175	20
Stanlib Collective Investments	161,485	67
Stanlam Collective Investments	153,671	154
Old Mutual Unit Trust Managers	148,910	60
Absa Fund Managers	142,315	44
PSG Collective Investments	97,886	18
Boutique Collective Investments	96,827	255

Source: Fundsdata.co.za via Economist Intelligence Unit, 2019

### 3.7 FINANCIAL SERVICES INTERMEDIARIES

Just over 12,000 FSPs are licensed under the Financial Advisory and Intermediary Services Act 2002 (FAIS Act). The five types of licensed categories under the FAIS are as follows

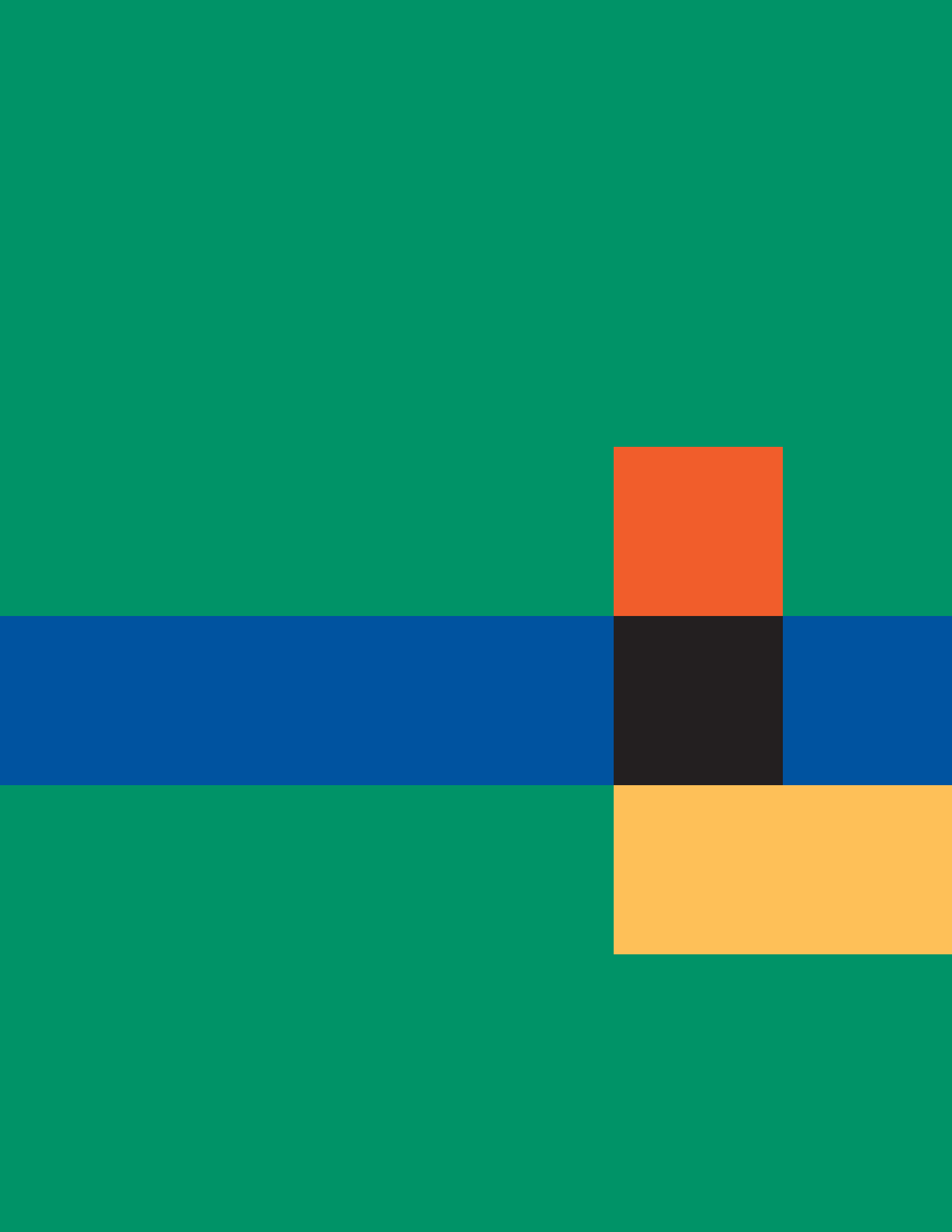
- Category I FSPs consist of financial advisers and those intermediaries who render financial services without discretion.
- Category II FSPs (also referred to as discretionary FSPs) render intermediary services of a discretionary nature, as regards the choice of a particular financial product, but without implementing bulking.<sup>87</sup>
- Category IIA FSPs represent hedge-fund managers.

- Category III FSPs represent investment administrators specializing mainly in the bulking of collective investments on behalf of clients (linked investment services providers).
- Category IV represents assistance business administrators that render intermediary services in relation to the administration of assistance policies on behalf of the insurer, to the extent agreed upon in terms of a written mandate between the insurer and the assistance business FSP.

The FSCA 2018–19 annual report provides figures for the number of licensed entities in each license category (table 3J). The types of activities that category 1 licensees are authorized to provide range from advice relating to assistance business (funeral insurance) to collective investment schemes, long- and short-term insurance, health-care benefits, and retail pension-benefit funds.

**Table 3J. Categories of Financial Service Providers Registered under the FAIS Act**

Category of FSP	No. Registered FSPs (2018–19)
Category I (advisory/intermediary services and foreign FSPs)	11,068
Category II (discretionary FSPs)	702
Category IIA (hedge-fund manager FSPs)	126
Category III (administrative FSPs)	28
Category IV (assistance business administration FSPs)	104
Source: FSCA, Annual Report 2018–19, 31	



# 4

## FINANCIAL REGULATION

This chapter provides a brief review of the current structure of the South African financial regulatory framework relevant to the operation of the financial ombud system.

### 4.1 RELATIONSHIP WITH THE FINANCIAL OMBUD SYSTEM

**The regulatory framework influences the development, coverage, and oversight structure of the financial ombud system in the following ways:**

- The activities of financial regulators influence how financial providers treat their customers and may affect how they handle complaints.
- Coverage by an ombud scheme may depend on statute, a regulatory requirement, or the membership of an industry association.
- The types of complaints that an ombud scheme is able to consider may reflect the scope of regulated products, services, and activities.
- Ombud decisions take into account the law, regulatory rules and standards, and relevant industry codes.
- Information about systemic issues in the financial market, identified through complaints handled by financial ombuds, may help financial regulators to identify issues requiring their attention.
- The structure and performance of ombud schemes may be overseen by government agencies.

### 4.2 FINANCIAL SECTOR REGULATION ACT

**South Africa is undertaking wide-ranging reforms of its financial services regulation and has recently implemented a twin-peaks regulatory structure.** The FSR Act established two new authorities: the PA<sup>88</sup> as a juristic person operating within the administration of the South African Reserve Bank, and the FSCA<sup>89</sup> as successor

to the Financial Services Board (FSB). The relevant legislation became effective on April 1, 2018. The FSR Act enables the PA and FSCA to enter into cooperation agreements to ensure consistent standards and minimize duplication.<sup>90</sup>

Under the first phase of the reform program, the PA and FSCA regulate the financial sector under the provisions of existing laws and with the overlay of the FSR Act.<sup>91</sup> The PA and FSCA are responsible for the following current legislation under schedule 3 of the FSR Act:

- PA:
  - Banks Act
  - Mutual Banks Act
  - Co-operative Banks Act
  - Financial supervision of the Road Accident Fund Act
  - Long-Term Insurance Act and Short-Term Insurance Act, as they relate to matters within the specific objectives of the PA
  - Regulations issued in terms of any of the above
- FSCA:
  - Pension Funds Act
  - Friendly Societies Act
  - Financial Advisory and Intermediary Services (FAIS) Act
  - Collective Investment Schemes (CIS) Control Act
  - Financial Markets Act
  - Credit Rating Services Act

- Long-Term Insurance Act and Short-Term Insurance Act, as they relate to matters within the specific objectives of the FSCA
- Regulations issued in terms of any of the above

**The FSR Act also enables the PA and FSCA to issue standards in their area of responsibility as well as joint standards when required.** The FSCA is able to set standards relating to the conduct of institutions relating to its responsibilities and goals of implementing initiatives aimed at treating customers fairly. The FSCA will be able to do so for the relevant conduct activities for entities authorized and supervised by the PA, such as banks and insurers. The FSCA is solely responsible for setting standards relating to the following:

- Fair treatment of customers
- Design and suitability of financial products and financial services
- Promotion, marketing, and distribution of, and advice in relation to, those products and services
- Resolution of complaints and disputes concerning those products and services, including redress
- Information disclosure
- Refusal, withdrawal, or closure of a product or service
- Financial-education programs
- Design, suitability, and implementation
- Monitoring and evaluation of financial-education programs or other initiatives promoting financial literacy
- Prevention of financial crime

### 4.3 NATIONAL CREDIT ACT

**The NC Act (as amended by the National Credit Amendment Act of 2014) has a number of purposes.** These include the following:

- General regulation of consumer credit to promote a fair and non-discriminatory market

- Establishment of national standards
- Promotion of a consistent enforcement framework
- Registration of
  - Credit bureaus and credit bureau resellers;
  - Credit providers;
  - Debt-counselling services;
  - payment distribution agents; and
  - ADR agents<sup>92</sup>

**Credit providers must be registered with the NCR.**<sup>93</sup> This applies to all businesses and individuals who do business on credit, provide loans, or charge interest on overdue accounts (within the threshold limits set under the NC Act), including

- Banks;
- Microlenders; and
- Retailers, such as furniture and clothing stores.

The NCR was established under the NC Act as part of the major reforms to the regulation of consumer credit in South Africa.<sup>94</sup> The NCR regulates the credit industry in South Africa. Its role includes consumer education, research, policy development, registration of industry participants, investigation of complaints, and ensuring the enforcement of the NC Act.

As consumer protection is a concurrent responsibility between the national and provincial governments under the constitution of South Africa, regulation of credit by the NCR involves coordination and harmonization with the provincial consumer protection offices.<sup>95</sup>

The NCR's functions include investigation of complaints. A consumer may lodge a complaint with the NCR against any institution offering credit, against a debt counsellor and a credit bureau, provided the NCR has jurisdiction. Juristic persons (trust companies and so forth) may lodge a complaint if the person making the complaint is authorized to do so and the annual turnover of the business or

group of businesses is less than R 1 million (about \$66,666<sup>96</sup>) or if the agreement in question is less than R 250,000 (about \$16,666).<sup>97</sup>

In 2019, the NCR received 1,874 complaints, most of which related to the removal of debt-review status and end-balance disputes by consumers under debt review. The NCR also provided training to the provincial consumer protection offices to support the resolution of complaints.<sup>98</sup>

The NC Act requires the NCR to promote the development of an accessible credit market to address the needs of historically disadvantaged persons, low-income persons, and remote, isolated, or low-density communities.<sup>99</sup>

The NC Act also established a National Consumer Tribunal as an independent adjudicative body to hear applications under the NC Act.<sup>100</sup> The role of the National Consumer Tribunal is to determine when conduct prohibited by the NC Act has occurred, to help consumers to resolve disputes and obtain redress against credit providers who contravene the act, and to enforce the NC Act.<sup>101</sup>

This includes adjudicating on applications made by consumers, credit providers, credit bureaus, debt counsellors, and the NCR, reviewing the NCR's decisions, and dealing with matters referred to it by the NCR or complaints related to allegations of prohibited conduct.<sup>102</sup> The National Credit Tribunal's mandate was expanded to enable it to deal with prohibited conduct more broadly under the Consumer Protection Act of 2008.

#### 4.4 PROPOSED CONDUCT OF FINANCIAL INSTITUTIONS BILL

The FSR Act and COFI Bill take into account sector-specific considerations, especially in the regulation of provision of credit. Along with the newly established PA and FSCA, the existing NCR will continue to play a role in the regulation of provision of credit under the existing NC Act. To the extent that a bank or other credit provider in South Africa wants to advance credit to natural persons, it

must continue to be registered as a credit provider and subject to oversight by the NCR.

**Under the FSR Act, the FSCA is to regulate the conduct of credit providers in the same way as it does for other financial products and services**—for example, on matters such as marketing and promotion, the provision of advice, and the distribution and disclosure of information relating to credit transactions. Any new conduct standards set by the FSCA must take into account requirements in place under the NC Act.<sup>103</sup> The explanatory materials for the draft COFI Bill make clear that close coordination between the FSCA and NCR is contemplated.<sup>104</sup> The PA will continue to be responsible for the licensing of banks and their supervision for purposes of financial safety and soundness objectives.

**The COFI Bill, once enacted, will modify and extend the scope of the FSCA's jurisdiction and amend the FSR Act.**<sup>105</sup> Schedule 1 of the COFI Bill sets out the categories and subcategories of activities that will require licensing under the new activity-based licensing regime. These are intended to cover the full scope of financial services regulated under the FSR Act.<sup>106</sup> There is also discretion in the FSR Act for the minister to extend the scope of regulation to other financial products and services.

**In some cases, the activities in Schedule 1 include classes of businesses authorized by the PA.** In these cases, licensing by the FSCA is intended to happen automatically based on authorization by the PA but with the holder of the license for that activity being required to comply with any relevant FSCA standards and those under the proposed COFI Bill.

**The COFI Bill defines broad activity categories for licensing purposes consistent with the objective of the reforms to cover all relevant financial-sector activities.** The coverage of the Bill is wide, including areas such as services relating to the provision of credit, claims handling by insurers, and debt-collection activities.<sup>107</sup>

The current list of broad categories and subcategories in the COFI Bill is as follows:

- Providing a financial product:
  - Providing a financial instrument
  - Providing a financial product
- Distributing financial products:
  - Sales and execution
  - Product comparison or aggregation services
- Financial Advice
- Managing and administering investments:
  - Discretionary investment management
  - Administering a pooled investment
  - Operating an investment platform
- Benefit administration:
  - Pension fund benefit administration
  - Medical scheme administration
  - Funeral administration
- Professional fiduciary or custodian service:
  - Professional custodian service
  - Professional nominee service
  - Professional pension fund trustee service
  - Independent pension fund trustee service
- Payment service
- Financial markets activities:
  - Undertaking a public offering
  - Trading
  - Making a market
  - Clearing services

**The details of the COFI Bill are still in consultation.** The final scope of what is inside the broad boundaries and what is outside the regulatory perimeter will depend on the definitions and any exemptions set out in the legislation once enacted.

**Under the FSR Act and COFI Bill, an entity will need to be licensed by the FSCA in order to be able to undertake one or more of the regulated activities.**<sup>108</sup> This marks a move from regulating by type of entity to regulating by activity. Chapter 12 of the proposed COFI Bill sets out the general requirements for the granting of a license by the FSCA. These include that an applicant for a license must demonstrate to the authority that it can meet the fit-and-proper requirements (honesty and integrity, good standing, and competence)<sup>109</sup> and that it has a sustainable business model, meets operational requirements, and is able to comply with the obligations for conducting the relevant type of activity and all legal requirements in the operation of its business.<sup>110</sup>

**The COFI Bill also sets out requirements relating to the governance and culture of a licensed entity designed to give effect to the principles of fair dealing.**<sup>111</sup> It also defines complainant and a complaint for purposes of the proposed bill. Both are broadly defined. A complaint is defined<sup>112</sup> as an expression of dissatisfaction about a financial product or service where the financial provider has

- Not complied with an agreement, a law, a rule, or a code of conduct;
- Engaged in maladministration or some willful or negligent action or failure resulting in harm, prejudice, distress, or substantial inconvenience; or
- Treated the person unfairly.

**The COFI Bill sets out the complaint and claim-handling obligations of licensed entities and empowers the FSCA to make standards relating to both complaint and claims handling.**<sup>113</sup> These obligations include that

- The financial institution may not unreasonably prevent financial customers from submitting a claim or making a complaint;<sup>114</sup> and



- Licensed financial firms must have an internal complaints system that provides customers with efficient and effective complaints management that resolves their complaints in a fair and expeditious manner.<sup>115</sup>

**The FSCA may prescribe conduct standards in relation to the handling, management, and reporting of complaints and disputes.** This may include requirements relating to the following:

- Monitoring processes to promote “learning” from complaints
- Reporting of complaint information to the authority or public

- The provision of redress for financial customers
- The handling and management of claims, including prohibited claims practices<sup>116</sup>

**Customers must be advised of both internal and external complaints mechanisms.** Financial providers also need to have systems to monitor complaints, so they can take action to prevent them from occurring in future. The COFI Bill also requires, where relevant, customer claims to be handled in a “fair, transparent and expeditious manner.”<sup>117</sup>



This chapter briefly describes the current financial ombud schemes in South Africa and the NT's 2017 Consultation Document on reform of the system.

## 5.1 FINANCIAL OMBUD SCHEMES

### Types of Ombud Schemes

South Africa has seven financial ombud schemes—a mixture of compulsory (statutory) and voluntary (industry) schemes.

- Statutory ombud schemes are established by law. They have automatic jurisdiction with respect to particular financial services. Their powers over financial providers are set by law.
- Industry-based ombud schemes are created within a particular industry. Joining may be voluntary or a condition of being a member of an industry association. Their powers over financial providers arise from the contract created by the providers' membership of the scheme.

Compared to international practice, South Africa has an unusually large number of financial ombud schemes. The current ombud structure is based mainly around different types of institutions and types of financial products. The FAIS Ombud, however, covers advice and intermediary services by all regulated financial entities (even if they are a member of another ombud scheme) and has a backup jurisdiction over the other activities of any regulated financial entities that are not members of any other ombud scheme.

### Statutory Ombud Schemes

There are two statutory financial ombud schemes:

- **Pension Funds Adjudicator<sup>118</sup> (PFA)**
  - The Office of the Pension Funds Adjudicator was established as a statutory body under S30B of the Pension Funds Act of 1956 (PF Act).

- The PFA covers complaints relating to fund administrators, insurers, brokers, funds (and their boards), and service advisers in relation to pension funds (except for certain public-sector pensions funds).<sup>119</sup>
- The Minister of Finance in consultation with the FSCA appoints the PFA and one or more deputy adjudicators.
- Under the Financial Services Board Act 97 of 1990 (FSB Act) and the Financial Sector Regulations 2018, the FSCA sets a levy, for funding the PFA, payable in respect of pension funds registered (or provisionally registered) under the Pension Funds Act.<sup>120</sup>
- The PFA is a schedule 3A entity for purposes of the Public Finance Management Act 1 of 1999 (PFM Act).

- **Office of the Ombud for Financial Services Providers<sup>121</sup> (FAIS Ombud)**

- The Office of the FAIS Ombud was established under section 20 of the FAIS Act.
- Under the FAIS Act, it covers all FSPs (including banks and insurers) in relation to advice and intermediary services.
- Under the Financial Services Ombud Schemes Act (FSOS Act), it also has a backup jurisdiction covering complaints that the industry-based ombud schemes do not cover, or where it is not clear which scheme has jurisdiction.
- The FAIS Ombud is appointed by the Minister of Finance in consultation with the FSCA.

- Under the FSB Act and the Financial Sector Regulations 2018, the FSCA sets a levy, for funding the FAIS Ombud, payable by FSPs authorized under the FAIS Act.<sup>122</sup>
- The Office of the FAIS Ombud is a Schedule 3A entity under the PFM Act.

## Industry Ombud Schemes

There are five industry financial ombud schemes:

- **Ombudsman for Banking Services<sup>123</sup> (Banking Ombud)**

- The Banking Ombud covers all the registered banks, from their membership of the Banking Association South Africa (BASA).

- **Office of the Credit Ombud<sup>124</sup> (Credit Ombud)**

- The Credit Ombud covers those credit providers, credit bureaus and service providers, and subscribers to credit bureaus that have chosen to join the ombud scheme.<sup>125</sup>

- **Ombudsman for Long-Term Insurance<sup>126</sup> (LTI Ombud)**

- The LTI Ombud covers those long-term insurers that have chosen to join the ombud scheme (as almost all have done).<sup>127</sup>

- **Ombudsman for Short-Term Insurance<sup>128</sup> (STI Ombud)**

- The STI Ombud covers those short-term insurers that have chosen to join the ombud scheme (as almost all have done)<sup>129</sup> and Lloyd's.<sup>130</sup>

- **Johannesburg Stock Exchange Ombud<sup>131</sup> (JSE Ombud)**

- The JSE Ombud covers members of the Johannesburg Stock Exchange (JSE) in relation to JSE-listed securities. The JSE is a for-profit entity and a self-regulatory organization, licensed in terms of section 8 of the Financial Markets Act of 2012 and regulates the financial markets it operates.

- The JSE Ombud differs from the other ombud schemes because the JSE's Market Regulation Division covers much of what the ombud schemes do in other sectors. If a complainant is dissatisfied with the response from a JSE member, their first recourse is to JSE's Market Regulation Division. The Market Regulation Division will investigate, mediate, and/or recommend an outcome, and the JSE Ombud provides only the final or appeal stage.

The industry ombuds are approved as "recognized schemes" under section 11 of the FSOS Act.<sup>132</sup> This recognition automatically provides them with recognition in terms of section 134 of the NC Act<sup>133</sup> for the resolution of credit disputes that fall within their jurisdictions.

In respect of the Banking, Credit, LTI, and STI Ombud schemes,

- They operate as voluntary associations or not-for-profit companies;
- The ombuds and deputy ombuds are appointed by their governing bodies;
- The constitutional documents<sup>134</sup> set out their jurisdiction and bind providers under contract; and
- They are directly funded by their members.

In respect of the JSE Ombud scheme,

- It is not a separate body;
- The ombud is appointed by the JSE;
- The jurisdiction and powers are set out in JSE rules; and
- It is funded by the JSE.

The following major developments occurred in 2018–20:

- Under the FSR Act the commissioner of the FSCA took over from the FSB the role of accounting officer for the PFA and FAIS ombud after November 1, 2018. (But this role is due to pass to the adjudicator and ombud themselves from April 2022.)

- Section 219 of the FSR Act established an independent Financial Services Tribunal, which can reconsider, on application by any aggrieved party, any decisions made by the PFA or FAIS Ombud. It can dismiss such an application or set the decision aside and remit the matter for reconsideration by the ombud.
- Complaints about the credit-information activities of banks moved to the Banking Ombud from the Credit Ombud, significantly reducing the size and funding of the Credit Ombud.
- The LTI Ombud and STI Ombud carried out a “soft merger,” under which they share an ombud and some systems. Because of the authorization system, they needed regulatory approval for a full merger—which they could not obtain because the FSOS Council had ceased to operate and the new Ombud Council had not yet been appointed.

**Table 5A. Key Features of the Financial Ombud Schemes in South Africa**

	PFA	FAIS Ombud	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud
<b>Basis of approval as ombud scheme</b>	PF Act	FAIS Act	FSOS Act <sup>135</sup> NC Act <sup>136</sup>	FSOS Act NC Act	FSOS Act	FSOS Act	FSOS Act
<b>Source of complaint-handling jurisdiction</b>	PFA	FAIS Act <sup>137</sup> FSOS Act <sup>138</sup>	Contract in constitutional documents	Contract in constitutional documents	Contract in constitutional documents	Contract in constitutional documents	JSE Market Rules
<b>Nature of entity</b>	Statutory office, and schedule 3A PFM Act entity	Statutory office, and schedule 3A PFM Act entity	Not-for-profit company	Voluntary association with industry members	Voluntary association without industry members	Not-for-profit company	JSE Ltd. is a for-profit company. <sup>139</sup>
<b>Funding</b>	Industry levy set and collected by the FSCA	Industry levy set and collected by the FSCA	Mix of a levy and case fees paid directly by members	Levy paid directly by members	Mix of a levy and case fees paid directly by subscribing members	Case fees paid directly by members	No separate funding of matters considered by the JSE ombud
<b>Appointment of ombud</b>	Minister of Finance	Minister of Finance	Governing body	Governing body	Governing body	Governing body	JSE Ltd. (through company secretary)
<b>Coverage</b>	Entities regulated under the PF Act (excludes certain public pension funds)	Entities authorized under the FAIS Act and any authorized FSP that is not covered by another scheme	All the registered banks	Some credit providers and credit bureaus	Almost all long-term insurers	Almost all short-term insurers	All members of the JSE, in relation to JSE-listed securities

- In 2020, the Banking, Credit, LTI, and STI Ombud schemes began to discuss moving toward a potential merger between 2021 and 2024 and established working groups on a single point of entry, common branding, shared offices, back-office integration, and harmonization of rules, processes, and case-management systems.

## 5.2 SIZE AND SCOPE OF THE FINANCIAL OMBUDS

Appendix A presents an overview of the ombud system data for 2019, while table 5B gives a summary of the activities of the financial ombuds for 2019.

- The FAIS Ombud covers all FSPs, and the PFA handles complaints relating to pension funds that are covered by the PF Act, except for certain public-sector pension funds.

- The Banking, Credit, LTI, and STI Ombuds together cover about 498 FSPs. This includes all the major banks, most insurance companies, and some non-bank credit providers and credit bureaus. The JSE Ombud covers all JSE members.
- In 2019, the ombud system
  - Handled 92,273 enquiries;
  - Received 80,512 complaints;
  - Opened 42,089 new cases; and
  - Closed 38,792 cases.<sup>140</sup>
- Resolution of these cases by the financial ombuds led to some R 380.78 million (about \$25.39 million) being paid out to complainants in this period. These amounts do not include the value of other outcomes including the following:

**Table 5B. Summary of the Activities of the Financial Ombuds for 2019**

	Banking Ombud	Credit Ombud	FAIS Ombud	LTI Ombud	STI Ombud	PFA	JSE Ombud	Totals for System
No. providers covered	34	118	All	53	53	See PF Act <sup>141</sup>	240 <sup>142</sup>	498+
Total expenditure	R 30.2 million	R 16.0 million	R 40.0 million	R 24.5 million	R 42.8 million	R 72.5 million	0	R 226 million
Total FTE staff	29	12	49	37	47	60	0	234
Total enquiries received	30,682	37,269	0	18,337	3,420	2,565	0	92,273
Total complaints received	6,472	29,510	8,835	10,509	13,787	11,399	N/A	80,512
Total cases opened	6,472	4,439	5,750	3,574 <sup>143</sup>	10,367	11,399	88	42,089
Total cases closed	6,333	4,937	4,507	3,558	9,167	10,289	84	38,875
Total ordered to be paid to complainants	R 20.42 million	R 6.90 million	R 57.26 million	R 201.27 million <sup>144</sup>	R 94.93 million	N/A <sup>145</sup>	0	R 380.78 million <sup>146</sup>

Source: Data provided in response to 2020 WBG diagnostic questionnaire by each ombud scheme

- Reinstatement of an insurance policy or recurring payments such as income disability or annuities
- Benefits paid to pension fund beneficiaries (as the PFA leaves this to the pension fund trustees to calculate once the PFA has decided a complaint)
- The ombud schemes employ in total some 234 full-time-equivalent (FTE) staff; total expenditure in 2019 across all schemes was about R 226 million (about \$15 million).

## 5.3 NATIONAL TREASURY 2017 CONSULTATION

### Consultation

In September 2017, the NT published a consultation policy document entitled *A Known and Trusted Ombud System for All*.<sup>147</sup> This reviewed the historic development of the financial ombud system in South Africa, explained the reforms to the system resulting from the FSR Act, and asked for comments on further reform of the financial ombud system. It canvassed the following three alternative models:

- **Model 1: A hybrid model building on current FSR Act provisions**

This model makes use of both industry and statutory ombud schemes but encourages greater consolidation among the schemes. The Ombud Council oversees both industry ombuds and the statutory ombuds. It establishes a central, single entry point for customers to enter the ombud system.

A consolidated statutory ombud structure could continue to serve as the “back-stop” ombud, hearing complaints that fall outside the jurisdiction of the industry schemes and newly designated financial products and services. The Ombud Council and statutory ombuds report to the Minister of Finance.

- **Model 2: A centralized model, establishing a single statutory ombud scheme**

A single statutory ombud scheme is established by law, with jurisdiction over all complaints in the financial sector. As an organization, this office should have different departments with expertise to hear complaints on different financial products and services.

It reports to the Minister of Finance with governance oversight by an independent committee or board. The Chief Ombud created under the FSR Act is likely to be best placed to take over these functions.

- **Model 3: Industry ombuds with strong oversight by the Ombud Council**

Under this model, all financial providers in the retail market must belong to a financial ombud scheme, either as a direct statutory obligation or as a condition of licensing. Such schemes are established through industry initiatives.

No ombud schemes are established through statute. All schemes must be recognized by the Ombud Council and are subject to oversight by the council, including minimum standards for resolving disputes.

The 2017 Consultation Document also proposed further research into the current operation of the financial ombud system to inform the work of the new Ombud Council, established by the FSR Act. For this purpose, the NT and FSCA engaged the WBG to undertake this diagnostic on South Africa’s financial-sector ombud system and propose the optimal approach.

### Brief Overview of Responses

The key features of the responses were as follows:

- **Financial ombud schemes**

The Banking, Credit, LTI, and STI Ombuds, responding jointly, said the following:

- They favored the hybrid model (model 1).

- Change would adversely affect customer service.
- They were happy to help with a single point of access.
- They would cooperate more in the future on promotion and harmonization.
- They were cheaper and less bureaucratic than a statutory scheme.

The JSE Ombud said the following:

- It believed that a centralized model would lack the expertise to handle stock-exchange matters.
- It did not favor models 1 or 2.
- It favored industry ombuds with strong oversight by the Ombud Council (model 3).
- It welcomed the prospect of a diagnostic study of the ombud system.

The PFA said the following:

- Its top complaints arose from failure to comply with regulation.
- Ombud schemes were bearing the burden of regulatory deficiencies.
- Ninety percent of the out-of-jurisdiction complaints it received were ruled out by the Prescription Act.<sup>148</sup>
- Ombud schemes could be better known.
- The FSOS Council did little about promoting coordination and cooperation.
- There should be more transparency in governance.
- There is no logic in just rationalizing the statutory ombud schemes.
- The statutory and industry schemes should be rationalized in the same way or left alone.
- The Ombud Council was a good idea, but its mandate must be properly defined.

- The role of the Chief Ombud must also be clearly defined.
- The principle of single entry will inevitably lead to a bureaucracy and increased costs.
- The consultation paper ignored the problems of literacy, financial literacy, and the limits of communication.

The FAIS Ombud scheme did not respond to the 2017 Consultation Document.

One former industry ombud said the following:

- The existing system was not fit for purpose and lacked credibility with consumers.
- There should be a single statutory financial ombud scheme (model 2).
- There should be direct access to the ombud scheme.
- It should have a local presence through branch offices.
- It should also have a consumer-education role.

Another former industry ombud said the following:

- The existing industry schemes received good cooperation from the industry.
- They appeared to be quicker and cheaper than statutory alternatives.
- Their different processes, timescales, and costs, however, caused concerns.
- There were fears of politicians influencing a statutory ombud scheme.
- A board can make an ombud's life difficult.
- He favored a single, private ombud scheme underpinned by statute (a new model).

#### • **Financial industry**

The BASA said the following:

- The existing system worked well, but they were open-minded about changes.



- Any new system needed to be cost effective.
- There was scope for a common point of entry.
- Ombud decisions should not become binding precedents.
- Ombuds should not have power to award compensation for distress.

The Financial Intermediaries Association said the following:

- The existing system worked well, but they were open-minded about changes.
- Any new system needed to be efficient and cost effective.
- There should be an appeal system.

The Institute of Retirement Funds said the following:

- There should be a single point of access.
- They preferred to remain with the PFA.
- Failing this, they favored a single statutory ombud (model 2).
- The funding model would be key to designing any new system.
- They wondered if the FSCA would issue conduct rules clarifying what fairness requires.
- They wondered if PFA appeals would move from the High Court to the Financial Services Tribunal.

The Insurance Association (for short-term insurers) said the following:

- Comments were received from only a few members.
- Views were split, but maybe model 1 could be a stepping-stone to model 2.
- Consumer affairs offices throughout the country could assist accessibility.

- Complaints should go to the FSP first.
- There should be no maximum limit on the size of claims the ombud could handle.
- There should be differential costs based on the stage a case has reached.
- There should be a uniform appeal process for both the insured and the insurer.
- There should be an industry forum, for information sharing with the ombud scheme.

One insurer said the following:

- There should be a single statutory financial ombud scheme (model 2).
- Costs should be kept low, especially for low-value claims.

#### • Others

The Independent Regulatory Board for Auditors said the following:

- Ombuds should “name and shame” and have enforcement powers.
- Accessibility can be provided by technology.
- They favored model 3, subject to resolving the conflict of interest between the NT Director-General and the minister.

The Rule of Law Project said the following:

- The existing system worked well.
- Forum shopping was not a problem.
- Fair and reasonable is not an appropriate basis of decision for an imposed statutory ombud.
- Voluntary private schemes were better.
- Ombud schemes would be less independent if politicians were in control.

There were no responses from consumer bodies or other civil-society bodies.



# 6

## OMBUD OVERSIGHT LEGISLATION

This chapter summarizes relevant provisions of the FSOS Act and FSR Act relating to oversight of the ombud system.

### 6.1 OVERVIEW

South Africa is unusual (compared to international practice) in having a separate oversight framework for the financial ombud system. We are at a point of significant change in the legislative arrangements for this oversight framework.

- Previously, the ombud system was overseen by the FSOS Council. This was created by the Financial Services Ombud Schemes Act 37 of 2004,<sup>149</sup> but the FSOS Council ceased to operate some time ago.
- From November 1, 2020, the ombud system is to be overseen by the new Ombud Council (including a Chief Ombud and other members). This was created by chapter 14 of the FSR Act, but
  - The recruitment process for the Chief Ombud has not been completed yet; and
  - Though the other members of the Ombud Council have been appointed, their names have not been announced yet.

### 6.2 FINANCIAL SERVICES OMBUD SCHEMES ACT

#### FSOS Council

The FSOS Act provided for the establishment of the FSOS Council. The council was to meet at least twice a year and was to comprise the following:

- A chairperson
- A deputy chairperson
- Three to five other members

- The registrar of the FSB, predecessor of the FSCA

The registrar of the FSB, however, did not have a vote.

**The Minister of Finance was to appoint the members of the council, after consultation with the FSB.** In making the appointments, the Minister was required to have regard to the following:

- Relevant, knowledge, experience, and expertise
- The demographic and gender profile of the South African population

The Minister could not appoint anyone engaged in the following:

- The business of a financial institution
- Provision to a client of a financial service or a product of a financial institution

**Council members were to be appointed for terms of no more than three years.** They could be reappointed for further terms. A member could be discharged by the minister on the grounds of misconduct or incapacity provided they were given a reasonable opportunity to be heard.

**The functions of the FSOS Council were to include the following:**

- Recognizing non-statutory financial ombud schemes
- Monitoring compliance with the FSOS Act by recognized ombud schemes
- Promoting cooperation and coordination in telling clients about the availability of ombud schemes

- Developing and promoting good practice (in consultation with recognized ombud schemes)
- Ensuring it did not affect the impartiality and independence of any financial ombud
- Submitting an annual report to the minister and FSB

### Recognition of Non-Statutory Ombud Schemes

**In order to qualify for recognition by the FSOS Council, a financial ombud scheme had to satisfy specified requirements, including the following:**

- Participation by a majority of financial institutions in a particular category
- A body that is not controlled by participants and
  - Appoints the ombud and settles the ombud's remuneration;
  - Monitors the performance and independence of the ombud;
  - Monitors compliance with the constitution and provisions of the scheme; and
  - Reports any noncompliance to the FSOS Council
- Minimum requirements for the ombud's qualifications, competence, knowledge, and experience
- Sufficient human, financial, and operational resources, funded by participants, to enable the ombud to function efficiently and timeously
- Procedures that enable the ombud to do the following:
  - Resolve complaints by mediation, conciliation, recommendation, or determination
  - Act independently in resolving complaints or making determinations

- Follow informal, fair, and cost-effective procedures
- Apply the principles of equity, where appropriate, in resolving complaints
- Report to the registrar and a body representative of the relevant financial institutions

- Provision for the effective enforcement of ombud determinations
- Provision to ensure that consumer questions, concerns, and complaints are treated equitably, consistently, and in a timely, efficient, and courteous manner
- Provision to cooperate with the FSOS Council in promoting the education of clients and coordination of activities

**After a financial ombud scheme had been recognized by the FSOS Council, the council was to issue a certificate.** After this, a recognized scheme

- Could not change its constitution, provisions, or terms of reference without the FSOS Council's consent;
- Must send the FSOS Council a report on its affairs and functions, in a form specified by the council, within six months of the end of each financial year;
- Must provide the FSOS Council, on request and within a reasonable time, information about the scheme as might be necessary to ensure its compliance with the FSOS Act; and
- Could have its recognition suspended or withdrawn by the FSOS Council if the financial ombud scheme had ceased to function or to comply with the FSOS Act.

## Overlaps and Gaps in Jurisdiction

The FSOS Act contained provisions to clarify overlaps in jurisdiction and to fill any gaps.

- Statutory ombud schemes (the PFA and FAIS Ombud) had the jurisdiction set out in their enabling acts, and recognized ombud schemes had the jurisdiction set out in their terms of reference.
- If there is an overlap between the jurisdiction of a statutory ombud scheme and a recognized ombud scheme, the jurisdiction of the statutory scheme prevails unless it declines to deal with the case.
- If a statutory or recognized ombud scheme receives a complaint that is outside its jurisdiction, it must refer it promptly to the statutory or recognized ombud scheme that has jurisdiction.
- If there is uncertainty about which financial ombud scheme has jurisdiction, the relevant schemes should consult to resolve this.
- If a complaint falls outside the jurisdiction of all the other financial ombud schemes, the FAIS Ombud has jurisdiction over it.

## 6.3 FINANCIAL SECTOR REGULATION ACT

### Definitions

The act includes a number of relevant definitions.

- **Ombud scheme** means
  - An industry ombud scheme; or
  - A statutory ombud scheme.
- **Industry ombud scheme** means an arrangement with the following characteristics:
  - The arrangement is established by one or more financial institutions.
  - The purpose of the arrangement is to facilitate mediation and resolution of complaints from financial customers about financial institutions that are members of the ombud scheme.

- Mediation or resolution of the complaints in terms of the ombud scheme is undertaken by an ombud appointed in terms of the ombud scheme's governing rules.

- **Ombud** means each of the following:
  - The PFA
  - The FAIS Ombud
  - A person declared by a specific financial-sector law to be a statutory ombud
  - A person who has the function, in terms of the rules of a recognized industry ombud scheme, of mediating or resolving complaints to which the scheme applies
- **Financial customer** means a person to, or for, whom a financial product, a financial instrument, a financial service, or a service provided by a market infrastructure is offered or provided, in whatever capacity, and includes
  - A successor in title of the person; and
  - The beneficiary of the product, instrument, or service.
- **Financial institution** means any of the following, other than a representative:
  - A financial product provider
  - An FSP
  - A market infrastructure
  - A holding company of a financial conglomerate
  - A person licensed or required to be licensed in terms of a financial-sector law

## Establishment of Ombud Council

Chapter 14 establishes an Ombud Council to assist in ensuring that financial customers with complaints against financial institutions have access to affordable, effective, independent, and fair ADR processes by means of the following activities:

- Recognizing industry ombud schemes
- Promoting cooperation and coordination among ombuds
- Striving to protect the independence and impartiality of ombuds
- Promoting public awareness of ombuds and ombud schemes and their services
- Taking steps to facilitate access by financial customers to appropriate ombuds
- Publicizing ombud schemes, including the kinds of complaints each deal with
- Resolving jurisdictional overlaps among different ombud schemes
- Monitoring the performance of ombud schemes
- Supporting financial inclusion

### The board comprises the following:

- The Chief Ombud
- The commissioner of the FSCA
- At least four but not more than six other members

The commissioner of the FSCA, however, does not have a vote.

**The Minister of Finance appoints the members of the board** and appoints a chairperson and a deputy chairperson (who may be neither the commissioner nor the Chief Ombud).<sup>150</sup> The minister may not appoint as a member of the board the following figures:

- An ombud
- A member of the governing body or staff of an ombud scheme
- A member of the staff of the Ombud Council
- A disqualified person<sup>151</sup>
- Anyone not ordinarily resident in South Africa
- Anyone engaged in providing financial services

**Board members must be appointed for terms of no more than five years.** They can be reappointed for one further term, and the minister must tell them, at least three months before the end of their first term of office, whether they are to be reappointed.

**Board members hold office on terms and conditions (including relating to remuneration) that are determined by the minister.** The minister may remove a board member if

- The member becomes a disqualified person; or
- An independent inquiry, established by the minister and whose findings are reported to the National Assembly, finds that the member
  - Is unable to perform their duties for health or other reasons;
  - Has failed materially to discharge any of their responsibilities of office; or
  - Has acted in a way that is inconsistent with continuing to hold office.

**The Chief Ombud is appointed by the minister.** The Chief Ombud

- Must agree performance measures in writing with the minister; and
- Holds office on the terms and conditions determined by the board.

## Operation of Ombud Council

**The Ombud Council must perform its functions without fear, favor, or prejudice.** Board members must act honestly, declare any conflict of interest, and perform their functions

- In good faith;
- For a proper purpose; and
- With care and diligence.

**Anyone who is (or was) a board member or a member of staff must not misuse their position or information obtained to**

- Improperly benefit themselves or anyone else;
- Impede the Ombud Council's ability to perform its functions; or
- Cause improper detriment to anyone.

**The Chief Ombud is responsible for the day-to-day management and administration of the Ombud Council.** The Chief Ombud must convene regular meetings of the ombuds to discuss the effective operation of the ombud system. Meetings must take place at least four times a year, and also if three ombuds request a meeting.

**The Ombud Council may engage employees and contractors, acquire and dispose of property, and enter into contracts.** It may set levies and fees, but any increase exceeding inflation must be approved by the minister.

## Recognition of Non-Statutory Ombud Schemes

**The Ombud Council may recognize an industry ombud scheme** that has applied for recognition in a form specified by the Ombud Council and includes a copy of the scheme rules and a list of scheme members. The Ombud Council may request additional information and/or verify any information provided and grant recognition subject to conditions. The Ombud Council must be satisfied of the following:

- The ombud scheme has (or will have) a significant number of members.
- Its rules specify its scope.
- Its rules require members to tell customers about the scheme and how to contact it.
- Its rules make adequate and appropriate provision for making complaints.
- Its rules are legally binding on members and enforceable by the industry ombud scheme.
- Its rules require members to comply with its determinations.
- Its rules make adequate provision for monitoring and oversight of its operations.
- Its rules make adequate provision about the employment terms and conditions of the ombud.
- Its rules require the ombud to apply, where appropriate, principles of equity.
- Its rules comply with applicable Ombud Council rules.
- It has sufficient resources and capacity.
- Its recognition will not be contrary to the interests of financial customers, the financial sector, or the public interest.

**Before the Ombud Council can recognize an industry ombud scheme,** the Ombud Council must publish

- A draft of the scheme rules or amendments to them;
- An explanation of the need for them and their intended operation;
- A statement of their expected impact; and
- A notice inviting submissions about them.

The Ombud Council must also submit the draft rules to the FSCA.

**The rules of a recognized industry ombud scheme must be approved by, and may not be amended without the approval of, the Ombud Council.**

The Ombud Council must not approve rules or an amendment to them unless it is satisfied that this assists in achieving the object of the FSR Act—which is to achieve a stable financial system that works in the interests of financial customers and that supports balanced and sustainable economic growth in the republic, by establishing, in conjunction with the specific financial-sector laws, a regulatory and supervisory framework that promotes

- Financial stability;
- The safety and soundness of financial institutions;
- The fair treatment and protection of financial customers;
- The efficiency and integrity of the financial system;
- The prevention of financial crime;
- Financial inclusion;
- Transformation of the financial sector; and
- Confidence in the financial system.

**The Ombud Council may suspend or revoke the recognition of a scheme** if any of the following conditions are true:

- The scheme applies for it or has ceased to function.
- A condition of recognition has been contravened.
- The scheme, its ombud, or a significant number of its members have contravened
  - The rules of the scheme;
  - Financial-sector law relating to ombuds; or
  - Ombud Council rules.
- Information provided was false or misleading, including by omission.

- The scheme is not complying with a requirement of the FSR Act.
- It is necessary to prevent serious breach of a financial-sector law or material prejudice to customers.
- A fee, levy, or administrative is unpaid.

## Rules and Powers

**To ensure that financial customers have access to affordable and effective, independent and fair ADR processes, the Ombud Council may make rules for ombud schemes** on the following:

- Their rules
  - Their governance, including the composition, membership, operation, roles, and responsibilities of their governing bodies and structures
  - The qualifications and experience of ombuds
  - Fit-and-proper person requirements for ombuds and members of governing bodies
  - The definition and type of complaints to be dealt with
  - Dispute-resolution processes
  - Matters on which the Ombud Council may issue a regulatory instrument about ombuds or ombud schemes under a specific financial-sector law
  - Matters that may be regulated by Ombud Council rules under any part of the FSR Act
  - Any other matter appropriate and necessary for achieving the Ombud Council's statutory objectives
- Different Ombud Council rules may be made in respect of different categories of ombuds and ombud schemes and different circumstances.** Ombud Council rules must
- Not be inconsistent with relevant financial-sector laws;



- Not interfere with the independence of an ombud;
- Not interfere with the investigation or determination of a specific complaint;
- Seek to provide for a consistent approach and consistent requirements for all ombud schemes;
- Promote the efficiency and cost effectiveness of ombud schemes;
- Promote coordination and cooperation between ombud schemes; and
- Take account of differences in the nature/complexity of cases handled by different ombud schemes.

**The Ombud Council may issue a written directive to an ombud or ombud scheme** requiring them to take specified action if they have contravened (or are likely to contravene) a financial-sector law relating to ombud schemes. The Ombud Council may accept a written undertaking about an ombud scheme's future conduct in relation to a financial-sector law relating to ombud schemes.

**The Ombud Council may make a debarment order in respect of an individual** (that prohibits them from performing a specified role in relation to an ombud scheme for a specified period) if they have

- Contravened a financial-sector law relating to ombud schemes or an Ombud Council rule; or
- Attempted, or conspired with, aided, abetted, induced, incited, or procured another person to contravene a financial-sector law relating to ombud schemes.

**The Ombud Council may impose an administrative penalty** on an ombud scheme, a member of the governing body of an ombud scheme, or an ombud who has contravened a financial-sector law or an enforceable undertaking accepted by the Ombud Council.

**The Ombud Council may conduct supervisory on-site inspections and investigations** for the following purposes:

- To check compliance by an ombud or ombud scheme with a financial-sector law in respect of ombuds, a directive issued by the Ombud Council, or an enforceable undertaking accepted by the Ombud Council
- Determine the extent of the risk posed by the ombud or ombud scheme of contraventions of a financial-sector law in respect of ombuds
- Assist the Ombud Council in supervising the ombud or ombud scheme

### Accessibility and Gaps

**The Ombud Council must establish and operate one or more centers (which may incorporate a call center) to assist financial customers** to formulate complaints and to identify for them the ombud appropriate to deal with their complaints.

**If no recognized industry ombud scheme or statutory ombud scheme<sup>152</sup> covers complaints about a particular financial product/service**, the Ombud Council may—after consulting relevant ombud schemes—designate one or more ombud schemes to deal with them. If the Ombud Council designates an ombud scheme, then

- Any relevant exclusion in the scheme rules does not apply;
- It must deal with those complaints in the same way as it deals with other complaints; and
- Any obligation on a financial institution to comply with determinations applies.

### Requirements for Financial Institutions

**A financial institution must be a member of any recognized industry ombud scheme that covers the financial product/services that it provides.** It must inform its customers about applicable ombud schemes and how to contact them, in accordance with rules issued by the Ombud Council. A financial institution may not

- Describe any internal procedure as an ombud scheme, or any staff member as an ombud; or
- Require or invite a customer to make a complaint to an ombud scheme unless it is a recognized industry ombud scheme or a statutory ombud scheme.

**A financial institution must comply with the rules of a recognized industry ombud scheme of which it is a member.** A financial customer may enforce those rules as if they were part of their contract.

**Receipt of a complaint by a financial-sector regulator, the Ombud Council, or an ombud suspends any applicable time-barring terms** (under any agreement, law, or the running of prescription under the Prescription Act of 1969) until the complaint has either been withdrawn or finally determined.

### Requirements for Financial Ombud Schemes

**An industry ombud scheme may not deal with a complaint that is within the jurisdiction of a statutory ombud scheme.** It must refer the complaint to the appropriate statutory ombud scheme unless the statutory ombud scheme has declined to deal with the complaint.

**An ombud scheme may not deal with a complaint that has been dealt with by another ombud scheme unless**

- The complaint is referred to it by the other ombud scheme; or
- The Ombud Council has designated both schemes to deal with complaints of the relevant kind, and each scheme is dealing with the elements of the complaint in accordance with the applicable determination.

**The ombud schemes, and the ombuds, must cooperate/collaborate with each other regarding complaints,** including by developing processes/procedures to hear and determine complaints jointly, on their own initiative, or as may be required by Ombud Council rules.

### Information

**An ombud scheme must provide information to the Ombud Council.**

- Within six months after the end of each financial year, an ombud scheme must submit to the Ombud Council (with the form and content required by the Ombud Council) a report on its operations during the financial year, including in relation to the following:
  - Compliance with the financial-sector laws relating to ombud schemes
  - The complaints it is dealing with, and how they are being dealt with
  - The conduct of financial institutions that is giving rise to complaints
- At any time, an ombud scheme must comply with any information request from the Ombud Council about the following:
  - The operation of the ombud scheme
  - Trends in, and implications of, the conduct of financial institutions
  - Any other relevant information

**The Ombud Council may require an ombud scheme or an ombud to provide specified information or a specified document** in their possession or under their control if it is relevant to the Ombud Council's assessment of compliance with the following:

- A financial-sector law in so far as it relates to ombuds
- An Ombud Council rule
- An Ombud Council directive
- An undertaking accepted by the Ombud Council

The Ombud Council may also require the information or document to be verified, including by an auditor approved by the Ombud Council.

**An ombud must report to the FSCA details, including the identity of the financial institution,** if (in dealing with a complaint) the ombud becomes aware that there has or may have been

- Material breach of a financial-sector law by a financial institution; or
- An activity or action by a financial institution that has an effect on other customers.

**Each of the following must provide the FSCA, on request, with information and reports** about the operation of ombud schemes and trends in and implications of the conduct of financial institutions:

- The Ombud Council
- A statutory ombud scheme
- A recognized industry ombud scheme

**On request, the Ombud Council must provide the Minister of Finance and NT with information and documents** that may be prescribed by regulation but excluding information about persons identifiable from the information.

# DETAILED FINDINGS AND RECOMMENDATIONS

Assessment

# 7

## ASSESSMENT PROCESS

This chapter summarizes the fact-finding process used to gather information about the financial ombud system and the views of relevant stakeholders.

### 7.1 OVERVIEW

**In assessing the financial ombud system in South Africa, we took the following into account:**

- The responses to the NT's 2017 Consultation Document
- Desk research into the existing financial ombud system
- The information set out in chapters 1 to 6 of this report
- Fact-finding with the NT and FSCA
- Fact-finding with the existing financial ombud schemes
- Fact-finding with relevant stakeholders

Unfortunately, the COVID-19 pandemic prevented the project team from visiting the existing financial ombud schemes and speaking to stakeholders face to face. Despite this challenge, the team was able to conduct fact-finding interviews by video, and the level of participation and engagement was high.

We would like to thank the ombud schemes, the NT, the FSCA, industry participants, and all stakeholders for their willingness to share information and views with us during what has been a challenging time.

**Chapters 8 to 16 set out our assessment of the information we gathered, and chapter 17 contains our recommendations.** Chapters 8 to 14 consider the existing financial ombud system. Chapter 15 considers the new Ombud Council. We have assessed the information and documents provided to us against the following key attributes, described in chapter 2:

- Effectiveness  
*Consistent redress in all appropriate sectors of financial services<sup>153</sup>*
- Independence  
*Visibly objective, impartial, and unbiased*
- Accessibility  
*Well known, easy to use, and free for consumers*
- Fairness  
*Processes and decisions that are visibly fair and equitable*
- Efficiency  
*Good quality of service and value for money*
- Openness  
*Clear and open to scrutiny about its work and the lessons that can be drawn from it*

### 7.2 FACT-FINDING WITH OMBUD SCHEMES

#### Process

**The WBG team prepared a lengthy questionnaire, a copy of which is set out in appendix B to this report.** The questionnaire comprised nine sections of detailed questions, covering the following:

- Basic information
- Effectiveness
- Independence
- Accessibility
- Fairness
- Efficiency

- Openness
- Looking ahead
- Data

**The NT sent out the questionnaires, but responses were to be sent directly to the WBG in order to encourage frankness.** The questionnaire went to all seven of the existing financial ombud schemes:

- PFA
- FAIS Ombud
- Banking Ombud
- Credit Ombud
- LTI Ombud
- STI Ombud
- JSE Ombud

**Taking into account the information provided in response to the questionnaire, we engaged with the ombud schemes in detail about the existing system and options for the future.** To clarify some points, we sent them a series of follow-up questions, which they kindly answered. We held video discussions with representatives from all the ombud schemes. As our conclusions began to emerge, we held follow-up video discussions with all of the ombud schemes. And we subsequently sent them a draft of some sections of this report, for fact-checking.

### Overview of Feedback

**The information and data that the ombud schemes provided is summarized in relation to the various topics in chapters 8 to 14.** The ombud schemes offered the following views about the future:

- Potential longer-term changes as a result of the COVID-19 pandemic:

- Both the Banking Ombud and the LTI Ombud said that the new ways of remote working that they were forced to adopt had shown some significant advantages, and they were likely to retain some aspects of these after the pandemic was over.
- The FAIS Ombud feared that the pandemic would have an economic effect on providers of financial services, and that this would affect their capacity to afford the amount of levy that would be required to fund the ombud scheme.
- Role of the Ombud Council (views expressed before the date of its introduction was announced):
  - The Banking Ombud looked forward to the establishment of the Ombud Council, so that it could approve rule changes. It hoped the Ombud Council would promote awareness of ombud schemes and the services they provide and thought that common points of entry could be beneficial. Consumer education was a big issue, and one where the industry and many agencies would need to cooperate. It was concerned by the apparent lack of sanctions for financial providers that failed to comply with the new requirement to belong to an ombud scheme, though membership was not an issue in the banking sector.
  - The Credit Ombud also looked forward to the establishment of the Ombud Council, so that it could approve rule changes, and it welcomed the fact that it would become compulsory for all authorized credit providers and other financial providers to belong to an ombud scheme. Collective action could improve public awareness of the ombud system.
  - The LTI Ombud said it would end a long period of uncertainty for the ombud system. There should be more standardization and cooperation among the ombud schemes, but it was concerned that there were some sector-specific issues (such as time limits and compensation limits) that should not be standardized. A lot would depend on the quality of the members of the Ombud Council.

- The STI Ombud also looked forward to the establishment of the Ombud Council, so that it could approve rule changes and address systemic issues.
- The FAIS Ombud thought the Ombud Council would have a clear mandate and capability to harmonize and improve the ombud system, and that these would improve access to justice through an affordable, independent, and fair ADR process.
- The PFA looked forward to monitoring of standards, equitable distribution of resources, better-qualified staff, improved access, and improved coordination of activities.
- Future shape of the ombud system:
  - The general views of the Banking, Credit, LTI, and STI Ombuds on options for reform were similar to those provided in response to the NT’s 2017 Consultation Document—already summarized in chapter 5, section 5.3(b), of this report—but they had now started discussions about working toward the possible amalgamation of their four schemes.
  - The JSE Ombud favored an entirely industry-based ombud system with strong oversight by the Ombud Council (model 3).
  - The FAIS Ombud favored starting with the hybrid model (model 1) with enhanced collaboration among the ombud schemes, with a gradual move toward a single statutory ombud scheme (model 2) by consolidating the existing statutory and industry ombud schemes—to maintain stability, promote greater independence, extend coverage, increase cost effectiveness by streamlining current processes, and preventing silo working and forum shopping.
  - The general views of the PFA on options for reform were similar to those provided in response to the NT’s 2017 Consultation Document—already summarized in chapter 5, section 5.3(b), of this report.

## 7.3 FACT-FINDING WITH STAKEHOLDERS

### Process

**To encourage responses from financial regulators, the financial industry, community organizations, and other stakeholders, we prepared an Issues Paper.** The Issues Paper sought the views of stakeholders on the performance of the current ombud system against the key assessment criteria and their suggestions for improvements to the current system. We also asked for views on the advantages and disadvantages of the three reform models set out in the NT’s 2017 Consultation Document. The NT sent out the Issues Paper with a request that the responses be sent directly to the WBG. A copy of the Issues Paper is in appendix C of this report.

**We received 34 written responses to the Issues Paper, covering 44<sup>154</sup> stakeholders, of which 38 were from the financial industry.** A full list of respondents is provided in appendix D of this report. We followed up on the responses by holding video conferences with a selection of stakeholders to obtain additional details and clarifications. To encourage frank feedback, we agreed not to attribute comments to individual stakeholders, so the following section provides only a summary of what we were told.

We also reviewed views on complaint handling collected from the cooperative bank sector as part of a broader survey being undertaken as a separate project by the WBG.

### Overview of Feedback

**Stakeholders highlighted that the current system has many strengths. However, most noted that the current arrangements of multiple ombuds results in a variety of overlaps, gaps in coverage, inconsistencies, and inefficiencies for both providers and consumers.** While there was broad agreement on the need to address these issues, there was no consensus on the best way to do so.

## Key Themes

**All industry respondents from the banking, insurance, and credit industry were broadly supportive of the performance of the current industry ombuds whom they deal with regularly.** They highlighted the good governance, independence, generally efficient complaint-handling process, approach to decision-making, and level of specialist expertise as key positive features of the current industry ombud schemes. They also commented favorably on the ombuds' formal and informal engagement and willingness to share insights with the industry. These were all features they felt important to preserve and build on in any reforms to the current ombud system.

**The intermediary industry respondent supported the current distinction between complaints about products and advice.** They considered that it was important to hold the provision of advice, whether provided independently or as part of a tied offering, to the same standards of professionalism.

**Non-bank credit providers highlighted the importance of understanding the specific features of the business models in this sector.** This includes that the chief competition for microfinance providers often comes from the unregulated and informal sectors. This means that the costs and impact of credit regulation, and potential for customers to turn to unregulated providers who are not part of any ombud system, are key issues, given the low margins and cost sensitivity of this consumer segment.

**A common theme in many of the comments was the overlaps in jurisdiction among the different ombud schemes.**

- The most common overlap referred to was between the industry ombuds and the FAIS Ombud, where complaints can involve a mix of product, service administration, and advice elements—as explained more fully in chapter 8 of this report. Respondents also referred to a range of overlaps among the other ombud schemes and regulators (including the FSCA, NCR, and JSE).

- Respondents who were frequent users of the ombud system felt they could navigate the system to direct their complaint to the right ombud. But the overlaps also created inefficiencies for financial providers, a duplication of case fees, the potential for inconsistent decision-making approaches by the different ombuds to similar matters, and increased forum shopping by consumers.
- Most respondents agreed that the current system is difficult for consumers to navigate. Many respondents felt the arrangements the ombuds had in place to refer complaints to other ombuds, while helpful, did not fully address consumer confusion. They also noted the potential for overlaps between the regulatory roles of the FSCA, NCR, and JSE.

**Many respondents also highlighted the inconsistency in rules and processes among the different ombuds as a key issue, creating confusion and complexity for consumers and firms.** These respondents highlighted a lack of consistency across many features of the current ombud schemes. These included differences in time frames, use of a referral-back process, approaches to decision-making (including how they apply equity principles), appeal processes, engagement with stakeholders, and public performance reporting. Some respondents felt the distinct features of the financial products and services handled by the ombuds justified some of these differences.

**Several comments from smaller-market participants noted that it was important to take into account the cumulative impact of all the regulatory and ombud fees on their business costs.** FSPs often have to pay multiple industry ombud membership fees and the FSCA levies, including covering the costs of the FAIS ombud and PFA.

**Several respondents considered that the current jurisdictional boundaries did not take into account financial innovation.** They considered that the blurring of traditional institutional and product lines resulted in packaged financial products and services (for example, loan plus credit insurance)



that cut across the jurisdictions of several of the ombuds. There were also comments that, because the current ombud system is based largely on types of institutions and products, it would not align with the activity-based approach to regulation under the COFI Bill reforms.

**Views on awareness and accessibility of the ombuds differed. Some respondents considered that the ombud schemes were accessible, noting their continuing efforts to improve their outreach activities.** They also noted that financial providers informed customers about the ombud in their policy and other documents. Others felt the lack of awareness and accessibility was a key weakness of the current ombud system with no single ombud brand.

**A community respondent commented that all consumers across all socioeconomic groups should be able to access the ombud system from all provinces.** They considered this difficult, given

the ombuds' use of electronic communications and that there is not a physical office in each province to cater to walk-in complainants.

Key themes identified in the stakeholder-consultation process are summarized in table 7A.

### Views on Reform Options

**Most stakeholders acknowledge that the current system is imperfect and needs reform, but there was no agreement on the best approach to do so.** There were divergent views expressed on the advantages and disadvantages of the three options set out in the NT's 2017 Consultation Document:

- Model 1: A hybrid model building on current FSR Act provisions
- Model 2: A centralized model establishing a single statutory ombud scheme
- Model 3: Industry ombuds with strong oversight by the Ombud Council

**Table 7A. Summary of Stakeholder Comments on Key Themes**

<p><b>Scope of jurisdiction and scheme members</b></p>	<p>Differences in quantum of remedies (for example, the FAIS Ombud limit of R 800,000 compared to the LTI Ombud's absence of a limit), coupled with overlaps in jurisdiction, lead to confusion, unfairness, and forum shopping.</p> <p>There are gaps in coverage of some existing products and a lack of flexibility to deal with novel products created by financial innovation.</p> <p>Overlaps in jurisdiction create confusion for consumers, delays, and increases in financial provider costs.</p> <p>Basing jurisdiction on types of institutions and products will not align with the new activity-based approach to regulation under the COFI Bill.</p> <p>The terms of reference of the industry ombud scheme and legislation require them to refer some complaints to the statutory ombuds, even where the initial scheme would otherwise have had jurisdiction.</p> <p>The voluntary membership of the industry ombuds results in incomplete coverage of financial providers and limits the ability of all consumers with complaints to access an ombud scheme.</p>
<p><b>Specialist industry and legal expertise</b></p>	<p>Some ombuds do not have the specialist product and/or legal expertise for the more complex products within their jurisdiction.</p> <p>Given the differences in products and services across the financial system, keeping specialist industry and legal expertise is essential in any reforms.</p>
<p><b>Independence</b></p>	<p>Industry participants felt that current governance and process for appointing ombuds of the industry ombuds ensured that these ombuds were independent.</p> <p>A lack of periodic independent reviews of all schemes with feedback from members was often guarded because of the need to maintain good relationships with the ombuds.</p>

<p><b>Funding models</b></p>	<p>Difference in funding models across schemes led to confusion and to some financial providers paying twice.</p> <p>The non-statutory schemes are voluntary, resulting in the cost burden not being fairly shared across industry.</p> <p>Volume-based fees create incentives for financial providers to resolve complaints.</p> <p>The fee structures of the ombuds cause undue costs for smaller firms with fewer disputes.</p> <p>It is important to consider the negative financial impact of all regulatory and ombud fees along with relevant ombud case fees applicable to financial providers.</p>
<p><b>Fairness and appeal mechanisms</b></p>	<p>How the ombuds apply their equity jurisdiction (fairness) differs.</p> <p>Views by some financial providers that the ombuds take the consumer's side, rather than a balanced and impartial approach, or that the ombud sometimes provides legal advice to a complainant.</p> <p>A view that there is pressure on financial providers to settle complaints, to avoid an adverse ombud decision, even when the financial provider does not consider that the complaint has merit.</p> <p>Different appeal mechanisms across the different schemes lead to inconsistency in decision-making and approach to the equity jurisdiction of the ombuds.</p> <p>A concern about the Financial Services Tribunal (which takes appeals from the FAIS Ombud and PFA) being able to set aside a decision only on appeal, rather than being able to reconsider and decide the matter.</p>
<p><b>Different rules, processes, and approach across schemes</b></p>	<p>Key inconsistencies noted included the following:</p> <ul style="list-style-type: none"> <li>• Time frames</li> <li>• Levels of specialist industry and legal expertise</li> <li>• Transfer processes to allow the provider to consider a complaint</li> <li>• Use of mediation</li> <li>• Predetermination process</li> <li>• Degree of legalistic approach versus preference for settlement</li> <li>• Application of equity principles</li> <li>• Accessibility of decisions</li> <li>• No central database of all decisions</li> <li>• Different levels of public reporting</li> <li>• Difference in industry engagement models and styles</li> </ul> <p>These different approaches lead to confusion for consumers, delays, complexity, and increased costs for industry.</p> <p>The different rules can lead consumers to forum shop where jurisdictions overlap or the boundaries are unclear—or, in relation to credit, where a complaint could go to the Credit Ombud or NCR.</p> <p>The current ombud system is not an integrated and semi-automated complaint system that operates consistently across the entire complaint cycle.</p>
<p><b>Accessibility</b></p>	<p>A lack of a single ombud brand reduces general consumer awareness.</p> <p>Confusion over the jurisdiction of the ombuds by consumers acts as a barrier to access.</p> <p>Reliance by the ombuds on electronic means for dealing with complaints limits access for vulnerable consumers.</p>

<b>Reform issues</b>	<p>The ombud system should be independent of both industry and government in any future reformed model.</p> <p>Concerns about disruption, loss of expertise, and reduced capacity in the current ombuds in any transition to a new system.</p> <p>Concerns that costs for smaller and micro financial providers will cause consumers to turn to the unregulated and informal markets.</p> <p>The impact of COVID-19 on the economy needs to be considered in the approach and sequencing of reforms to the ombud system.</p> <p>The complaint-resolution process must take into account and tailor its processes to the profile of consumers.</p> <p>Consumer awareness and education are key improvements that need to be made to the current ombud system.</p> <p>Need to access ombuds in all the national languages.</p> <p>Greater collaboration by ombuds, regulators, and other stakeholders is essential in improving consumer awareness and access.</p>
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**Many of the views on these options in the responses to the Issues Paper were consistent with the range of views expressed by stakeholders on the NT’s 2017 Consultation Document.** Key themes in the comments were on how each of the options addressed the following themes:

- Specialist industry and legal expertise
- Scope of jurisdiction
- The benefits of a single-entry point
- Consistency across the different ombuds
- Operational efficiency
- The reputation and independence of the ombuds
- The costs and potential disruption of change

Table 7B summarizes comments on these key themes.

**Respondents supportive of Models 1 and 3 considered that the current system is generally operating effectively and has the support of key stakeholders.**

- They consider keeping specialist expertise and minimizing disruption to be key risks in any reform process.

- An underlying theme of many of these comments was a concern that any reforms, however well intended, might dilute the attributes they consider important in the current ombud system or might cause unintended consequences.
- These concerns included that any new system could lead to less independence, more bureaucracy, less professionalism and expertise, and a loss of stakeholder support.
- Views were also expressed that
  - Even a well-designed system depends on the right people being appointed to the governance bodies and as its leadership; and
  - There is a significant risk of losing current expertise and operating capabilities during the transition to a reformed system.
- These respondents saw the Ombud Council structure as the way to address these issues, including avoiding perceptions of too much government or industry control over the ombuds.
- They considered that the Ombud Council could address issues around consistency, accessibility, and inefficiencies in a multi-ombud system by mandating common governance and complaint-handling standards.

**Table 7B. Summary of Key Themes in Comments on 2017 NT Reform Options**

Theme	Model 1 Hybrid model building on current FSR Act provisions	Model 2 Centralized model establishing a single statutory ombud scheme	Model 3 Industry ombuds with strong oversight by the Ombud Council
<b>Specialist Expertise</b>			
<b>Advantages</b> as seen by stakeholders	Keeps existing knowledge and cooperative relationships among ombuds.  Having the ombuds, rather than the Ombud Council, manage the single-entry point would enhance this model.	Combined expertise under one roof.	Will not lose the skill and expertise of the existing staff of the ombuds, so the users will continue to enjoy the same high level of service.
<b>Disadvantages</b> as seen by stakeholders		Separate ombud schemes have specialist expertise and are familiar with the industry they serve. This could be lost with a centralized model.	
<b>Single Entry/Accessibility</b>			
<b>Advantages</b> as seen by stakeholders	A single entry point would enable quicker resolution, easier access, and less confusion for customers and reduce times when matters are passed between offices because of disputes over jurisdiction.	Consumers and financial providers would benefit from a single point of reference, it would eliminate confusion about which office to approach, and it could handle jurisdictional matters in house.	Facilitates a single point of entry for consumers and allows the new structure to draw on the strengths and mitigate some apparent criticisms in the existing ombud structures.
<b>Disadvantages</b> as seen by stakeholders	If not well managed, it could add inefficiencies to the complaint-resolution process and act as a bottleneck.  If not staffed with individuals with the knowledge and skills, it could lead to inappropriate allocation of cases.		Unless it establishes a centralized point of entry, the retention of different ombud schemes would still leave consumers in the same position of having to find the body to deal with their complaints.
<b>Jurisdictional Coverage</b>			
<b>Advantages</b> as seen by stakeholders	This model makes use of both industry and statutory ombud schemes but encourages greater consolidation among the schemes with oversight by the Ombud Council.  It addresses the need for jurisdiction over all financial products.	No jurisdictional disputes leading to faster resolution.  Covers the full range of financial services, regardless of the quantum.  Consistent processes and all data under a single roof allow the ombud to share concerns better, address ongoing issues, and identify trends.	Compulsory membership will ensure equal cost sharing between members and more accurate reporting.  Not constrained by current limits of jurisdiction imposed by legislation.

<b>Disadvantages</b> as seen by stakeholders	Increase in potential jurisdictional confusion		May leave a gap in coverage by an ombud scheme where new products/services enter the market.
<b>Operational Efficiency</b>			
<b>Advantages</b> as seen by stakeholders	This model keeps the efficiencies, experience, and specialized knowledge of the various individual industries and statutory schemes.	Enables a centralized view that can shorten the time span of the complaint.  Cost effective in terms of management structure, consolidated reporting, standard level of complaint-assessment process, quicker resolution, centralized accountability, and knowledge sharing.  A central ombud can share resources, expertise, and facilities to create increased efficiencies.	Current structure is in place and working efficiently.  Draws on the many strengths of current ombuds.
<b>Disadvantages</b> as seen by stakeholders	Not cost effective because of duplication of management structures of schemes.  Could create process inefficiencies and delays.  Funding model cumbersome and not cost effective for financial providers.  Cumbersome governance structure, bureaucracy, and red tape.  Does not have the same level of flexibility regarding reallocating staff as a centralized model.  Can lead to bottlenecks with lack of capacity and specific expertise to deal efficiently with consumers queries.	Benefits are not always realizable in practice; for example, it may not achieve economies of scale and will be expensive to establish.  Increase in red tape and bureaucracy.  Centralized ombud concentrates governance and operational risk in one place.	Expensive model.  Duplication of cases of an ombud scheme. For example, if membership is compulsory for an ombud scheme, will each ombud scheme address both advice-related complaints and product- or service-type complaints?
<b>Consistency</b>			
<b>Advantages</b> as seen by stakeholders	Role of Ombud Council will assist consistency of process and standards across the different ombuds.	Financial providers deal with one organization with one set of rules.	Statutory oversight by Ombud Council would be an advantage, as there would be minimum standards across all the ombud schemes

<p><b>Disadvantages</b> as seen by stakeholders</p>	<p>Increase in jurisdictional issues.</p> <p>Inconsistency in complaint handling and forum shopping.</p> <p>Difficult (if not impossible) to achieve consistency.</p>	<p>Different industries require different rules (for example, time frames), given differences in their operations and types of complaints.</p>	<p>A challenge to ensure high levels of voluntary coordination and collaboration where consumers' claims are multifaceted.</p> <p>The standards set by the Ombud Council should provide guidance and procedures for addressing these types of claims.</p>
<p><b>Independence and Reputation</b></p>			
<p><b>Advantages</b> as seen by stakeholders</p>	<p>Ombud Council plays a pivotal role in ensuring appropriate governance over the ombuds as an independent third-party body.</p>	<p>Avoids perceptions that, as the industry funds the ombuds, they may not be impartial.</p> <p>A single voice has a greater ability to recommend and drive change.</p>	<p>Ombud Council structure avoids criticisms of too much government control while having common governance and other standards.</p> <p>The legitimacy of the ombud depends on the support it receives from its users. It has to earn their respect.</p> <p>This model encourages the scheme to adhere to its stated mission, which impels the appointment of competent adjudicators who underpin the stature and esteem of the ombud.</p>
<p><b>Disadvantages</b> as seen by stakeholders</p>	<p>Public perceptions are that ombud schemes established and funded by the industry are not independent.</p>	<p>In Model 1 and Model 3, the Ombud Council plays a pivotal role in ensuring appropriate governance over the ombuds as an independent third-party body. This is not the case for Model 2.</p> <p>Risks of perception that not independent of government.</p>	<p>Public perceptions that ombud schemes established and funded by the industry are not independent.</p>
<p><b>Disruption/Ease of Transition</b></p>			
<p><b>Advantages</b> as seen by stakeholders</p>	<p>Easier to make transition and least disruptive.</p> <p>The current environment in the financial-services sector requires as little disruption as possible, so this model can assure that.</p>		<p>Least change required to existing landscape and therefore the easiest to introduce.</p>

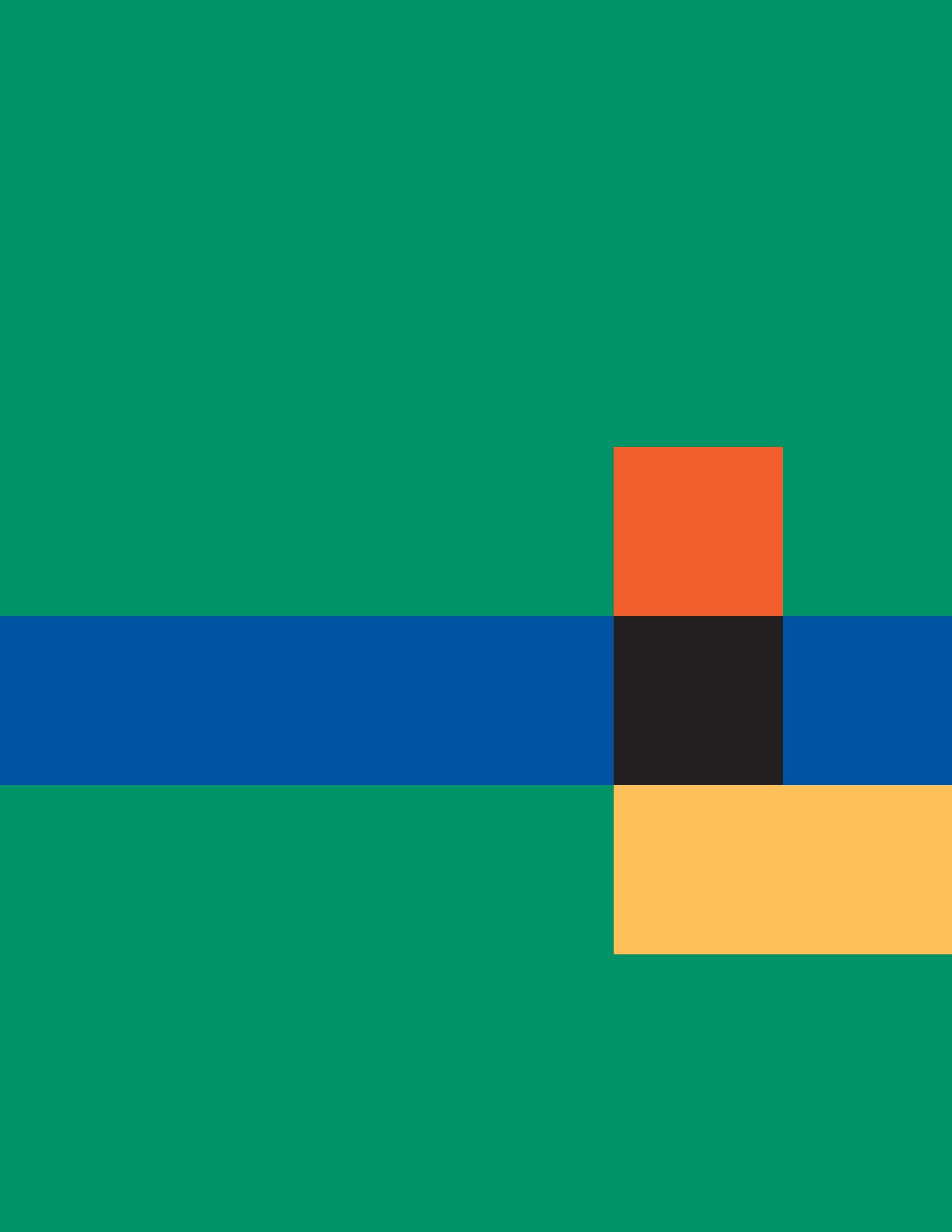
<p><b>Disadvantages as seen by stakeholders</b></p>	<p>This model is what is now in place, so stakeholders may see it as failing to address concerns with the current ombud system.</p>	<p>Expensive and disruptive to establish.</p>	<p>All the disadvantages of the hybrid model (Model 1) with few of the benefits.</p> <p>The industry ombud schemes would have to replace the existing statutory ombuds (PFA and the FAIS Ombud); doing this would require consultation with, and agreement between, the members of the relevant industries.</p>
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- The primary concerns expressed about Model 2 by these respondents were that it would cause the potential loss of current specialist expertise, lead to greater red tape and government control, and fail to deliver the efficiency benefits claimed for a single centralized ombud.
- One respondent also noted that, if the authorities imposed this model without the full support of stakeholders, it would lack legitimacy and have adverse consequences for the quality of the ombud system.

**Respondents supportive of Model 2 highlighted as key benefits greater accessibility and the reduction in confusion for both consumers and industry.**

- They identified as other important benefits increased efficiency, a broader scope of jurisdiction more able to accommodate current and future innovation, and greater independence from industry.

- One respondent noted that this model would provide a more effective single voice for the ombud system with a better overview of emerging issues and trends.
- These respondents also expressed a range of concerns about the limitations of the other two options. These concerns included that these options would not reduce consumer confusion; would result in ongoing jurisdictional overlaps; and would lead to continuing inconsistency in standards and processes across the different ombud schemes.
- Several respondents also commented that these options would be less able to cope with current and future financial-sector innovation or align with the activity-based approach under the COFI reforms.





# 8

## EFFECTIVENESS OF SCOPE

This chapter considers how effectively the current financial ombud system covers complaints about all appropriate sectors of financial services.

### 8.1 CRITERIA

To assess how effectively all appropriate sectors of financial services are covered, we consider the overall ombud system, not just the individual ombud schemes. This chapter considers the following:

- The financial providers and activities that are covered
- The complainants who are covered, including relevant non-customers
- The time limits for referring complaints to the ombud system<sup>155</sup>

### 8.2 FINANCIAL PROVIDERS AND ACTIVITIES COVERED

#### Providers Covered

**Jurisdiction over those providers that are covered by the ombud system is divided among seven ombud schemes.** The division is mainly by

type of financial provider, but also partly by type of activity. The division is summarized in table 8A.

**Particular issues arise in relation to the crossover between the scope of the voluntary industry ombud schemes and the compulsory statutory ombud schemes.** The industry schemes are prohibited by law from dealing with a complaint that falls within the compulsory jurisdiction of the statutory ombud schemes (FAIS Ombud and PFA) unless the statutory ombud scheme declines to deal with the case. But the boundary is not always clear, particularly to a consumer.

**The first issue arises where a provider advises a customer to take out one of that provider's products.**

- Where the provider advises a customer to buy a particular product and the customer later complains, any part of the complaint about the product itself goes to the relevant industry ombud scheme, but any part of the complaint about the advice to buy it goes to the FAIS Ombud. Many consumers may find this distinction difficult to grasp.

**Table 8A. Providers Covered by Existing Ombud System**

Ombud Scheme	Banking Ombud
Statutory or voluntary	Voluntary: no legal requirement to join
Providers covered	Bank members of the BASA
Providers of that type not covered	All retail banks are members of the BASA and so are covered, but cooperative banks are not covered.
Who covers those providers	FAIS Ombud; statutory compulsory gap-filling jurisdiction
Activities covered	Financial services (apart from advice and intermediary services) and credit services
Activities not covered	Financial services advice and intermediary services <sup>156</sup>
Who covers those activities	FAIS Ombud; statutory compulsory jurisdiction

Ombud Scheme	Credit Ombud
Statutory or voluntary	Voluntary: no legal requirement to join
Providers covered	<p>Non-bank credit providers and credit bureaus that choose to join. The scheme says its 113 members include the following:</p> <ul style="list-style-type: none"> <li>• All the large clothing and furniture retailers</li> <li>• All the members of the Large Non-Bank Lenders Association</li> <li>• A small number of microlenders</li> <li>• A minority of non-bank vehicle and housing finance providers</li> <li>• The eight largest (of 33 registered) credit bureaus</li> <li>• Certain subscribers to credit bureaus</li> <li>• Large mobile-phone operators</li> </ul>
Providers of that type not covered	All other credit providers and credit bureaus (The NCR's 2018–19 annual report <sup>157</sup> said that, as of March 31, 2019, a total of 6,895 credit providers, 33 credit bureaus, four payment distribution agents, six ADR agents, and 1,495 debt counsellors were registered.)
Who covers those providers	No ombud scheme; complaints go to the regulator (NCR)
Activities covered	Credit services and credit bureau services
Activities not covered	Debt collection and debt counselling
Who covers those activities	NCR
Ombud scheme	LTI Ombud
Statutory or voluntary	Voluntary: no legal requirement to join
Providers covered	Long-term insurers that choose to join
Providers of that type not covered	The scheme says that the minority of long-term insurers that have not joined cover about 7.5 percent of the market by premium income or about 4.6 percent of the market by asset size.
Who covers those providers	FAIS Ombud; statutory compulsory gap-filling jurisdiction
Activities covered	Long-term insurance (apart from pensions funds, advice, and intermediary services)
Activities not covered	(1) Pension funds (2) Insurance advice and intermediary services <sup>158</sup>
Who covers those activities	(1) PFA; statutory compulsory jurisdiction (2) FAIS Ombud; statutory compulsory jurisdiction
Ombud scheme	STI Ombud
Statutory or voluntary	Voluntary: no legal requirement to join
Providers covered	Short-term insurers that are members of the South African Insurance Association (SAIA)
Providers of that type not covered	The scheme says that (excluding reinsurers and captive-insurers) about 18 short-term insurers have not joined.
Who covers those providers	FAIS Ombud; statutory compulsory gap-filling jurisdiction
Activities covered	Short-term insurance (apart from advice and intermediary services)

Activities not covered	Insurance advice and intermediary services <sup>159</sup>
Who covers those activities	FAIS Ombud; statutory compulsory jurisdiction
<b>Ombud scheme</b>	<b>JSE Ombud</b>
Statutory or voluntary	Voluntary: no legal requirement to join
Providers covered	Members of the JSE
Providers of that type not covered	None; joining is a compulsory part of membership
Who covers those providers	Not applicable
Activities covered	JSE-listed securities (apart from advice and intermediary services)
Activities not covered	(1) Securities advice and intermediary services (2) Non-listed securities (such as contracts for differences)
Who covers those activities	(1) FAIS Ombud; statutory compulsory jurisdiction (2) FAIS Ombud; statutory compulsory gap-filling jurisdiction
<b>Ombud scheme</b>	<b>FAIS Ombud</b>
Statutory or voluntary	Statutory: automatic compulsory jurisdiction
Providers covered	All FSPs
Providers of that type not covered	Not applicable
Who covers those providers	Not applicable
Activities covered	(1) Financial services advice and intermediary services (2) Other financial services where the provider is not covered by another ombud scheme
Activities not covered	Activities (apart from financial services advice and intermediary services) that are covered by another ombud scheme in respect of that provider
Who covers those activities	Banking Ombud, LTI Ombud, STI Ombud, or JSE Ombud
<b>Ombud scheme</b>	<b>PFA</b>
Statutory or voluntary	Statutory: automatic compulsory jurisdiction
Providers covered	Pension funds (and their boards) and administrators, insurers, brokers, and service advisers in respect of pension funds
Providers of that type not covered	Government pension schemes <sup>160</sup>
Who covers those providers	Not applicable
Activities covered	Pension fund activities (apart from financial services advice and intermediary services)
Activities not covered	(1) Advice and intermediary services <sup>161</sup> (2) Purchased annuities
Who covers those activities	(1) FAIS Ombud; statutory compulsory jurisdiction (2) LTI Ombud (if a member) or FAIS Ombud; statutory compulsory gap-filling jurisdiction

- The problem can be illustrated by the following example:

- A consumer approaches an insurer to insure a house and is advised to take out a particular policy. Later, the consumer makes a claim under the policy, but the insurer refuses to pay out.
- Is it the case that the consumer was advised to take out the wrong type of policy or did not have its terms properly explained? If so, the complaint is for the FAIS Ombud.
- Is it the case that the consumer was advised to take out the right type of policy but does not have a valid claim? If so, the complaint is for the STI Ombud.
- But the consumer is unlikely to know which of these it is and (at best) has to refer the same complaint against a single insurer to two separate ombud schemes.

- Additionally, based on the fact-finding interviews, the industry schemes appear to approach such mixed complaints (about product and advice) in inconsistent ways. Depending on the scheme and the nature of the complaint, the industry scheme might act as follows:

- It might refer the advice complaint to the FAIS Ombud if it was apparent at the outset, but deal with the advice aspect itself if it emerged while investigating the product complaint.
- It might investigate the product complaint first, before referring the advice complaint to the FAIS ombud.
- Or it might deal with both the advice and product complaints itself, if the advice was given by the product provider.

**The second issue is where a consumer buys a product through a local agent, without taking advice.**

- Many products are sold through agents or intermediaries. If they are a registered intermediary, the sale (even if there is no advice) comes within the definition of intermediary services and is covered

by the FAIS Ombud. But if the intermediary is a tied agent, the sale (if there is no advice) is not within the definition of intermediary services and is covered by the relevant ombud scheme for the product. Many consumers are unlikely to recognize the difference.

- The problem can be illustrated by the following example:

- A consumer wishes to complain about the service that the consumer received when taking out car insurance through a local agent.
- Was the local agent an intermediary registered with the regulator in its own right? If so, the complaint is one for the FAIS Ombud.
- Was the local agent a tied agent of the life insurer, operating under the umbrella of the insurer's regulation? If so, the complaint is for the STI Ombud.

- But the consumer is unlikely to know whether the person they dealt with was a registered intermediary or a tied agent and which ombud to go to—and may even just give up.

**The third issue arises where there is an administrative problem relating to an existing financial product.**

- The FAIS Act definition of intermediary services (which are covered by the FAIS Ombud) includes some activities relevant to the ongoing administration of a financial product, so that it is difficult to see clearly whether a complaint about poor administration of a product should go to the FAIS Ombud or to the ombud scheme that would otherwise cover that type of product.

- The problem can be illustrated by the following example:

- A consumer says they have paid the renewal premium on a life policy, but the insurance company says it has not received the premium.
- How is the consumer to know whether they should be complaining to the LTI Ombud or to the FAIS Ombud? They can only try one or the other and see what happens.

- Of course, one ombud scheme can refer cases to another, but we were told by a few stakeholders of cases where both ombuds said the case was one for the other ombud.

**If the provider is not a member of the relevant industry ombud scheme, the gap-filling jurisdiction of the FAIS Ombud applies.**

- This means that the FAIS Ombud can deal with any complaint that falls outside the jurisdiction of the five industry schemes if it relates to financial services (defined as excluding credit). This is helpful, as far as it goes.

- Internationally, however, credit is seen as a financial service, especially since the 2008 financial crisis. Most consumers also see it as a financial service and expect similar protections. But in South Africa, if a credit complaint is not covered by an industry scheme, the consumer's only option is to refer it to the NCR.

### Products Covered

**From the perspective of an unsophisticated consumer, the landscape can be even more complicated, even where only one financial product is involved.** Jurisdiction for some typical products is summarized in table 8B. Complaints

**Table 8B. Products Covered by Existing Ombud System**

Product	If	Ombud Scheme
Banking	Advice/intermediary services Other banking services from banks Other banking services from cooperative banks	FAIS Ombud Banking Ombud FAIS Ombud
Credit/debit/charge cards	From banks From some non-banks From other non-banks	Banking Ombud Credit Ombud None (can go to the NCR) <sup>162</sup>
Other payment services	From banks From non-banks	Banking Ombud None
Lending	From banks From some non-banks From other non-banks	Banking Ombud Credit Ombud None (can go to the NCR)
Credit brokering	Secured lending: some brokers Secured lending: all other brokers Unsecured lending: some brokers Unsecured lending: all other brokers	Credit Ombud None (can go to the NCR) Credit Ombud None (can go to the NCR)
Insurance	Advice/intermediary services Other issues: banks Other issues: some credit providers Other issues: most insurers (if long term) Other issues: most insurers (if short term) Other issues: if not member of an industry scheme	FAIS Ombud Banking Ombud Credit Ombud LTI Ombud STI Ombud FAIS Ombud
Investments/securities	Advice/intermediary services Other issues: from banks Other issues: from JSE members, if JSE listed	FAIS Ombud Banking Ombud JSE Ombud
Pensions	Government pension schemes Other pensions/annuities: advice/intermediary services Other pensions: apart from advice/intermediary services Purchased annuities	None <sup>163</sup> FAIS Ombud PFA LTI Ombud
Purchased annuities	Advice/intermediary services Other issues: most insurers Other issues: if not member of LTI Ombud	FAIS Ombud LTI Ombud FAIS Ombud

about particular products may fall within the jurisdiction of one to five ombud schemes or none. Where there is no ombud scheme for credit, the complainant can approach the NCR.

**A further level of complexity is added by bundled transactions, where a consumer buys two or more products as part of a financial package**—as illustrated in the following example scenario.

- This can be illustrated by a typical transaction for an unsophisticated consumer:
  - Broker A advised the consumer to take an unsecured loan from non-bank lender B.
  - Lender B advised the consumer to take a loan that included credit insurance.
  - The credit insurance was underwritten by insurer C.
- Now, sometime later:
  - The consumer has lost their job, could not afford the repayments, and claimed on the insurance.
  - Insurer C turned down the claim.
  - Lender B said that was not its problem and pressed the consumer to pay.
  - Broker A told the consumer that it was not its problem either.

- To whom can the consumer turn?
  - On whether insurer C should have paid up: the STI Ombud or (if the insurer is not a member) the FAIS Ombud
  - On whether lender B gave wrong advice about what the insurance covered: the FAIS Ombud
  - On whether lender B should give the consumer longer to pay: the Credit Ombud or (if the lender is not a member) the consumer can try approaching the NCR
  - On whether broker A misled the consumer about the loan package: not covered by any ombud scheme, but the consumer can try approaching the NCR
- So the unsophisticated consumer may be expected to deal, in relation to one problem, with up to three different ombud schemes plus a regulator.

### Complaints Referred between Ombud Schemes

**In view of the complexity illustrated above, it is not surprising that many consumers approach the incorrect ombud scheme and have to be referred to another scheme.** Table 8C summarizes what the ombud schemes reported about the number of complaints they had to refer to another ombud scheme. For 2019, the figures suggest<sup>164</sup> the following:

**Table 8C. Complaints Referred between Ombud Schemes**

Referred by	2017	2018	2019
Banking Ombud	About 800 to 950	About 900 to 1,000	About 900 to 1,000
Credit Ombud	Did not refer	Did not refer	From August 2019: 315
LTI Ombud	2,525	2,900	2,923
STI Ombud	No data	No data	From July 2019: 616
JSE	Did not refer	Did not refer	Did not refer
FAIS Ombud	2,687	2,770	2,467
PFA	695	1,075	1,355

- A total of around 9,683 complainants had to be referred from the ombud scheme they approached initially to another ombud scheme.
- That is about 12 percent of the 80,512 complaints that the ombud schemes reported they had received in total.

### 8.3 COMPLAINANTS COVERED, INCLUDING RELEVANT NON-CUSTOMERS

#### Consumers

All of the ombud schemes take complaints from consumers. That is so even if the consumer lives outside South Africa, as long as the service was supplied in/from South Africa.

#### Businesses

There is considerable inconsistency between different parts of the ombud system in whether they take complaints from some businesses or all businesses. The position is summarized in table 8D. Coverage of businesses is particularly relevant to sole traders and family businesses, where assets and accounts may be shared and the dividing line between consumer and business may be far from clear.

For examples of how these inconsistencies work in practice, consider the position of an incorporated family business.

- If it has a complaint about credit and its annual turnover is R 1.1 million:
  - It is covered if the loan is from a bank (by the Banking Ombud).

**Table 8D. Customers Covered by Existing Ombud System**

Ombud Scheme	Banking Ombud
Consumer	All
Unincorporated business	If yearly turnover is less than R 10 million (about \$666,666)
Incorporated business	If yearly turnover is less than R 10 million (about \$666,666)
Ombud Scheme	Credit Ombud
Consumer	All
Unincorporated business	All
Incorporated business	If yearly turnover is less than R 1 million (about \$66,666)
Ombud Scheme	LTI Ombud
Consumer	All
Unincorporated business	All
Incorporated business	All
Ombud Scheme	STI Ombud
Consumer	All
Unincorporated business	All
Incorporated business	All

Ombud Scheme	JSE Ombud
Consumer	All
Unincorporated business	All
Incorporated business	All
Ombud Scheme	FAIS Ombud (compulsory jurisdiction under FAIS Act)
Consumer	All
Unincorporated business	All
Incorporated business	All
Ombud Scheme	FAIS Ombud (compulsory backup jurisdiction under FSOS Act)
Consumer	All
Unincorporated business	If both yearly turnover and net assets are less than R 8 million
Incorporated business	If both yearly turnover and net assets are less than R 8 million
Ombud Scheme	PFA
Consumer	All
Unincorporated business	All
Incorporated business	All

- But it is not covered if the loan is from a non-bank lender (even if it is a member of the Credit Ombud).
- If it has a complaint about another type of financial service and its annual turnover is R 10.1 million:
  - It is not covered by the Banking Ombud, Credit Ombud, or FAIS Ombud (under the FSOS Act).
  - But it is covered by the LTI Ombud, STI Ombud, JSE Ombud, PFA, and FAIS Ombud (under the FAIS Act).

(The Banking Ombud, Credit Ombud, and the STI Ombud do not accept complaints from otherwise eligible businesses that are financial providers. The LTI Ombud, JSE Ombud, FAIS Ombud, and PFA do accept such complaints. This is yet another inconsistency in the system.)

### Prospective Customers

**Subject to the points above, all of the ombud schemes take complaints from customers, but they are inconsistent in whether they take complaints from prospective customers who have been refused a service.** This might, for example, arise from an allegation of discrimination or an allegation that the financial provider has based its decision on inaccurate information. Which ombud schemes take complaints from prospective customers, and which do not, is summarized in table 8E.

### Other Non-Customers

**Where relevant to the sector that they cover, the existing ombud schemes do cover other relevant non-customers.** The coverage is summarized in table 8F.



**Table 8E. Whether Prospective Customers Are Covered**

Ombud Scheme	Whether Covered
Banking Ombud	Covers prospective customers
Credit Ombud	Does not cover most prospective customers <sup>165</sup>
LTI Ombud	Covers prospective customers
STI Ombud	Does not cover prospective customers
JSE Ombud	Does not cover prospective customers
FAIS Ombud	Does not cover prospective customers
PFA	Does not cover prospective customers

**Table 8F. Other Non-Customers Covered**

Other Non-Customers	Ombud Schemes That Cover Them
Users of bank payment services and cash machines (ATMs)	Banking Ombud
Guarantors/sureties for loans or credit	Banking Ombud Credit Ombud
Someone whose credit history is recorded at a credit bureau	Banking Ombud Credit Ombud
Someone from whom a debt is incorrectly being claimed	Banking Ombud Credit Ombud
Beneficiaries of an insurance policy	LTI Ombud STI Ombud FAIS Ombud PFA
Beneficiaries of a collective investment	Banking Ombud FAIS Ombud
Beneficiaries of a pension fund	FAIS Ombud PFA

## 8.4 TIME LIMITS

**All the ombud schemes have time limits within which a complaint must be referred to the ombud scheme.** The position is summarized in table 8G.

- The JSE Ombud requires complaints to be referred to the JSE’s Market Regulation Division within
  - Six months of the act/omission by the financial provider; and
  - Four weeks of the financial provider’s final response to the complaint but extendable if the

failure to refer within the relevant period was not the complainant’s fault.

- All the other six ombud schemes have a general time limit of three years but differ in
  - The description of when the period starts;
  - Whether the ombud has discretion to waive the time limit; and
  - Whether there is any additional time limit.

- Two of these six ombud schemes have additional time limits. In the case of the STI Ombud, it comprises any enforceable time-bar provision in

the policy. In the case of the FAIS Ombud, it is six months after receipt of the final response of the financial provider.

**Table 8G. Time Limits in the Existing Ombud System**

Ombud Scheme	Banking Ombud
General time limit	Three years
When it starts to run	The date on which the complainant became aware or ought reasonably to have become aware of the act/omission by the financial provider
Discretion for ombud to waive it?	No
Any other time limit?	No
Discretion for ombud to waive it?	Not applicable
Ombud Scheme	Credit Ombud
General time limit	Credit information disputes: None Other disputes: Three years
When it starts to run	The date of the act/omission by the financial provider
Discretion for ombud to waive it?	Yes
Any other time limit?	Credit information disputes: None Other disputes: No
Discretion for ombud to waive it?	Credit information disputes: Six months from issue of a reference number Other disputes: Not applicable
Ombud Scheme	LTI Ombud
General time limit	Three years
When it starts to run	The date on which the complainant became aware or should reasonably have become aware that he or she had cause to complain to the ombud
Discretion for ombud to waive it?	Yes, if the failure to complain within that period was due to circumstances for which, in the opinion of the ombud, the complainant could not be blamed
Any other time limit?	No
Discretion for ombud to waive it?	Not applicable
Ombud Scheme	STI Ombud
General time limit	Three years
When it starts to run	As per the Prescription Act 1969 (Broadly, when the complainant knew the identity of the financial provider and the facts from which the complaint arises, but the complainant is deemed to have this knowledge if he/she could have acquired it by exercising reasonable care)
Discretion for ombud to waive it?	No
Any other time limit?	Any enforceable time-bar provision in the policy, subject to the provisions of any enactment that provides for its extension
Discretion for ombud to waive it?	Yes, upon good cause shown

Ombud Scheme	JSE Ombud
General time limit	The complaint must have been referred to the JSE's Market Regulation Division within six months
When it starts to run	The date of the act/omission by the financial provider
Discretion for ombud to waive it?	Yes, provided the failure to refer the complaint to JSE's Market Regulation Division within the relevant period was through no fault of the client
Any other time limit?	The complaint must have been referred to the JSE's Market Regulation Division within four weeks of the financial provider's response to the complaint
Discretion for ombud to waive it?	Yes, provided the failure to refer the complaint to JSE's Market Regulation Division within the relevant period was through no fault of the client
Ombud Scheme	FAIS Ombud
General time limit	Three years
When it starts to run	As per section 27(3)(a) of the FAIS Act (Broadly, when the act or omission occurred or [if later] when the complainant became aware, or ought reasonably to have become aware, of the act or omission)
Discretion for ombud to waive it?	No
Any other time limit?	Six months after receipt of the final response of the financial provider
Discretion for ombud to waive it?	No
Ombud Scheme	PFA
General time limit	Three years
When it starts to run	As per the Prescription Act of 1969 (Broadly, when the complainant knew the identity of the financial provider and the facts from which the complaint arises; but the complainant is deemed to have this knowledge if he/she could have acquired it by exercising reasonable care.)
Discretion for ombud to waive it?	No
Any other time limit?	No
Discretion for ombud to waive it?	No

**A number of significant issues arise from these assorted time limits:** The JSE Ombud's six-month time limit is notably short, and this is especially problematic, as its members are not required to point them out to complainants. The general three-year time limits of the other ombud schemes are more generous and, as in many countries, reflect the time limits that apply in the country's courts. But there is a significant issue about when the time limit starts to run.

- With longer-term financial products, a problem might not become apparent for a long time after

the relevant act/omission by the FSP, as the following examples show:

- A problem with a pension might not come to light until someone retires.
- A problem with a life policy may not come to light until someone dies.
- With complex financial products, there may be significant periods of time between the following:
  - Between when the financial provider actually did (or failed to do) something, and when time

starts running with the Credit Ombud and JSE Ombud, which means that the consumer can run out of time even if they could not have known about what the financial provider did (or failed to do); and

- Between when the consumer knew (or ought to have known) about that event, and when time starts running with the Banking Ombud, STI Ombud, FAIS Ombud, and PFA, which means that the consumer can run out of time even if they could not have known that what the financial provider did (or failed to do) caused a problem that they could complain about; and
- Between when the consumer knew (or ought to have known) this caused a problem that they could complain about, and when time starts running with the LTI Ombud, which is more generous and fairer to the consumer.
- By way of international comparison:
  - In Australia, the time limit is six years and starts to run from when the complainant first became aware (or should reasonably have become aware) that they suffered loss.<sup>166</sup>
  - In the United Kingdom, the time limit is six years from the event complained of or (if later) three years from when the complainant became aware (or ought reasonably to have become aware) that there was cause for complaint.<sup>167</sup>
- There is the added risk that, in deciding what the consumer ought to have known, an objective test might be applied, rather than a subjective test based on the particular consumer's degree of knowledge and sophistication, which would be more relevant to disadvantaged consumers in South Africa.
- In particular, the PFA's response to the NT's 2017 Consultation Document commented that, of the complaints it had to turn away as out-of-jurisdiction, about 90 percent were turned away because of the legal interpretation of the Prescription Act.

## 8.5 STAKEHOLDER VIEWS

**Stakeholders acknowledge the existence of overlaps and inconsistencies in coverage within the ombud system.** Views differ on how far they matter for financial providers and consumers.

- Providers that deal regularly with the ombud system say they can navigate it and direct complaints to the right ombud scheme, and that the ombud schemes have processes to redirect consumers. But other respondents highlighted the confusion for consumers and the complexities that the current system creates.
- Some stakeholders in the credit area expressed concern about what they saw as a conflict between the NCR's role as a regulator and its role in resolving individual complaints. They believed that, when dealing with the NCR, credit providers were reluctant to admit errors to the regulator and reluctant to make concessions in individual cases, lest it turn into a standard practice.

## 8.6 CONCLUSIONS

### Financial Providers and Activities Covered

**The fragmented nature of the ombud system creates overlaps, gaps, and confusion in the coverage of activities and financial providers.**

- The scope of some ombud schemes depends on the activity involved, and the scope of other ombud schemes depends on the type of FSP involved.
- The current classifications of activities are likely to change in the future to the new classifications in the COFI Bill, which may create additional complications.
- Most financial providers that are covered by an industry ombud scheme are also covered by a statutory ombud scheme for some activities.
- Some financial products may be covered by between one and five different ombud schemes or may not be covered by any ombud scheme.

- Credit, which many consumers see as a financial service, is outside the gap-filling jurisdiction of the FAIS Ombud (so the only gap filling is the NCR).
- There is potential for inherent tension between the NCR's role as regulator of credit and the impartial resolution of individual complaints by means of ADR.<sup>168</sup>
- Most mixed complaints (partly about the product and partly about the advice to buy it) are supposed to be considered by two ombud schemes.
- In dealing with mixed complaints, the industry ombud schemes are inconsistent in when and whether they refer the advice element of the complaint.
- Complaints about bundled products may involve two or three ombud schemes, or parts of them may not be covered by an ombud scheme at all.

### Complainants Covered, Including Relevant Non-Customers

**There are significant inconsistencies in who is eligible to refer a complaint to the financial ombud system** in the following cases:

- Businesses:
  - Four of the ombud schemes take complaints from businesses of any size.
  - One ombud scheme takes complaints from unincorporated businesses of any size but has a R 1 million turnover limit for incorporated businesses.
  - One ombud scheme takes complaints from businesses of any size in its main jurisdiction but has an R 8 million turnover and net assets limit for businesses in its backup jurisdiction.
  - One ombud scheme has a R 10 million turnover limit for all businesses.
- Prospective customers: Two of the ombud schemes will take complaints from prospective customers. The other five ombud schemes will not.

### Time Limits

**There is a patchwork of time limits that apply to different ombud schemes, and those that have a general time limit of three years calculate it in differing ways.**

- Financial products may be long term, so that years may elapse before an act/omission by a financial provider comes to light. Financial products may be complex, so that significant time may elapse between when a consumer knows about an act/omission and when they realize that it gives grounds for a complaint.
- One of the ombud schemes has very restrictive time limits (six months from the FSP's act/omission and four weeks from the FSP's final response to the complaint). This is coupled with a discretion to waive the time limit if the delay was through no fault of the complainant.
- The other six ombud schemes have general time limits of three years, but there are significant differences in how that time limit applies.
  - In one ombud scheme, time runs from when the complainant knew (or with reasonable care should have known) that there were grounds for complaint, but the ombud has discretion to waive the time limit if the complainant could not be blamed for the delay.
  - In four ombud schemes, time runs from when the complainant knew (or with reasonable care should have known) about the financial provider's act/omission, and the ombud does not have any discretion to waive the time limit.
  - In one ombud scheme, time runs from date of the financial provider's act/omission, but the ombud has discretion to waive the time limit.
- Two of the six ombud schemes that have a general time limit of three years also have an additional time limit.
  - In one of these ombud schemes, the terms of the product itself may set a time limit.

- In the other ombud scheme, the complaint must be referred to the ombud scheme within six months of the financial provider’s final response to the complaint.

### Effectiveness of Scope Overall

**We consider that there are material inconsistencies in the coverage of financial providers and activities, in the coverage of complaints and in time limits—and that these significantly undermine the effectiveness of the system.** In our assessment, all of this complexity must inevitably create the following:

- Inconsistency in whether otherwise-similar complaints are covered, simply because of the identity of the ombud scheme concerned
- Inconsistency in processes, approach, and outcomes among otherwise-similar complaints, simply because of the identity of the ombud scheme into whose jurisdiction they fall
- Confusion for consumers and consumer advisers and delay—with about 12 percent of complaints having to be referred from one ombud scheme to another
- Serious risk that some consumers may be so discouraged by the complexity that they are deterred from pursuing their complaint at all or may give up prematurely

- Additional work for financial providers—training staff, understanding the requirements applicable to different ombud schemes, and correct signposting
- Additional work for the initial stages of ombud schemes—training staff, understanding eligibility/limits/gaps/overlaps, and referring complainants to other schemes
- Scope for forum shopping by vexatious complainants able to use the complexity in order to pursue issues through multiple channels

### Areas for potential improvement include ensuring the following:

- That the ombud system covers all products and services that consumers are likely to see as financial (including credit and payment services and also cooperative banks and other cooperative financial institutions)
- That any boundaries between the scope of different ombud schemes are clear and logical, avoiding overlaps, and can be expressed in terms intelligible to a consumer
- Consistency in defining who is able to refer a complaint to a financial ombud (and harmonization between this and the “complainant” definition in the COFI Bill)
- Consistent and less inflexible time limits within which a complaint must be referred to a financial ombud

# 9

## EFFECTIVENESS OF INTERACTION AND POWERS

This chapter considers the effectiveness and consistency of the interaction between complaint handling by financial providers and the ombud system, and the powers of the ombud system.

### 9.1 CRITERIA

To assess the effectiveness of the interaction with financial providers and the consistency of powers, we consider the overall ombud system, not just the individual ombud schemes.<sup>169</sup>

- In relation to the effectiveness of the interaction between financial providers and the ombud system, this chapter considers the following:
  - Definition of what constitutes a complaint
  - Relevant obligations for providers
  - Referrals by ombud schemes to providers
- In relation to the effectiveness and consistency of powers, this chapter considers the following:
  - Redress a financial ombud can award
  - The effect of a financial ombud decision on the financial provider and the consumer
  - How a binding decision by a financial ombud can be enforced

### 9.2 DEFINITION OF WHAT CONSTITUTES A COMPLAINT

In order to achieve consistency in a system to deal with complaints, it is fundamental that there should be a shared understanding of what is meant by a “complaint.” Based on international good practice, we would expect there to be a consistent definition of a complaint—to be used by ombud schemes, financial providers, and regulators. This should make it clear that an oral expression of dissatisfaction suffices, and that a complaint does

not have to be in writing—to avoid creating a barrier for disadvantaged complainants.

We traced varying definitions of what constitutes a complaint (and noted that the Banking Ombud and Credit Ombud do not have definitions). Appendix E quotes nine definitions that we found.

- Statutory definitions:
  - FAIS Act, used by the FAIS Ombud
  - Pensions Funds Act 1956 as amended (PF Act),<sup>170</sup> used by the PFA
  - COFI Bill
- Regulatory definitions:
  - Conduct Standard 3 of 2020 (Banks)<sup>171</sup> under the FSR Act
  - Policyholder Protection Rules (Long-Term Insurance)
  - Policyholder Protection Rules (Short-Term Insurance)
- Definitions from ombud scheme rules or terms of reference:
  - LTI Ombud
  - STI Ombud
  - JSE Ombud

**The wording of the definitions varies.**

- The use of different wording, even where (after careful analysis) the effect of the definition is substantially similar, is likely to lead to confusion and inconsistency of application. On wording:

- All three statutory definitions differ.
- The three regulatory definitions are consistent with one another and with the COFI Bill.
- The three ombud scheme definitions differ from one another, and from the statutory and regulatory definitions.
- Where the effect of the wording is different (especially where an ombud scheme uses wording that has narrower effect than the regulatory definition), some complaints are covered by only part of the system. On effect:
  - All the statutory and regulatory definitions appear to have similar effect.
  - One of the ombud scheme definitions is not inconsistent to these in effect.
  - But two of the ombud definitions are narrower in effect (for example, by excluding prospective customers).

**Requiring a complaint to be made in writing limits accessibility (especially for disadvantaged consumers), but none of the definitions makes clear whether an oral expression of dissatisfaction is enough, or whether it has to be in writing.**

- The five industry ombud schemes and the FAIS Ombud say that they do accept oral complaints. But the PFA says that it cannot accept oral complaints.
- The regulatory General Code of Conduct for Authorized Financial Service Providers and Representatives requires them to ask complainants to lodge their complaints in writing.
- The Fit and Proper Requirements and Conditions for Managers of Collective Investment Schemes (Notice 910 of 2010) requires them to ask complainants to lodge their complaints in writing.
- The PF Act says that a complainant may lodge a “written complaint” with a fund for consideration by the board of the fund.

## 9.3 RELEVANT OBLIGATIONS FOR PROVIDERS

### International Good Practice

**Resolving complaints: The classic role of a financial ombud system is to resolve complaints from complainants who still remain dissatisfied after their complaint has been considered by the provider.** This places the initial obligation to resolve a complaint where it belongs, with the provider of the product or service—which has the client relationship and access to the relevant records. This should reduce the number of cases that have to be resolved by the financial ombud system and minimize its cost.

**Information about the ombud system: It increases confidence if consumers know that, if the provider does not resolve their complaint to their satisfaction, they have access to an independent ombud system.** Providers should give their customers information about the ombud system and the contact details of the relevant ombud scheme at the point of sale and, particularly, if they raise a complaint. This can spread the message to all of the areas of South Africa in which the provider does business. It is more cost effective than publicity by the ombud system, though it does not replace the need for it.

**Time limit for final decision: It is important for providers to be under an obligation to issue a written final decision on any complaint within a specified time.** The decision should make the issues and outcome clear. A maximum time limit prevents providers from wearing down complainants by making them go through a series of internal escalation stages. And the relevant ombud scheme knows it can take up the complaint once it sees the written decision or if the time limit has expired.

### Obligations in South Africa

**Some providers are (or will be) subject to varying complaint-handling obligations as a result of regulatory requirements.**



- Banks and cooperative banks are subject to regulatory Conduct Standard 3 of 2020 (Banks). The standard's requirements for complaint handling, which do not come into force until July 2021, provide the following:
  - Banks must clearly and transparently communicate the availability and contact details of the relevant ombud services to customers at all relevant stages of the relationship, including at point of sale, in relevant periodic communications, and when a complaint is rejected or a claim is repudiated.
  - Banks must give complainants indicative timelines for addressing the complaint; details of the internal complaint-escalation and review process if the complainant is not satisfied with the outcome of a complaint; and details of escalation of complaints to the office of a relevant ombud, where applicable.
  - Where a complaint is upheld, any commitment by the bank to make a compensation or goodwill payment or to take any other action must be carried out without undue delay and within any agreed time frames.
  - Where a complaint is rejected, the bank must provide the complainant with clear and adequate reasons for the decision and must inform them of any applicable escalation or review processes, including how to use them and any relevant time limits.
  - Although banks are required to give complainants indicative timelines for addressing complaints, there is the possibility of multiple stages of escalation within the bank, and no overall time limit is set for issuing a final decision.
- Insurers are subject to the complaint-handling requirements in the Policyholder Protection Rules (Long-Term Insurance) and Policyholder Protection Rules (Short-Term Insurance). Under these:
  - Insurers must clearly and transparently communicate the availability and contact details of the relevant ombud services to customers at all relevant stages of the relationship, including at point of sale, in relevant periodic communications, and when a complaint or claim is rejected.
  - Insurers must give complainants indicative timelines for addressing the complaint; details of the internal complaint-escalation and review process if the complainant is not satisfied with the outcome of a complaint; and details of escalation of complaints to the office of a relevant ombud where applicable.
  - Where a complaint is upheld, any commitment by the insurer to make a compensation or goodwill payment or to take any other action must be carried out without undue delay and within any agreed time frames.
  - Where a complaint is rejected, the insurer must provide the complainant with clear and adequate reasons for the decision and must inform them of any applicable escalation or review processes, including how to use them and any relevant time limits.
  - Although insurers are required to give complainants indicative timelines for addressing complaints, there is the possibility of multiple stages of escalation within the insurer, and no overall time limit is set for issuing a final decision.
- Financial services providers and representatives defined in terms of the FAIS Act are subject to the complaint-handling requirements in the General Code of Conduct. Under this:
  - Providers must have a written complaint procedure that includes the name, address, and other contact details of the FAIS Ombud.
  - If the outcome is favorable to the client, the provider must ensure that a full and appropriate level of redress is offered without any delay.
  - If the outcome is not favorable to the client, the client must be given full written reasons, notification that they can go to the FAIS Ombud within six months, and the name, address, and other contact details of the FAIS Ombud.

- The outcome of the complaint must be communicated within six weeks.
- Managers of collective investment schemes are subject to the complaint-handling requirements in the Fit and Proper Requirements and Conditions for Managers of Collective Investment Schemes (Notice 910 of 2010). Under this, managers must do the following:
  - Ensure complaint procedures are visible and accessible to investors
  - Require complaints to be lodged in writing
  - Investigate and respond to them promptly, and ensure that any resolution is fair
  - If the complaint is upheld, offer appropriate redress
  - If the investor remains dissatisfied, notify them of any further steps available to them
- Under Regulation 30(2)(n) of rules made under the PF Act, the rules of a pension fund must provide the manner in which any disputes between the pension fund and its members, or between the pension fund and any other person whose claim is derived from a member, must be settled.
- Under section 17(2)(u) of the Financial Markets Act 19 of 2012, the rules of a securities exchange must provide for the manner in which complaints against an authorized user, or officer or employee of an authorized user, must be investigated.
- Under chapter 6 of Regulations in Terms of the National Credit Act:
  - If an ADR agent fails to resolve a dispute, it must complete a certificate in specified form.
  - A consumer may lodge a complaint against a credit provider by submitting a specified form to the NCR by fax, mail, or e-mail or by contacting the NCR by telephone.
  - Telephonic and e-mail-originated complaints may be lodged only by the complainant, not by another person on behalf of the complainant.

**Three of the seven ombud schemes impose relevant obligations on providers under their terms of reference or rules.**

- Under the terms of reference of the Banking Ombud (which incorporates the Code of Banking Practice):
  - Banks must ensure that the contact details of the Banking Ombud are prominently displayed in their branches and supply the ombud's brochure, address, telephone, and fax numbers on request.
  - Complainants can refer their complaint to the ombud scheme if they have tried the bank's internal complaints procedure and have not received a response within 20 working days.
  - When the bank sends its final response, it must tell complainants how to take their complaints further (if not satisfied with the outcome) and provide information about the relevant ombud scheme.
- Under the terms of reference of the Credit Ombud:
  - Providers must help customers who wish to lodge a complaint and inform them what to do if they are not satisfied with the outcome.
  - Providers must, within 14 business days, give an estimated time limit for the complaint to be finalized.
  - When sending their final response, providers must tell complainants how to take their complaint further, if they are not satisfied with the outcome.
  - Providers must make readily available brochures or other materials advising customers of their membership of the Credit Ombud and the required procedures for submitting a complaint.
  - Providers must take every reasonable step to notify consumers with a dispute of the existence of the Credit Ombud.
  - There is no explicit obligation to issue a written final decision within a specified overall time.

- Under the rules of the JSE:
  - Within four weeks of receiving a complaint, a JSE-member must respond to the complaint or give an appropriate explanation as to why the member is not yet in a position to respond and indicate by when the provider will respond.
  - Where the JSE member decides that compensation or some other form of redress is appropriate in resolving a complaint, the member must provide the compensation or redress as soon as practicable.
  - There is no obligation for the JSE member to tell complainants that (if they are not satisfied) they can refer their complaint to JSE’s Market Regulation Division and on to the JSE Ombud.

and, if not, looks into the complaint itself. This is simpler for the complainant, and it may be that some providers take the complaint more seriously when they receive it through the ombud scheme.

- Table 9A shows how many premature complaints are referred in this way, apart from by the FAIS Ombud—which does refer but does not record the numbers. The STI Ombud has started to refer only recently. The Credit Ombud says that it has stopped recently, because it now lacks the resources to do so. It tells the complainant that they must complain to the provider themselves and to come back to the Credit Ombud if they are not satisfied with the outcome.
- The Banking Ombud says that it refers the complaint to the bank if the complainant has not reached the end of the bank’s complaints procedure. The other ombud schemes report that, if the complainant has already raised the complaint with any contact point within the provider, they will not refer the complaint to the provider but will start dealing with it themselves.
- Access to the JSE Ombud is through the JSE’s Market Regulation Division, which is the point of escalation of complaints from JSE-member financial providers, so premature complaints cannot arise.

## 9.4 REFERRALS BY OMBUD SCHEMES TO PROVIDERS

**Some complainants go straight to the ombud scheme, before raising their complaint with the financial provider.** In such cases (sometimes referred to as “premature complaints”):

- It is helpful if the ombud scheme itself refers the premature complaint to the provider; checks whether the provider resolves the complaint;

**Table 9A. Premature Complaints Referred by Ombud Schemes to Financial Providers**

Referred by	2017	2018	2019
Banking Ombud	7,173	6,309	4,709
Credit Ombud	4,508	5,112	4,439
LTI Ombud	3,436	3,951	4,051
STI Ombud	No process	No process	294
JSE	0	0	0
FAIS Ombud	Not recorded	Not recorded	Not recorded
PFA	5,335	7,523	9,445

## 9.5 REDRESS A FINANCIAL OMBUD CAN AWARD

We asked the ombud schemes about the types of redress that a financial ombud has power to award if they uphold a complaint (in comparison with international good practice).

- Compensation for loss: Can the financial ombud require the financial provider to pay compensation to the complainant for loss caused directly by the financial provider’s unfair act/omission?
- Compensation for consequential loss: Can the financial ombud require the financial provider to pay compensation to the complainant for consequential loss that would not have arisen but for the financial provider’s unfair act/omission?
- Compensation for distress/inconvenience: Can the financial ombud require the financial provider to pay compensation to the complainant for any material distress or inconvenience caused to the complainant by the financial provider’s unfair act/omission?
- Interest on compensation: Can the financial ombud award interest on compensation in appropriate circumstances?

- Directions: Does the financial ombud have power (instead of, or as well as, awarding compensation) to make a “direction”—which requires the financial provider to put things right by doing, or not doing, something (specified by the ombud) in relation to the particular complainant?
- Maximum limit: Is there an upper limit on the amount of compensation that the financial ombud can award (or the amount of any money payable to, or for the benefit of, the complainant as the result of a direction)? If there is an upper limit, what was the benchmark for it and when was it last reviewed?

**There are significant inconsistencies among, and gaps in, the redress powers of the different ombud schemes, as shown in table 9B.**

- The JSE Ombud has power to award compensation for loss but does not have power to make a direction.
- The Credit Ombud and the STI Ombud have power to make a direction but do not have power to award compensation for loss.

**Table 9B. Redress Provisions in the Existing Ombud System**

	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
Compensation for loss?	Yes	No	Yes	No	Yes	Yes	Yes
Compensation for consequential loss?	No	No	Yes	No	Yes	Yes	Yes
Compensation for distress and inconvenience?	Yes	No	Yes	No	Yes	Yes	Yes
Interest on compensation?	Yes	No	Yes	No	Yes	Yes	Yes
Direction?	Yes	Yes	Yes	Yes	No	Yes	Yes
Maximum limit for loss?	R 2 million	No	No	R 6.5 million (buildings) R 3.5 million (other)	No	R 800,000	No
Lower limit for distress and inconvenience?	R 50,000	Not awarded	R 50,000	Not awarded	No	No	No

- The Banking Ombud, LTI Ombud, FAIS Ombud, and PFA have power to award compensation for loss and/or to make a direction.
- The LTI Ombud, JSE Ombud, and PFA have power to award compensation for consequential loss. The Banking Ombud, Credit Ombud, STI Ombud, and FAIS Ombud do not.
- The Banking Ombud, LTI Ombud, JSE Ombud, and PFA have power to award compensation for material distress/inconvenience. The Credit Ombud, STI Ombud, and FAIS Ombud do not.
- The Banking Ombud, LTI Ombud, JSE Ombud, FAIS Ombud, and PFA have power to award interest on compensation. The Credit Ombud and STI Ombud (which only make directions) do not.
- The Banking Ombud, STI Ombud, and FAIS Ombud have (different) maximum limits on the loss that can be covered by a compensation award or a direction. The Credit Ombud, LTI Ombud, JSE Ombud, and PFA do not have maximum limits.
- The Banking Ombud says its maximum limit for loss was last reviewed about seven years ago, when it was doubled from the previous R 1 million to R 2 million.
- The STI Ombud says its maximum limit for loss was last reviewed in 2017, when it was increased from R 4 million to the current R 6.5 million (for homeowner/building cover) and from R 2 million to the current R 3.5 million (for other cover).
- The FAIS Ombud says that its maximum limit was first set at R 800,000 by the minister in 2004 and has not been reviewed since.
- Of the four ombud schemes that have power to award compensation for material distress/inconvenience, the Banking Ombud and LTI Ombud have separate maximum limits for this type of compensation. The JSE Ombud and PFA do not.

**To illustrate the differences and gaps identified, consider a complaint relating to a loan where the lender advised the borrower to take out credit**

**insurance and life insurance.** Different parts of the complaint fall within the jurisdiction of different ombud schemes, with different powers, as follows:

- Issues about the loan, if it was from a bank, go to the Banking Ombud.
- Issues about the loan, if it was from a non-bank lender, go to the Credit Ombud.
- Issues about the advice/intermediary services relating to the insurance policies go to the FAIS Ombud.
- Issues about the credit insurance policy go to the STI Ombud.
- Issues about the life insurance policy go to the LTI Ombud.

Table 9C compares the extent of their differing powers to award redress.

## 9.6 EFFECT AND ENFORCEMENT OF FINANCIAL OMBUD DECISIONS

**We asked the ombud schemes about the effect of a financial ombud's final decision and its enforcement. There are some significant differences, summarized in table 9D.**

- In the case of the Banking Ombud and the Credit Ombud, the financial provider is bound by the decision only if the complainant formally accepts it. The complainant is free to formally accept or reject the decision. If the complainant formally accepts it, they also are bound by it.
- If the provider does not pay up, the Banking Ombud cannot help the complainant to enforce the decision but says that a bank has never refused to pay. If the provider does not pay, the Credit Ombud can help the complainant to enforce the decision.
- In the case of the LTI Ombud and STI Ombud, the provider is automatically bound by the decision, but the complainant is not. If the provider does not pay up, the LTI Ombud can help the complainant to enforce the decision, but the STI Ombud cannot.

**Table 9C. Illustration of Differences: Complaint about Loan Plus Advised Sale of Credit Insurance**

Part of Complaint	Bank Loan	Non-Bank Loan	Advice/ Intermediation	Credit Insurance	Life Insurance
<b>Ombud Scheme</b>	<b>Banking</b>	<b>Credit</b>	<b>FAIS</b>	<b>STI</b>	<b>LTI</b>
Direction?	Yes	Yes	Yes	Yes	Yes
Compensation for loss?	Yes	No	Yes	No	Yes
Maximum limit?	R 2 million	No limit	R 800,000	R 3.5 million	No limit
Compensation for consequential loss?	No	No	Yes	No	Yes
Compensation for distress/ inconvenience?	Yes	No	Yes	No	Yes
Maximum limit for distress/ inconvenience?	R 50,000	0	Not applicable	0	R 50,000
Interest on compensation?	Yes	No	Yes	No	Yes

- In the case of the JSE Ombud, the provider is automatically bound by the decision, but the complainant is not. If the provider does not pay up, the JSE itself can enforce the decision. If the provider defaults financially, the complainant is likely to have a claim on the JSE Guarantee Fund.
- In the case of the FAIS Ombud and the PFA, both the provider and the complainant are automatically bound by the decision.
- If the provider does not pay up, neither the FAIS Ombud nor the PFA can help the complainant to enforce the decision, but the decisions of both these statutory ombud schemes can be enforced in the same way as a judgment by a civil court.

**Table 9D. Effect and Enforcement of a Financial Ombud Final Decision—Overview**

Ombud scheme	Need to Ask a Judge for an Order to Pay?	Can Go Straight to Enforcement through Court Mechanism?	Can Help Complainant to Enforce?
Banking Ombud	Yes	No	No
Credit Ombud	Yes	No	Yes
LTI Ombud	Yes	No	Yes
STI Ombud	Yes	No	No
JSE Ombud	Yes	No	Yes
FAIS Ombud	No	Yes	No
PFA	No	Yes	No

**Table 9E. Effect and Enforcement of a Financial Ombud Final Decision—by Scheme**

Ombud Scheme	Banking Ombud
Does the ombud's decision bind the financial provider?	Yes, if the consumer formally accepts it, whether the provider accepts it or not
Does the ombud's decision bind the complainant?	No, if the complainant does not accept it
Yes, if the complainant formally accepts it	
Could the complainant afterward pursue the same claim by litigation in court?	Yes, unless the complainant formally accepted the ombud's decision
Can the complainant enforce the ombud's decision in court?	Yes, as a matter of contract
Can the scheme help the complainant to enforce the ombud's decision?	No
Ombud Scheme	Credit Ombud
Does the ombud's decision bind the financial provider?	Yes, if the consumer formally accepts it, whether the provider accepts it or not
Does the ombud's decision bind the complainant?	No, if the complainant does not accept it
Yes, if the complainant formally accepts it	
Could the complainant afterward pursue the same claim by litigation in court?	Yes, even if the complainant formally accepted the ombud's decision
Can the complainant enforce the ombud's decision in court?	Yes, as a matter of contract
Can the scheme help the complainant to enforce the ombud's decision?	Yes
Ombud Scheme	LTI Ombud
Does the ombud's decision bind the financial provider?	Yes, automatically, whether the provider accepts it or not
Does the ombud's decision bind the complainant?	No
Could the complainant afterward pursue the same claim by litigation in court?	Yes
Can the complainant enforce the ombud's decision in court?	Yes, as a matter of contract
Can the scheme help the complainant to enforce the ombud's decision?	Yes
Ombud Scheme	STI Ombud
Does the ombud's decision bind the financial provider?	Yes, automatically, whether the provider accepts it or not
Does the ombud's decision bind the complainant?	No
Could the complainant afterward pursue the same claim by litigation in court?	Yes
Can the complainant enforce the ombud's decision in court?	Yes, as a matter of contract
Can the scheme help the complainant to enforce the ombud's decision?	No

Ombud Scheme	JSE Ombud
Does the ombud's decision bind the financial provider?	Yes, automatically, whether the provider accepts it or not
Does the ombud's decision bind the complainant?	No
Could the complainant afterward pursue the same claim by litigation in court?	Yes
Can the complainant enforce the ombud's decision in court?	No
Can the scheme help the complainant to enforce the ombud's decision?	Yes. As a self-regulatory organization, the JSE can enforce the decision itself. If the provider defaults financially, the complainant is likely to have a claim on the JSE Guarantee Fund.
Ombud Scheme	FAIS Ombud
Does the ombud's decision bind the financial provider?	Yes, automatically, whether the provider accepts it or not
Does the ombud's decision bind the complainant?	Yes, automatically, whether the complainant accepts it or not
Could the complainant afterward pursue the same claim by litigation in court?	No
Can the complainant enforce the ombud's decision in court?	Yes, as if it were a civil court judgment
Can the scheme help the complainant to enforce the ombud's decision?	No
Ombud Scheme	PFA
Does the ombud's decision bind the financial provider?	Yes, automatically, whether the provider accepts it or not
Does the ombud's decision bind the complainant?	Yes, automatically, whether the complainant accepts it or not
Could the complainant afterward pursue the same claim by litigation in court?	No
Can the complainant enforce the ombud's decision in court?	Yes, as if it were a civil court judgment
Can the scheme help the complainant to enforce the ombud's decision?	No

## 9.7 STAKEHOLDER VIEWS

**Stakeholders commented on some of the differences highlighted above.** Most commonly, they referred to the maximum award limit of the FAIS Ombud and the differences in powers relating to redress. Other stakeholders commented generically on the range of differences in jurisdiction, processes, and approaches across the different ombud schemes.

## 9.8 CONCLUSIONS

### Definition of What Constitutes a Complaint

**The use of differently worded definitions<sup>172</sup> of what constitutes a complaint creates gaps, could lead to confusion, and makes inconsistency of application more likely.**



- Though their substance is similar, the wording of the three statutory definitions differs from one another, and the wording of the FSCA definitions differ from two of the three statutory definitions.
- Among the industry ombud schemes, two do not have definitions, and three have differing definitions that also differ from the statutory and FSCA definitions.
- Despite the extent of illiteracy and poor literacy in South Africa, none of the definitions provides that an oral complaint has the same validity as a written complaint.
- If the COFI Bill definition were amended to make it clear that a complaint could be oral or written, it would suffice for all sectors.
- The Banking Ombud refers complaints to the bank if the complainant has not reached the end of the bank's in-house complaint-handling process.
- For other ombud schemes, it suffices if the complainant has raised the complaint with any part of the financial provider.

### Redress a Financial Ombud Can Award

**There are significant differences and gaps in the redress that the different financial ombuds can award, even relating to one product or arising out of a single transaction.**

### Relevant Obligations for Providers

**The complaint-handling obligations of financial providers lack consistent requirements to resolve complaints fairly, give information about the ombud system, and give a clear written final decision within a specified time.**

- The existing regulatory requirements for insurers and the coming regulatory requirements for banks are consistent with one another. The regulatory requirements for advisers and intermediaries differ. Other sectors lack any detailed regulatory requirements at all.
- The terms of reference of the Banking Ombud (incorporating the Banking Code) and the Credit Ombud impose obligations that differ from one another and differ in some ways from the regulatory requirements.

- One of the ombud schemes can award compensation for loss but cannot make a direction. Two cannot award compensation for loss but can make a direction. Four can do both.
- Four of the ombud schemes can award compensation for consequential loss, and three cannot. Five can award compensation for material distress/inconvenience, and two cannot.
- Three of the ombud schemes have (differing) maximum limits on what they can award. Four of the ombud schemes do not.

### Effect and Enforcement of Financial Ombud Decision

**The effect of a financial ombud decision, and the means to enforce it, differ among different sectors of the ombud system (and, in some cases, fall short of international good practice).**

### Referrals by Ombud Schemes to Providers

**Most of the ombud schemes have arrangements to refer to financial providers those complaints that have not first been raised with the provider, but these differ in process and time limits.**

- The Credit Ombud used to refer such premature complaints but says that it has stopped because of financial constraints since the banks transferred all their work to the Banking Ombud.

- In the two statutory schemes:
  - Financial providers are automatically bound by the financial ombud's decision.
  - Complainants are automatically bound by the financial ombud's decision.
  - The law provides that their decisions are enforceable in the same way as a civil court judgment.
  - The ombud schemes cannot assist complainants in enforcing their decisions.

- In the Banking and Credit Ombud schemes:
  - Financial providers are bound only if the complainant formally accepts the decision.
  - Complainants are bound only if they formally accept the decision.
  - The decisions are enforceable in court under contract law.
  - The Credit Ombud can help the complainant to enforce.
  - The Banking Ombud cannot help the complainant to enforce (but says banks always pay).
- In the LTI and STI Ombud schemes:
  - Financial providers are automatically bound by the financial ombud's decision.
  - Complainants are not bound.
  - The decisions are enforceable in court under contract law.
  - The LTI Ombud can help the complainant to enforce.
  - The STI Ombud cannot help the complainant to enforce.
- In JSE Ombud scheme:
  - Financial providers are automatically bound by the financial ombud's decision.
  - Complainants are not bound.
  - The JSE itself can enforce the decision.
  - If the provider defaults financially, the complainant is likely to have a claim on the JSE Guarantee Fund.

## Effectiveness of Interaction and Powers Overall

**We consider that there are material inconsistencies and deficiencies in the definitions of what constitutes a complaint, relevant obligations for financial providers, redress a financial ombud**

**can award, and the effect and enforcement of ombud decisions—and that these significantly undermine the effectiveness of the system.** In our assessment, all of these issues must inevitably create the following:

- Inconsistency in how financial providers treat complaints and to what extent financial providers tell complainants about the ombud system
- Inconsistency (and, in some case, inadequacy) of outcomes among otherwise-similar complaints, simply because of the identity of the ombud scheme into whose jurisdiction they fall
- Encouragement of forum shopping where jurisdictional boundaries are unclear, because one ombud scheme may have power to award much more redress than another ombud scheme
- Confusion for financial providers about what is expected of them, and confusion for consumers and consumer advisers about what redress is available and how it can be enforced

**Areas for potential improvement include ensuring the following:**

- A consistent and sufficiently comprehensive definition of what constitutes a complaint—to be used by ombud schemes, financial providers, and regulators—that confirms that an oral expression of dissatisfaction suffices and that a complaint does not have to be in writing
- Consistent requirements for financial providers (set by the regulator) about how providers should resolve complaints fairly, give information about the ombud system, and give a clear written final decision on complaints within a specified time
- Consistent and sufficient redress powers for all of the ombuds in the financial ombud system (and, if differing maximum limits are deemed necessary, there should be a logical link to specific categories of product readily understandable by consumers)
- Consistency in how far financial ombud decisions are binding on the parties, and consistency in the availability of effective mechanisms and support for complainants in enforcing those decisions

# 10

## INDEPENDENCE

This chapter considers the implementation across the ombud system of independent governance arrangements designed to ensure redress that is visibly objective, impartial, and unbiased.

### 10.1 CRITERIA

**Impartiality is underpinned by demonstrable independence. This chapter considers how far the independence of individual ombud schemes is guaranteed by their formal governance arrangements**

- For the industry ombud schemes, this means the following:
  - The constitutional documents establishing each ombud scheme
  - The terms of reference (or rules) under which it operates
- For each statutory ombud scheme, this means the legislation
  - Establishing it; and
  - Under which it operates.

**We consider, and compare with international good practice, the structures designed to ensure the independence of any board, the individual ombuds, and the resources available to the ombud scheme.**

- Is there an independent board—to provide the financial ombud with essential support and accountability?
- Are the board members chosen in a way that instills public confidence?
- Are they appointed on terms that secure their independence from those who appointed them, the financial industry, consumer bodies, financial regulators, and politicians?

- Does the independent board have power to make changes to the scope and powers of the financial ombud scheme without the financial industry or consumer bodies having a veto?
- Does the ombud scheme have and control its own resources and funding?
- Is any financial ombud chosen in a way that instills public confidence?
- Are they appointed on terms that secure their independence from those who appointed them, the financial industry, consumer bodies, financial regulators, and politicians?<sup>173</sup>
- Are the ombuds free to resolve cases on their merits, without fear or favor—and free from influence/direction by parties, financial regulators, or politicians?

**We also take into account that the FSOS Act called on the FSOS Council, before granting recognition of an ombud scheme, to consider a number of requirements,<sup>174</sup> including the following:**

- A body that is not controlled by participants in the scheme must appoint the ombud, set their remuneration, and monitor their performance and independence.
- The procedures of the scheme must enable the ombud
  - To resolve complaints through mediation, conciliation, recommendation, or determination; and
  - To act independently in resolving a complaint or in making a determination.

- The scheme must have sufficient human, financial, and operational resources, funded by the participants in the scheme, to enable the ombud to function efficiently and in a timely manner.

Our assessment focuses on what is guaranteed by the formal governance arrangements of the ombud schemes. It is important to note the following:

- All the ombud schemes were successfully created in the context of a complex commercial, social, and political environment with some particular challenges in the past.
- What constitutes international good practice for ombud schemes has evolved since the existing schemes were established.
- We have sought to give appropriate weight to instances where the schemes informed us that they had adopted new standards in practice, even though these are not reflected in their formal arrangements.
- In the future ombud system it is, of course, important that good practice should be guaranteed by the formal governance arrangements.
- None of our comments should be taken as any criticism of the individuals working conscientiously within the existing governance arrangements of the current schemes.
- The four schemes<sup>175</sup> that have their own governing bodies appear to have successfully attracted to those bodies in practice a wide and diverse range of talented members.

## 10.2 BANKING OMBUD

**The Banking Ombud is registered as a nonprofit company called the “Ombudsman for Banking Services NPC.”**

- Under the company’s memorandum of incorporation:
  - The object of the company is to provide customers of participating banks with a dispute-resolution mechanism.

- Banks are deemed to be members of the company for so long as they remain members of the BASA.
- The member banks elect eight board members (and alternates) comprising:
  - As chair, a judge or other appropriate statutory office or retired judge or other appropriate statutory office (or, if a suitable candidate cannot be found, a senior advocate) selected by the board;
  - Three banking directors, representatives of the banking sector in South Africa, nominated by the board of the BASA; and
  - Four independent directors, independent of the banking sector in South Africa, nominated by the company’s board (if six of eight directors vote in favor).
- The directors are appointed for a term of three years and can be reappointed for one further term of three years.
- The board has the following powers:
  - To appoint the ombud (if six of eight directors vote in favor)
  - To dismiss the ombud (if the chair is present and six of eight directors vote in favor)
  - To approve changes to the terms of reference (if six of eight directors vote in favor)
  - To approve the budget
  - To consider the annual report by the ombud and provide comments
  - To make recommendations on amendments to the Banking Code
- The ombudsman has overall responsibility for the conduct of the day-to-day administration of the company, including hiring employees.

- Under the company’s charter:
    - The composition of the board should reflect the need to ensure the independence of the company from the influence of the banking sector and the bank members (on the one hand) and to advance the interests of the customers of the participating banks (on the other).
    - The board should establish a formal and transparent procedure for appointments to the board.
    - Directors must declare any possible conflict of interest and not participate in a discussion or vote on the subject matter.
    - Candidates for membership on the board should
      - Have the ability to make informed decisions;
      - Be able to think strategically;
      - Be able to appreciate the wider banking context and perspective;
      - Have integrity in personal and business dealings;
      - Be objective at all times about what is in the best interest of the ombud scheme, participating banks, and their customers; and
      - Have sufficient time available to carry out their duties and responsibilities.
    - Independent directors are directors who
      - Are not representatives of any participating bank;
      - Have not been employed by a participating bank or the group of which it currently forms part in any executive capacity for the preceding three financial years;
      - Are not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by a participating bank or its group in an executive capacity;
    - Are not a professional advisor of the company, a participating bank, or group, other than in the capacity as a director;
    - Are not a significant supplier to, or customer of, a participating bank or group;
    - Have no significant contractual relationship with a participating bank or group; and
    - Are free from any business or other relationship that could be seen to interfere materially with the individual’s capacity to act in an independent manner.
  - Under the company’s terms of reference:
    - The ombud acts independently and objectively in resolving disputes and is not influenced by anybody in making decisions.
    - The ombud enjoys security of tenure and can be dismissed only on the ground of incompetence, gross misconduct, or inability to carry out his or her duties effectively.
    - The ombud cannot be dismissed for being unpopular with the banks or the consumer groupings.
  - The company says that smaller banks and those with fewer than 50 complaints per year pay a fixed annual membership fee, and that the six larger banks (in size and number of complaints) pay a fee that is calculated in accordance with their percentage of the total number of complaints received.
- The following features of the formal governance arrangements of the Banking Ombud appear to fall short of current best international practice on independence:**
- The board:
    - The charter says the board should establish a formal and transparent procedure for appointments to the board, but the company informs us that posts are not publicly advertised.

It says that advertising is by word of mouth among present and past board members, stakeholders, and industry and that there is a rigorous interview process.

- Non-bankers comprise a five-to-three majority on the board. But the specified majority of six board members out of eight for amending the terms of reference and for nominating independent directors has the effect of giving the banking members a veto (if they act together).
- Once nominated by the board, the independent directors have to be elected by the members, which are all banks (though the company informs us that this is merely a formality).
- The ombud:
  - There is no requirement for a transparent recruitment process, following a public advertisement, though the company informs us that this is done in practice.
  - The specified majority of six board members out of eight for appointing the ombud has the effect of giving the banking members a veto (if they act together).
  - Someone who has worked in a financial provider (or a financial industry body) in the previous three years is not prevented from being appointed as ombud, so someone who is currently a banker could be appointed as ombud.
  - There is no requirement that the ombud be appointed for a term of at least five years, though the company informs us that this is done in practice.
  - There is no requirement that the ombud is told at least one year before the end of their term whether they are to be reappointed.
  - The ombud's rate of pay is not protected by being linked to some appropriate external objective benchmark (for example, an equivalent grade of judge or other appropriate statutory office).

## 10.3 CREDIT OMBUD

**The Credit Ombud is established as an association (comprising a legal entity distinct from its members) called the “Credit Ombud Association.”** Under its constitution:

- The purposes of the association are to resolve disputes effectively within the credit industry and to provide consumer education to the public on the role and functions of the Credit Ombud and on matters of a general financial nature.
- The association
  - Will not take sides and will remain impartial at all times;
  - Will act independently and objectively;
  - Will have regard to the law, fairness, justice, equity, and fundamental human rights and values as prescribed by the principles of “Ubuntu”;<sup>176</sup> and
  - Must balance the rights of consumers and the rights of the members.
- The association and the ombud
  - Must be free from undue influence by any individual or organization; and
  - Will act independently and objectively in resolving disputes and will not be influenced by anybody in making decisions.
- Membership of the association is open to the following:
  - Registered credit providers
  - Registered credit bureaus
  - Subscribers who contract with the credit bureaus to submit consumer credit information
  - Any other entities approved by the association's council

- The council comprises between three and seven members, covering the following three groups:
  - Up to two independents
  - Up to two representatives nominated by consumer bodies
  - Up to three representatives nominated by the credit industry
- The council
  - Elects the council members, for five-year terms;
  - Chooses its own chair and deputy chair;
  - Is required to facilitate the provision of independent, equitable, speedy, and cost-effective resolution of disputes between credit receivers and the members of the association;
  - Is responsible for appointing the ombud;
  - If requested by the ombud, may appoint a deputy ombud;
  - Fixes the funding to be provided by the members and must ensure that it is sufficient to enable the Credit Ombud to function efficiently and in a timely manner, and that the independence of the ombud is free from any undue influence; and
  - Can amend the constitution by a two-thirds majority.
- The council and its members
  - Carry full fiduciary responsibility;
  - Must act in good faith and in the best interests of the association; and
  - Avoid any conflict of interest.
- The ombud
  - Must have the relevant qualifications, competence, knowledge, and experience;
- Has security of tenure and can be dismissed only for incompetence, gross misconduct, or inability to carry out their duties effectively;
- Serves for a term of five years and may be reappointed for a further three years;
- May have their term extended beyond that only with the approval of the FSOS Council;
- Has power to do what is necessary to give effect to all of the objectives of the association; and
- Is responsible for ensuring that the mandate and strategic objectives approved by the council are effectively implemented.
- The role and responsibilities of the ombud include the following:
  - Operational performance
  - Management oversight
  - Developing annual plans and budgets
  - Appointing and managing personnel
  - Fostering a corporate culture that promotes ethical practices and individual integrity and fulfills a social-responsibility objective
- The ombud and employees are
  - Entirely responsible for the handling and determination of complaints;
  - Accountable only to the council; and
  - Adequately resourced to carry out their respective functions.
- The council carries out a formal evaluation of the ombud each year, which must be
  - Based on objective criteria agreed beforehand between the council and the ombud; and
  - Used by the council when considering the ombud's pay.

**The following features of the formal governance arrangements of the Credit Ombud appear to fall short of current best international practice on independence:**

- The council: The following are not required, though the association informs us that they are done in practice:
  - Transparent recruitment process, following a public advertisement
  - Requirement that the chair is not one of the credit industry members
- The ombud:
  - There is no requirement for a transparent recruitment process, following a public advertisement, though the association informs us that this is done in practice.
  - Someone who has worked in a financial provider (or a financial industry body) in the previous three years is not prevented from being appointed as ombud, so an existing credit industry professional could be appointed as ombud. It is notable that a previous ombud was appointed straight from working for the BASA for 11 years.
  - There is no requirement for the ombud's rate of pay to be protected by being linked to an appropriate external objective benchmark (for example, an equivalent grade of judge or other appropriate statutory office), though the association informs us that this is done in practice.
  - There is no requirement for the ombud to be told at least one year before the end of their term whether they are to be reappointed, though the association informs us that this is done in practice.

## 10.4 LTI OMBUD

**The LTI Ombud is established as an association (comprising a legal entity distinct from its members) called the “Long-Term Insurance Ombudsman’s Association.”**

- Under the association’s constitution:
  - The mission of the association is to mediate in disputes between subscribing members of the industry and policyholders.
  - The members of the association are the following:
    - The chair of the council
    - The chair of the committee
    - The ombud
    - The deputy ombud
    - Any assistant ombuds
    - The finance and operations officer
  - The subscribing members of the industry are those members of the long-term insurance industry who subscribe to the rules of the association.
  - The council’s purpose is to facilitate the provision of independent, equitable, speedy, and cost-effective mediation between complaining policyholders and subscribing members of the industry. Its functions include the following:
    - (After consultation with the committee) appointing or reappointing the ombud and deputy ombud and settling the terms and conditions of their employment
    - (After consultation with the committee) approving the budget
    - (After consultation with the committee) approving any changes to the rules and policy guidelines governing the ombud’s powers and activities to ensure that they comply with the association’s purpose
    - Monitoring, maintaining, and promoting the ombud’s independence
  - The committee concerns itself primarily with the efficient operations of the association. Its functions include the following:



- Commenting on the budget and recommending to the council appropriate mechanisms for financing operational costs
- Communicating industry views on any operational issues, including the efficiency of the service rendered
- Acting as a consultative body to the council on the appointment of the ombud, the terms of appointment of the ombud and of senior staff, any change to the rules under which the ombud operates, and any extension or limitation of the ombud's jurisdiction
- The ombud must seek to ensure that
  - They act independently and objectively in advising on any complaint received and take no instructions from anybody regarding the exercise of their authority.
  - The subscribing members of the industry act with fairness and with due regard to both the letter and spirit of the contract between the parties and render an efficient service to those with whom they contract;
  - They keep the scale in balance between the rights of the policyholders on the one hand and the rights of the subscribing members on the other; and
  - Due weight is accorded to considerations of equity.
- The ombud reports to the council and the committee on matters covered by their respective functions.
- The ombud and deputy ombud
  - Have overall responsibility for the conduct of the day-to-day administration and business of the association;
  - Appoint employees and determine all matters relating to their conditions of service and remuneration; and
- Can do anything that is necessary or expedient for the running of the association, which may include issuing guidelines for the implementation and application of the rules.
- The ombud, the deputy ombudsman, and any assistant ombuds have authority to give rulings relating to the complaint-handling process.
- Amendments to the constitution require a resolution by the members and approval by the council after consultation with the committee.
- Under the council's constitution:
  - The council consists of between five and 11 members.
  - The ombud and the chair of the committee are members ex officio.
  - The FSB (now, in effect, the FSCA) can nominate (and change) one member.
  - The other members are appointed by the council in their personal capacity
    - Having regard to the knowledge and skills required by the association and the need to represent the broad public interest and promote public confidence; and
    - For a term of three years and are eligible for reappointment for successive terms of three years.
  - Each member of the council is obliged to act in the best interests of the association.
- Concerning the committee:
  - It comprises representatives from various life offices that are subscribing members.
  - Its chair is an ex officio member of the council.
- Under the current ombud's employment contract:
  - The ombud has security of tenure and in particular will not be liable to dismissal on the grounds of decisions that may be unpopular with insurers or consumer groups.

- The ombud may be dismissed for incompetence, gross misconduct, inability to carry out their duties effectively, or any ground recognized as good cause by law.
- If health or any other vitally important consideration renders it impossible or ill advisable for the ombud to complete their agreed term of office, the appointment may be terminated on six months' notice by either side.
- The association says the following:
  - Ten to twelve percent of its funding is by levy.
  - The balance is by case fees.
  - It bills insurers an amount based on a projected charge per case and the projected case volumes plus the levy.

**The following features of the formal governance arrangements of the LTI Ombud appear to fall short of current best international practice on independence:**

- The Council:
  - There is no requirement that appointments of council members are to be by a transparent process following a public advertisement, though the association informs us that this is done in practice.
  - There is no requirement that a majority of council members are not associated with the industry, though (apart from the ex officio members) members are chosen by the council, and only two of nine of the current council come from the industry.
  - There is no requirement that the chair is not associated with the industry, though the association says that in practice the chair has always been a judge or retired judge.
- The ombud:
  - There is no requirement for a transparent recruitment process, following a public advertisement, though the association informs us that this is done in practice.

- The requirement for the council to consult the committee on appointment of the ombud could give the appearance that the committee (comprising only industry members) has an influence over the appointment.
- Someone who has worked in a financial provider (or a financial industry body) in the previous three years is not prevented from being appointed as ombud, so an existing insurance industry professional could be appointed as ombud. In practice, over its 35-year history, the LTI Ombud has always been a retired judge.
- There is no requirement for the ombud to be appointed for a term of at least five years, though the association informs us that this is done in practice.
- There is no requirement that the ombud is told at least one year before the end of their term whether they are to be reappointed.
- There is no requirement that the ombud's rate of pay is protected by being linked to an appropriate external objective benchmark (for example, an equivalent grade of judge or other appropriate statutory office), though the association informs us that this is done in practice.

## 10.5 STI OMBUD

**The STI Ombud is registered as a nonprofit company called the “Ombudsman for Short-Term Insurance NPC.”**

- Under the company's memorandum of incorporation:
  - The objects of the association are the following:
    - To comply with the requirements for recognition as an industry scheme under the FSOS Act
    - To serve the interests of the insuring public and of the insurance industry, which includes all registered insurers and Lloyd's underwriters and their intermediaries

- To receive and consider any complaints arising as a result of a dispute between a policyholder and a member
- Membership of the company is open to the following:
  - Registered insurers that underwrite short-term insurance business
  - The representative of Lloyd's designated under the Short-term Insurance Act
  - Intermediaries
- The members elect a board of 11 members, to serve terms of three years, comprising the following:
  - Two independent non-executive directors appointed from a list compiled by the ombud in consultation with every member of the board and who, by virtue of their training, expertise, experience in the business world, and stature in the community, are able to add to the standing of the company in the eyes of all its stakeholders
  - Four directors representing consumers appointed from a list of the most appropriate candidates compiled by the ombud in consultation with current consumer directors on the board
  - Three directors representing the members appointed from a list of those nominated by the chief executive officers of members
  - One director representing the SAIA, appointed ex officio
  - One director representing the FSB (now, in effect, the FSCA), appointed ex officio
- The board elects its chair and deputy chair annually. The chair must be one of the independent directors.
- The board has power to make (and change) rules on, among other things, the following:
  - The election and appointment of the ombudsman
  - Changes recommended by the ombud to the ombud's terms of reference
  - The creation of the budget
  - Contributions to the budget payable by members
  - Ensuring compliance by the company with the FSOS Act
  - The budget is prepared by the ombud and approved by the board.
  - The cost is shared by the members prorated to the number of registered complaints against each member, or according to some other formula approved by the board.
  - The ombudsman is appointed by the board and must
    - Have been qualified as an attorney or advocate for at least 15 years, or be a former High Court judge; and
    - Have had at least seven years' involvement with the short-term insurance industry in whatever capacity is approved by the board.
  - The ombudsman
    - Is appointed for between three and five years;
    - May be reappointed for not more than a further five years in total;
    - Can be removed from office by a majority vote of the board; and
    - Is entitled to receive payment of reasonable remuneration.
  - If requested by the ombud, the board may appoint a deputy ombudsman.
  - The ombudsman has power to appoint staff at such remuneration and on such other terms deemed fit within the budget constraints of the company.

- The memorandum of incorporation can be amended by a special resolution of members proposed by the board or by at least 10 percent of the voting members.
- Under the company's terms of reference:
  - The ombud has overall responsibility for the day-to-day administration and business of the company.
  - The ombud has the following powers:
    - To appoint an administrator, responsible to the ombud
    - To appoint and dismiss employees, consultants, legal experts, independent contractors, and agents and to determine their salaries, fees, terms of employment, or engagement
    - To incur expenditure in accordance with the budget approved by the board
- Under the current ombud's employment contract:
  - The ombud has security of tenure and in particular will not be liable to dismissal on the grounds of decisions that may be unpopular with insurers or consumer groups.
  - The ombud may be dismissed for incompetence, gross misconduct, inability to carry out their duties effectively, or any ground recognized as good cause by law.
  - If health or any other vitally important consideration render sit impossible or ill advisable for the ombud to complete their agreed term of office, the appointment may be terminated on six months' notice by either side.
- There is no explicit requirement in the governance documents for board members to act in the public interest, though the company informs us that in practice they always do so.
- The ombud:
  - There is no requirement that the appointment of the ombud is to be by a transparent process following a public advertisement, though the company informs us that this is done in practice.
  - Someone who has worked in a financial provider (or a financial industry body) in the previous three years is not prevented from being appointed as ombud, so an existing insurance industry lawyer could be appointed as ombud. Indeed, the requirement for the ombud to have had at least seven years' involvement with the short-term insurance industry makes that more likely.
  - There is no requirement that the ombud be appointed for a term of at least five years. (They can be appointed for between three and five years.)
  - There is no requirement for the ombud to be protected against removal except for incapacity, misconduct, or other just cause, though the company informs us that this is the case in practice and is reflected in the ombud's contract.
  - There is no requirement that the ombud is told at least one year before the end of their term whether they are to be reappointed. It is notable that none of the previous four ombuds was reappointed.
  - There is no requirement that the ombud's rate of pay is protected by being linked to an appropriate external objective benchmark (for example, an equivalent grade of judge or other appropriate statutory office), though the company informs us that this is done in practice:

**The following features of the formal governance arrangements of the STI Ombud appear to fall short of current best international practice on independence:**

- The board:
  - There is no requirement that appointments of board members are to be by a transparent process following a public advertisement.

## 10.6 JSE OMBUD

**The JSE Ombud is an individual appointed on a case-by-case basis under the rules of the JSE.** Under those rules:

- A case will be referred by the JSE’s company secretary to a duly appointed ombud for consideration.
- The JSE will appoint the ombud, who must be a retired High Court judge or a senior counsel.
- The ombud controls the process of the case and makes a decision.
- There is no separate budget and funding.

There is no independent board or council and little independence in the appointment of the ombud.

- Appointment is by the JSE, which is a self-regulatory organization and of which the financial provider is a member.
- The ombud has security of tenure for only one case at a time, although a retired High Court judge or a senior counsel will be seen to be personally independent.

## 10.7 FAIS OMBUD

**The FAIS Ombud is established by chapter VI, part I, of the FAIS Act and called the “Ombud for Financial Services Providers.”** There are some similarities to, and some differences from, the provisions in the legislation establishing the PFA.

- Under the FAIS Act, as amended by the FSR Act:<sup>177</sup>
  - The Office of the Ombud for Financial Services cannot be disestablished or liquidated except by an act of Parliament.
  - The Ombud for Financial Services is declared to be a statutory ombud scheme for the purposes of the FSR Act.
  - The minister

- Appoints as ombud a person who is qualified in law and possesses adequate knowledge of the rendering of financial services;
- May appoint as deputy ombud one or more persons who is qualified in law and possesses adequate knowledge of the rendering of financial services;
- May, on good cause shown, remove the ombud or a deputy ombud from office on the ground of misbehavior, incapacity, or incompetence after affording the person concerned a reasonable opportunity to be heard; and
- May set maximum limits for the amount of compensation that the ombud can award.
- The remuneration of the ombud, and any deputy ombud, is set by
  - The commissioner of the FSCA until March 31, 2022; and
  - The minister from April 1, 2022.<sup>178</sup>
- The budget is approved by
  - The commissioner of the FSCA until March 31, 2022; and
  - The minister from April 1, 2022.<sup>179</sup>
- The commissioner of the FSCA has power to make rules on<sup>180</sup>
  - Which complainants are eligible to use the ombud;
  - Types of complaints covered by the ombud (which may include complaints about a financial service provided by an unauthorized person);
  - How financial providers should handle complaints; and
  - Payment of case fees by authorized providersbut must ensure no rule detracts from, or affects the independence of, the ombud in any material way.

- The ombud
  - Decides whether a case is within the jurisdiction set by rules;
  - Decides the outcome of cases—subject to review by the Financial Services Tribunal;
  - When dealing with complaints, is independent and must be impartial;<sup>181</sup>
  - Can employ staff, determine their terms of appointment, and assign duties to them; and
  - Is the accounting authority under the PFM Act.<sup>182</sup>
- The auditor-general audits the accounts.
  - Under Rule 2(a) of the Rules on Proceedings of the Office of the Ombud for Financial Services Providers of 2003, in disposing of a complaint, the ombud acts independently and objectively and takes no instructions from any person regarding the exercise of authority.
  - Under the FSB Act and the Financial Sector Regulations of 2018, the FSCA sets a levy, for funding the FAIS Ombud, payable by providers authorized under the FAIS Act.

**The following features of the formal governance arrangements of the FAIS Ombud appear to fall short of current best international practice on independence:**

- There is no independent board/council of the ombud scheme (along the lines described in section 10.1 of this chapter) to provide the financial ombud with essential support and accountability.<sup>183</sup>
- The ombud:
  - The appointment is made by a politician.
  - There is no requirement for the appointment to be by a transparent process following a public advertisement, though the ombud informs us that this is done in practice.

- Someone who has worked in a financial provider (or a financial industry body) in the previous three years is not prevented from being appointed as ombud, so an existing financial industry professional could be appointed as ombud.
- There is no explicit requirement for the ombud to be appointed on terms that secure their independence; in particular, there are no requirements for
  - The ombud to be appointed for a minimum term of five years; or
  - The ombud’s rate of pay to be protected by being linked to an appropriate external objective benchmark (for example, an equivalent grade of judge or other appropriate statutory office).
- The ombud can be removed by the minister for misbehavior, incapacity, or incompetence after being heard but without the additional procedural safeguards (independent inquiry and a report to the National Assembly) that apply, for example, to the removal of a member of the Ombud Council under the FSR Act.
- There is no requirement that the ombud is told at least one year before the end of their term whether they are to be reappointed, though the ombud informs us that this is done in practice.
- From April 1, 2022, the budget has to be approved by a politician.

## 10.8 PFA

**The PFA is established by chapter VA of the PF Act (as amended) and called the “Office of Pension Funds Adjudicator.”**<sup>184</sup> There are some similarities to, and some differences from, the provisions in the legislation establishing the FAIS Ombud.

- Under the PF Act (as amended):<sup>185</sup>
  - The PFA is declared to be a statutory ombud scheme for the purposes of the FSR Act.

- The Office of the Pension Funds Adjudicator cannot be liquidated except by an act of Parliament.

- The minister

- Appoints<sup>186</sup>

- An adjudicator, and

- One or more deputy adjudicators;

All of whom must

- Have practiced as an advocate or attorney for 10 years, or

- Have taught law for 10 years and have practiced as an advocate or attorney, or

- Possess other suitable experience;

and are appointed for not more than three years (which may be renewed);

- May remove the adjudicator or deputy adjudicator from office on the grounds of misbehavior, incapacity, or incompetence after consultation with the FSCA; and

- Makes regulations about the processes and procedures to be applied by the adjudicator.<sup>187</sup>

The budget is approved by

- The commissioner of the FSCA until March 31, 2022; and

- The minister from April 1, 2022.<sup>188</sup>

The remuneration of the adjudicator and deputy adjudicator are set, and the remuneration of other staff is agreed, by

- The commissioner of the FSCA until March 31, 2022; and

- The minister from April 1, 2022.<sup>189</sup>

- The adjudicator

- Decides whether a case is within jurisdiction;

- Decides the outcome of cases—subject to review by the Financial Services Tribunal;

- Can employ staff and assign duties to them; and

- Is the accounting authority under the PFM Act.<sup>190</sup>

- Under the FSB Act and the Financial Sector Regulations of 2018, the FSCA sets a levy, for funding the PFA, payable in respect of pension funds registered (or provisionally registered) under the PF Act.

**The following features of the formal governance arrangements of the PFA appear to fall short of current best international practice on independence:**

- There is no independent board/council of the ombud scheme (along the lines described in section 10.1 of this chapter) to provide the adjudicator with essential support and accountability.<sup>191</sup>

- The adjudicator:

- The appointment is made by a politician.

- There is no requirement that the appointment is to be by a transparent process following a public advertisement, though the PFA informs us that this is done in practice.

- Someone who has worked for a financial provider (or a financial industry body) in the previous three years is not prevented from being appointed as ombud, so an existing financial industry lawyer could be appointed as adjudicator.

- There is no explicit requirement that the adjudicator be appointed on terms that secure their independence.

- The adjudicator is appointed for three years, rather than five.

- The adjudicator can be removed by the minister on the grounds of misbehavior, incapacity, or incompetence after consultation with the

FSCA but without the additional procedural safeguards (independent inquiry and a report to the National Assembly) that apply, for example, to the removal of a member of the Ombud Council under the FSR Act.

- There is no requirement for the adjudicator be told at least one year before the end of their term whether they are to be reappointed.
- There is no requirement for the adjudicator’s rate of pay to be protected by being linked to an appropriate external objective benchmark (for example, an equivalent grade of judge or other appropriate statutory office).
- From April 1, 2022, the budget and the pay and employment terms of all staff have to be approved by a politician.
- A politician can set the processes and procedures to be applied by the adjudicator.

## 10.9 STAKEHOLDER VIEWS

**Stakeholders all agreed that the ombud system should be demonstrably independent.**

- Industry stakeholders accepted that consumer trust and confidence required independence from the financial industry.

- They acknowledged that direct funding of the industry schemes by industry participants could create a public perception that the schemes were not truly independent of the industry. But they noted that the governance arrangements mean that these schemes are in fact independent.
- A few commented that in some cases they felt the ombud’s views tended to tilt toward the consumer, rather than being evenhanded.
- A significant number of stakeholders (mainly but not exclusively from the industry) were also concerned that the ombud system should be demonstrably independent from politicians and government.

## 10.10 CONCLUSIONS

### Company/Association/Statutory Body

**Table 10A summarizes the corporate structure of the various ombud schemes:** The fact that four of them “belong” to industry members risks the perception that they are not independent. Below, in the context of boards/councils, we consider the extent to which they are actually independent.

**Table 10A. Independence—Company/Association/Statutory Body**

	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
Company (nonprofit) with industry members	✓			✓			
Association with industry members		✓					
Association without industry members			✓				
Self-regulatory organization with industry members					✓		
Statutory office						✓	✓



## Board/Council

**Four of the ombud schemes have their own board/council; three do not.** A board/council can help support the independence of the ombud (where the ombud may need to resist external pressure in deciding cases) and provide a source of constructive accountability in the management of the scheme. The two statutory ombud schemes do not have boards/councils of their own (unlike statutory ombud schemes in other countries, such as the United Kingdom and Ireland), nor does the JSE Ombud.

**In respect of the four ombud schemes that have boards/councils, table 10B summarizes key aspects.**

- Recruitment of board/council members by a transparent process, following a public advertisement, is more likely to ensure the diversity of the board/council and exploration of new ideas. As the table shows, this is not the universal practice.
- In all of the schemes, industry members form a minority of the board/council. But the following situations undermine the perceived independence of the board/council:

- Where (as in two of the ombud schemes) non-industry board/council members, even if nominated by another mechanism, must be elected by the industry members of the scheme itself
- Where (as in two of the ombud schemes) the chair of the board/council could be one of the industry members of the board/council—though they inform us this does not happen in practice
- Where (as in one of the ombud schemes) there are provisions for special majorities that result in the industry members of the board/council (if they act together) having a veto on some decisions
- None of the ombud schemes bars serving financial regulators from the board/council, and two of the ombud schemes have regulators as board/council members.
- This creates the risk of confusion between the very different roles of regulator and dispute resolver and, occasionally, the risk of tensions if a run of ombud decisions has prudential implications for a particular provider.

**Table 10B. Independence—Board/Council**

Y = Yes, in the constitutional documents ↙ = See footnote N = No, not in the constitutional documents P = No, but the body says it does in practice	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
Is there a board/council?	Y	Y	Y	Y	N	N <sup>192</sup>	N <sup>193</sup>
Are posts advertised?	↙ <sup>194</sup>	P	P	N	N/A	N/A	N/A
Nominated from different constituencies? <sup>195</sup>	Y	Y	Y	Y	N/A	N/A	N/A
Elected by the board/council?	N	Y	Y	N	N/A	N/A	N/A
Not elected by industry members?	N	Y	Y	N	N/A	N/A	N/A
Term of at least three years?	Y	Y	Y	Y	N/A	N/A	N/A
Industry members a minority?	Y	Y	P	Y	N/A	N/A	N/A
Chair cannot be an industry member?	Y	P	P	Y	N/A	N/A	N/A
Can change rules/terms of reference?	↙ <sup>196</sup>	↙ <sup>197</sup>	Y	Y	N/A	N/A	N/A

**Table 10C. Independence—Ombud**

Y = Yes, in the constitutional documents ↵ = See footnote N = No, not in the constitutional documents P = No, but the body says it does in practice	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
Is the post advertised?	P	P	P	P	N	P	P
Appointed by the board/council?	↵ <sup>198</sup>	Y	Y	Y	↵ <sup>199</sup>	N	N
Appointed by independent body, not a politician?	Y	Y	Y	Y	Y	N	N
Appointee from the industry barred?	N	N	N	N	Y	N	N
Appointed for at least five years?	P	Y	P	N	P	N	N
Told a year before if not to be reappointed?	N	P	N	N	N	P	N
Can be dismissed only for good cause?	Y	Y	Y	P	P	Y	Y
Dismissal by board/council?	Y	Y	Y	Y	N	N	N
Cannot be dismissed by a politician?	Y	Y	Y	Y	Y	N	N
Pay linked to external objective benchmark?	N	P	P	P	N	N	N
Hires and controls employees?	Y	Y	Y	Y	N	Y	↵ <sup>200</sup>

- This does not mean that there should not be appropriate lines of two-way communication between ombud schemes and financial regulators, consistent with their differing independent roles, as we discuss in chapter 14 (Openness).
- None of the ombud schemes bars serving politicians from the board/council. If a serving politician could be a board/council member, there is a risk that the board/council might become associated with external controversies or be perceived to be susceptible to political influence.

**Ombud**

**The impartiality of the ombud should be underpinned by the ombud’s demonstrable independence from the financial industry, consumer bodies, financial regulators, and politicians. Table 10C summarizes key aspects.**

- The best choice of qualified candidates is likely to come from a transparent recruitment process, following a public advertisement. As the table shows, this is not a specified requirement in any of the schemes, and not every scheme does so in practice.
- The independence of the mechanism for appointing the ombud (and dismissing an ombud for good cause) is a key aspect of demonstrating the independence of the ombud who is appointed.
  - In four of the schemes, the ombud is appointed by the board/council (and may be dismissed by the board/council for good cause). This is appropriate if the board/council is itself independent and able to act independently. We have already set out some issues in relation to this.
  - In two of the schemes, the ombud is appointed by a politician (and may be dismissed by a politician for good cause but without the additional procedural safeguards afforded to members of the Ombud Council).<sup>201</sup>

- In the remaining scheme, the ombud is appointed on a case-by-case basis by the membership-based self-regulatory organization. None of the three is demonstrably independent.
- Once appointed, the ombud’s independence should be underpinned by security of tenure.
  - International good practice suggests a minimum term of five years. One of the ombud schemes is required, by its constitutional documents, to provide this. Three are not required to provide it but say they do in practice. Three do not provide it.
  - International good practice suggests an existing ombud should be told whether their term is to be renewed at least one year before the end of their current term. None of the schemes is required, by their constitutional documents, to do this. Only two say that they do it in practice.
- None of the schemes is required, by its constitutional documents, to protect the ombud’s pay by linking it to an external objective benchmark (such as an equivalent level of judge or other appropriate statutory office), and only three say that they do so in practice.
- In all of the schemes, in line with international good practice, the ombud is free to employ staff and set their duties. In all but one of the schemes, the ombud sets they pay of such staff, within the approved budget. In the PFA, from April 1, 2022, staff pay has to be agreed by a politician.

## Budget/Funding

**In accordance with international good practice, an ombud scheme needs to control sufficient resources.** In order to operate independently and effectively, it needs to control its own budget and funding—though whether funding comes from levies, case fees, or a combination of the two is best decided in the light of local conditions.

- Levies are paid by all financial providers within the jurisdiction of an ombud scheme. This funding source
  - Gives the ombud scheme a reasonable degree of certainty about the amount of funding it will receive each year;
  - Gives financial providers a degree of stability and predictability of the amount payable, enabling them to budget ahead; and
  - Reflects the increased consumer confidence that all financial providers benefit from when consumers know there is somewhere they can go if things go wrong.
- Case fees are paid by financial providers against which complaints are referred to the ombud scheme. This funding source
  - Creates a significant degree of uncertainty for the ombud scheme about the amount of funding it will receive;

**Table 10D. Independence—Budget/Funding**

	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
Budget approved by board/council?	✓	✓	✓	✓			
Budget approved by politician?						✓ <sup>202</sup>	✓ <sup>203</sup>
Providers pay levy (usually based on size)	✓ <sup>204</sup>	✓	✓	✓		✓	✓
Providers pay fees (based on number of cases)	✓ <sup>205</sup>		✓	✓			
No separate budget or funding					✓		

- Creates a degree of volatility in the amounts that will be payable by financial providers, making it more difficult for them to budget ahead; but
- Reflects the workload that those financial providers generate for the ombud scheme, irrespective of the outcome of cases.
- Internationally, some ombud schemes balance these factors by
  - Charging all financial providers a combination of levies and case fees (for example, raising half their funding by levies and half by case fees); or
  - (To simplify levy collection) charging larger providers a levy plus (lower) case fees and smaller providers just a (larger) case fee.

**Table 10D shows existing arrangements in South Africa for budget approval and funding.**

- In the two statutory schemes, the budget is currently approved by the FSCA, but from April 1, 2022, it will be subject to approval by a politician. In four of the industry schemes, the budget is approved by the board/council. There is no separate budget for the JSE Ombud scheme.
- The STI Ombud scheme is funded by fees based on the number of cases. The Credit Ombud, FAIS Ombud, and PFA are funded by levies (usually based on provider size). The Banking and LTI Ombud schemes are funded by a combination of both. The JSE Ombud is funded out of the JSE budget provided by industry members.
- All of the ombud schemes are funded by the industry (and, arguably, ultimately by customers through the charges they pay to financial providers), but where (as with the statutory schemes) the levy is set by the regulator, the perception of independence from the industry appears to be higher.

## Independence overall

**The existing governance arrangements cover many of the features of international good practice designed to demonstrate independence of operation and decision-making.**

- Casework decisions are reserved to the ombuds by the governance documents of the industry schemes and the legislation covering the statutory schemes.
- The four main industry ombud schemes have boards/councils with a diversity of well-qualified and experienced members, well able to stand up for the scheme's independence.
- Only a minority of the members of the boards/councils are from the industry, and all the chairs are currently independent of the industry.
- Individual industry schemes have also adopted various practices to bolster public perception of their independence, such as appointing a retired judge as ombud and/or as chair of the board/council.
- They were all recognized by the FSOS Council as having independently appointed ombuds, free to act independently in resolving cases, and sufficient resources to function efficiently and in a timely manner.

**Nevertheless, as described in this chapter, there are some material inconsistencies (and some deficiencies) in the mechanisms to underpin the independence of the ombud schemes and ombuds.** Some of the current practices of the ombud schemes may go some way to mitigate these deficiencies, but we do not think that relying on good practice is a substitute for ensuring that proper protections are built into the formal governance frameworks. Moreover, the statutory schemes lack an independent governing body to appoint the ombuds and help protect their independence.

**Areas for potential improvement include incorporation of formal requirements that ensure the following:**

- That the ombud is
  - Appointed by, and accountable to, a governing body that is itself demonstrably independent;
  - Is chosen by a transparent and public recruitment process so as to instill public confidence; and
  - Appointed on terms that secure their independence from those who appointed them, the financial industry, consumer bodies, financial regulators, and politicians.
- That the governing body's members
  - Are chosen in a balanced and independent way that instills public confidence—and not chosen by industry members;
  - Are appointed on terms that secure their independence from those who appointed them, the financial industry, consumer bodies, financial regulators, and politicians;
- Include an independent chair and exclude serving politicians and regulators.
- That the independent governing body has power to
  - Approve the budget; and
  - Make changes to the scope and powers of the ombud scheme, subject to any regulatory approvals.
- That in exercising its powers, the independent governing body will at all times have regard to the importance of
  - Preserving the independence, integrity, and fairness of the decision-making process; and
  - Ensuring that the scheme is appropriately resourced to carry out its objectives in a timely and efficient manner.
- That the ombud scheme has, and controls, its own resources and funding.



This chapter assesses the extent to which the financial ombud system is well known and accessible to all types of consumers throughout South Africa.

## 11.1 CRITERIA

**This involves assessing how far the financial ombud system is well known, easy to use, and free for consumers.** Issues to consider include the following:

- Are financial providers required to tell customers in writing about the relevant financial ombud scheme?
- Does each financial ombud scheme provide on its own website comprehensive information that enables the parties to understand the ombud scheme's enquiry and case-handling process?
- Does the financial ombud scheme ensure that information is also readily available to potential complainants who do not have access to the internet?
- Does the financial ombud scheme take active steps to make its services visible and accessible to consumers (especially vulnerable and disadvantaged consumers)?
- Can consumers refer a complaint to the financial ombud free of charge, so that cost does not form a barrier to access?
- Is any financial ombud scheme easily available and accessible to complainants for submitting complaints and requesting information?
- Does the financial ombud scheme make appropriate provision for consumers who are more vulnerable or disadvantaged?
- In all these, is there consistency across the financial ombud system?

## 11.2 FRAGMENTATION

**The existing fragmentation of the ombud system (with seven separate schemes) has inevitable implications for the system's visibility and accessibility.**

- There is no common "brand" to promote. The limited outreach resources available to the individual ombud schemes do not appear to be operated collectively. Combined resources, working behind a common "brand," would be able to achieve more.
- Similarly, each of the ombud schemes has its own (differing) approach to accessibility, including how the scheme can be contacted, how complaints can be submitted, provision for complainants who are vulnerable/disadvantaged or disabled, and language issues.
- As part of their "soft merger," the LTI Ombud and the STI Ombud have linked their websites and phone systems, though they still have to maintain their separate identities externally pending availability of the Ombud Council to approve a full merger.

**Following the NT's 2017 consultation, the schemes established a common phone number linked to an outsourced call center.** Potential complaints could call this number if they were unsure which of the ombud schemes they needed, and the call center could transfer the call to one of the ombud schemes.

- The schemes maintained their separate presences on the internet and continued to promote their own phone numbers (in some cases, alongside the central number), so the common phone number has been little used.

- The ombud schemes themselves continue to refer complaints to one another—and the jurisdictional complexity that we described in chapter 8 means that the jurisdictional boundaries are difficult for an outsourced call center to understand and apply.
- The ombud schemes themselves acknowledge that the outsourced common phone number has not been a success. Some have withdrawn from the project, and others say that they are thinking of doing so.
- International experience demonstrates that initial receipt of a complaint is a crucial stage in the ombud process, where effective triage can facilitate appropriate understanding, routing, and handling of the complaint.
- This requires the initial stage to be handled by people who fully understand the scope, powers, and approach of the relevant ombud scheme.
- So a properly functioning common point of entry is difficult to achieve until the complexity and inconsistencies of the existing system have been resolved. Until then, it merely adds an extra signposting stage.

### 11.3 VISIBILITY

**Complainants cannot access the ombud system if they do not know that it exists.** The existing ombud schemes work separately from one another in undertaking a range of activities designed to raise their visibility. These include the following:

- Publishing information on their websites
- Publishing and distributing leaflets
- Media activities (including press, radio, and social media)
- Promoting their annual reports
- Consumer-awareness drives in shopping malls
- Visits to community gatherings
- Participation in roadshows and exhibitions

**The ombud schemes recognize the need to increase their visibility and have increased their separate activities in this area—so far as their limited resources permit.** For example:

- One of the schemes uses a public relations company. It uses national and local radio (in various languages). It provides articles for free local-language newspapers. It uses advice agencies to distribute information and will run workshops for those that request this.
- Another of the schemes regularly contributes to TV and radio programs and has secured free media coverage that would have cost R 66 million to buy. Another has created a new communications team and secured free media coverage that would have cost more than R 30 million to buy.
- Another—in addition to using TV, radio, and the press—leverages its limited budget by partnering with other agencies and participating in roadshows and exhibitions. Its activities also include making presentations to various courts throughout the country and to pro bono offices in Gauteng, as well as participating in the National Financial Education Committee.

**We asked the different ombud schemes about the information made available through financial providers on the ombud schemes' own websites and through other means.** Table 11A summarizes what the seven existing ombud schemes reported. It can be seen that there are significant inconsistencies in relation to the following:

- Whether financial providers are required to tell customers about the financial ombud at various stages
- The information on the ombud schemes' websites about their powers and procedures
- The information on the ombud schemes' websites about who makes decisions
- How information is made available to consumers who do not have access to the internet



**Table 11A. Visibility of the Existing Ombud System**

	Yes (No. Schemes)	No (No. Schemes)
<b>Are financial providers covered by your scheme required to tell customers in writing about it</b>		
On the financial provider's website?	4	3
At the point of sale?	3	4
In contracts?	6	1
If the customer makes a complaint?	6	1
In its final decision on a complaint?	7	0
<b>Does the ombud scheme's own website show</b>		
If the complaint has to be made to the provider first?	7	0
The provider's obligations in handling complaints?	1	6
If the scheme handles enquiries?	3	4
Which official languages the scheme can handle?	4	3
Which financial providers are covered?	7	0
Which customers are covered?	7	0
Which non-customers are covered?	2	5
Any time limits?	6	1
That the ombud scheme actively investigates case?	6	1
What redress an ombud can award?	3	4
If any court time limit is suspended?	4	3
What information is (or is not) confidential?	5	2
The name of any ombud?	5	2
The background of any ombud?	4	3
The way ombuds are appointed?	6	1
<b>For those without internet access, does your scheme ensure that information is readily available from</b>		
Consumer-advice organizations?	6	1
Local consumer-advice centers?	5	2
Public libraries?	6	1
Local government authorities?	3	4
Elected representatives?	1	6
Press, TV, and radio?	6	1
Social media?	5	2

## 11.4 ACCESSIBILITY

### Free of Charge

**Apart from the JSE Ombud, all of the existing financial ombud schemes are free of charge to complainants.** This means that cost is not a barrier for complainants wishing to use these ombud schemes. Under JSE rules, however, the JSE may require the parties to pay a deposit to cover a proportion of the costs of proceedings and the ombud may award costs against the losing party—so cost is a barrier.

### Making Contact

**Table 11B shows what the existing ombud schemes reported about the various ways in which complainants can contact them.** This does not automatically mean that a formal complaint can be submitted in all these ways. That is covered in the next section.

### Submitting Complaints

**All the schemes allow complaints to be submitted in a variety of ways, but there are differences in whether (or not) the complainant’s signature is required.**

- All of the schemes will give complainants some assistance in submitting a formal complaint—for example, noting down the complaint details from a phone call.

- Even if they note down the complaint, three of the ombud schemes still require the complainant to sign the complaint by hand (one because it considers this is required by law).
- Another of the ombud schemes requires written confirmation of the complaint but is prepared to accept confirmation by e-mail as an alternative to a signature.
- Three of the ombud schemes will accept online and phone complaints without requiring a signature. In the case of phone complaints, it reads back the details and asks the complainant to confirm them.
- Complaints to the Banking Ombud can also be submitted through bank branches.
- The PFA says it receives most of its complaints face to face, as complainants need help completing the complaint form. It also says that, when it runs outreach meetings with staff who speak the local language, this produces a surge in complaints.
- For the other schemes, contacts are mainly online, via e-mail, and by phone—plus a limited number of face-to-face contacts.
- Since the pandemic, the Credit Ombud has been actively promoting contact by SMS text, as it believes many people have lost access to work phones and e-mail. Someone from the Credit Ombud will then phone the complainant to take down details of their complaint.

**Table 11B. Ways of Contacting Existing Ombud Schemes**

	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
Face to face?	✓	✓	✓	✓	✓	✓	✓
Post?	✓	✓	✓	✓	✓	✓	✓
Online?	✓	✓	✓	✓	✓	✓	✓
Free-call phone?		✓				✓	✓
Share-call phone?	✓		✓	✓		✓	
SMS text		✓					
Social media		✓	✓	✓		✓	

## Language

**The multiplicity of official languages in South Africa presents challenges for all agencies that deal with the public, including the ombud system.** English is the principal language used in financial products, but, as table 11C shows, only 8.1 percent of the population speaks English at home and only 16.6 percent speaks English outside home. This strongly suggests that there must be significant numbers of consumers who lack the fluency to pursue a complaint in English (or perhaps even to understand the financial products sold to them).

**Although English is the principal language used in financial products, it appears that they are promoted using a variety of languages.** For example:

- Our discussions with industry stakeholders suggested that in rural areas some products, especially credit, are sold initially by local introducers who use the local language to talk to potential customers before introducing them to a credit provider that works primarily in English.
- The WBG’s *South Africa: Retail Banking Diagnostic*<sup>206</sup> noted that banks vary in the languages they use in marketing. One bank said it used marketing materials in all 11 languages. Another said it used nine languages. Still another said it used the languages most predominantly spoken in that region.

- In some cases, it may also be necessary to consider the language abilities of dependents. An insurance or funeral policy might be taken out by a customer who can speak English but, when they die, may be claimed by a dependent who cannot speak English.

**All of the existing ombud schemes work primarily in English. Their facilities for dealing with other languages are variable.**

- All of the schemes say that the calls and communications that they receive from complainants are overwhelmingly in English. That may reflect the fact that complaints are about products that are in English, or it may reflect apparent inaccessibility to those using other languages.
- All of the ombud websites are in English—as are those of many other bodies, including some public authorities. Some have limited information available in other languages, if the user can manage to navigate to it through the English pages. For example:
  - One includes its rules in all the official languages and brochures in five languages.
  - One has its complaint guidelines in all official languages.
  - One has a leaflet in isiZulu.

**Table 11C. Percentage of Population Who Speaks English Inside/Outside Home**

Population Group	Speak English inside the Home	Speak English outside the Home
Black African	1.8%	8.6%
Colored	20.1%	28.3%
Indian/Asian	92.1%	95.8%
White	36.3%	61.0%
<b>All South Africans</b>	<b>8.1%</b>	<b>16.6%</b>

Source: StatsSA census ([www.statssa.gov.za/publications/P0318/P03182018.pdf](http://www.statssa.gov.za/publications/P0318/P03182018.pdf))

- All but one will accept phone calls and other contacts in other languages, assuming they have a staff member who can speak that language. All but one will accept complaints in any of the official languages, but they all process complaints in English.
- Practice concerning written communications to complainants varies. At one extreme, some schemes will write only in English. At the other extreme, one scheme (where the complaint was received in another language) will write in English but automatically include or offer a translation as well.

### Vulnerable/Disadvantaged/Disabled Complainants

**Complainants may also be vulnerable/disadvantaged (for example, because of poor literacy or poor rural communications) or be disabled.**

- One scheme said it had not thought about these issues, and so it had not developed any processes or policies to deal with it.
- One scheme said that it has processes to deal with vulnerable/disadvantaged complainants but not disabled complainants.
- The other schemes said that they had processes to assist vulnerable/disadvantaged and disabled complainants, but none of them had prepared documented processes and policies about this.
- One said that it was about to launch an update of its electronic case-management system that would enable it to identify and classify vulnerable complainants and document their needs.

## 11.5 REGIONAL DIFFERENCES

**Tables 11D and 11E illustrate the distribution of complaints received by the ombud system (and each scheme) compared to the distribution of the population in South Africa.**

- Both tables compare the number of complaints received (where the province was identified)<sup>207</sup> to the population of each province and the whole of South Africa.<sup>208</sup>

- Note the following:

- The JSE Ombud does not appear, because it received only one complaint during the year.
- The STI Ombud was unable to identify the province for about one-third of the complaints it received, so its overall numbers are understated.

- Table 11D shows the number of complaints in 2019 per one million of the current population, for the whole of the ombud system and each of the ombud schemes. Table 11E shows which provinces produced notably fewer (or notably more) complaints than the others per one million of population.

- Though the tables are based on a single year, and there may well be fluctuations from year to year, there are some striking variations among provinces. For example, across the whole ombud system, Gauteng produced almost four times as many complaints per one million inhabitants as Limpopo.

- These variations may arise because the following:

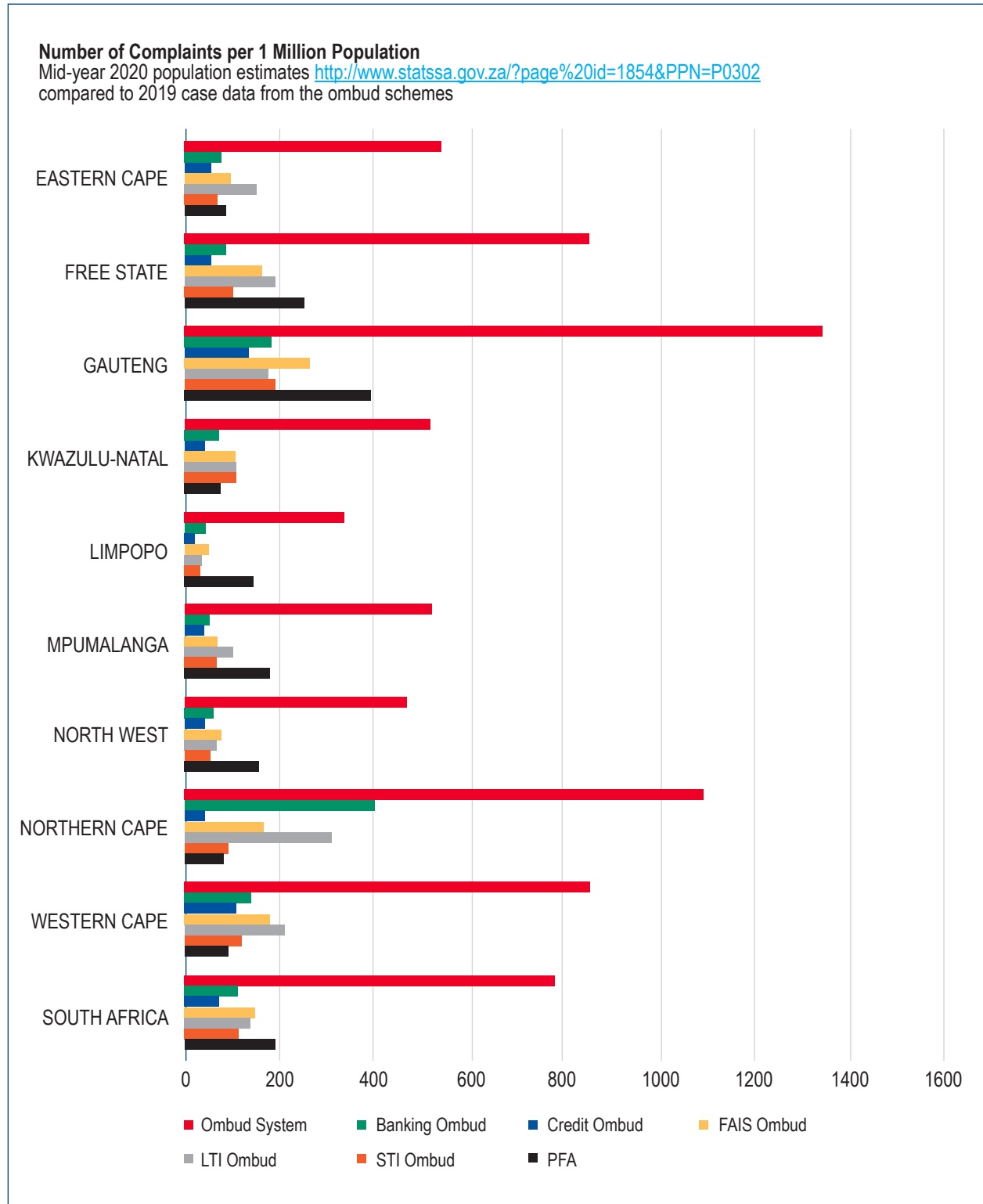
- The ombud schemes are more visible and accessible in some provinces.
- Financial services, or particular financial products, are more widely used in some provinces.
- More people are comfortable transacting in English in some provinces.
- A combination of all three.

The figures, however, would merit further investigation by the Ombud Council, as they may indicate that the ombud system is proportionately less accessible from some provinces and proportionately more accessible from others.

## 11.6 STAKEHOLDER VIEWS

**Stakeholders acknowledged the importance of the ombud system being visible and accessible while accepting that the multiplicity of schemes created issues.**

**Table 11D. Complaint Distribution Compared to Population Distribution (1 of 2)**



**Table 11E. Complaint Distribution Compared to Population Distribution (2 of 2)**

Complaints per one million population: ↑ More than 125% of average may indicate proportionately more accessible = 125% to 75% of average ↓ Less than 75% of average may indicate proportionately less accessible	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape
Banking Ombud	↓	=	↑	↓	↓	↓	↓	↑	=
Credit Ombud	=	=	↑	↓	↓	↓	↓	↓	↑
LTI Ombud	=	↑	=	=	↓	↓	↓	↑	↑
STI Ombud	↓	=	↑	=	↓	↓	↓	=	=
FAIS Ombud	↓	=	↑	↓	↓	↓	↓	=	=
PFA	↓	↑	↑	↓	=	=	=	↓	↓
<b>Whole ombud system</b>	<b>↓</b>	<b>=</b>	<b>↑</b>	<b>↓</b>	<b>↓</b>	<b>↓</b>	<b>↓</b>	<b>↑</b>	<b>=</b>

- Some industry stakeholders (especially in the insurance sector) thought the system was already sufficiently accessible.
- Other industry stakeholders (especially in the credit sector) and consumer stakeholders thought there was much that remained to be done in order to reach many consumers, especially disadvantaged ones.
- Many accepted the need to improve the financial education of consumers but recognized that the ombud schemes do not have the resources to do so—though they cooperate with the financial-education activities of public agencies.
- Quite a few stakeholders advocated working with local agencies (both advice centers and others) and the use of local-language radio.

## 11.7 CONCLUSIONS

### Fragmentation

The ombud schemes have increased their efforts to promote awareness, but there is no common brand to promote, and the limited

outreach resources available to the individual ombud schemes do not appear to be operated collectively. So the visibility and accessibility of the ombud system are less than they would be if the resources were combined and operated behind a common brand. A single point of entry would help, but only once the complexity and inconsistencies of the existing system have been resolved.

### Visibility

There is significant inconsistency, and some deficiencies, in whether and when financial providers are required to tell customers about the ombud system, the information available on scheme websites, and the provision of information to those without internet access. Coordination and standardization could improve things substantially, especially in getting information to those without internet access.

### Accessibility

All of the ombud schemes (apart from the JSE Ombud) are free to consumers. But there are significant differences, and some deficiencies, in the ways in which complaints can be submitted to

the different schemes, and in whether a signature or written confirmation is required. All of the existing schemes can be contacted online, by phone, by post, or face to face, but there is no consistency in whether phone calls are partially chargeable or in the use of SMS text and social media.

**The multiplicity of official languages presents challenges for all agencies that deal with the public, including the ombud system.** Although English is the principal language used in financial products, it appears that they are promoted using a variety of languages. All of the existing ombud schemes work primarily in English. Their facilities for dealing with other languages are variable.

**The amount of help available to vulnerable/disadvantaged/disabled complainants is variable (and, in some instances, lacking).** Most but not all schemes make some provision for them, but there is a lack of the documented policies and procedures usually required to train staff appropriately.

## Regional Differences

**Even after adjusting for population differences, there are striking differences in the numbers of complaints received from different provinces.** These may arise because the ombud schemes are more visible and accessible in some provinces; financial services, or particular financial products, are more widely used in some provinces; more people are comfortable transacting in English in some provinces; or a combination of all three. The issue deserves further study, given that it could potentially indicate deficiencies or concerns needing to be addressed at the regional level.

## Accessibility Overall

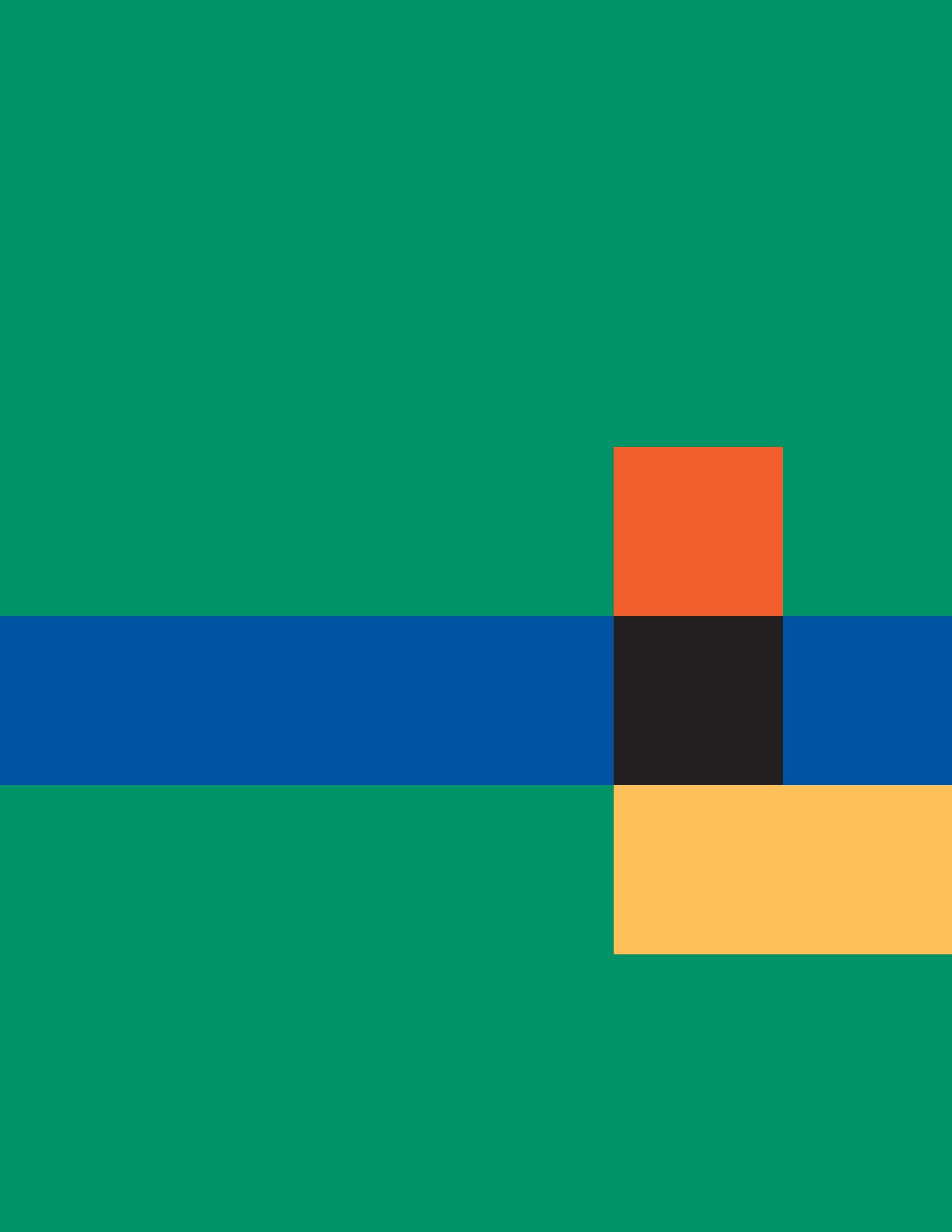
**The visibility and accessibility of the ombud system are less than they would be if there were combined resources using a standard approach.**

- Coordination could improve things substantially, especially in getting information to those without internet access. The amount of help available to complainants who are vulnerable, disadvantaged, or disabled is variable—as is the degree of outreach to more rural areas.

- There are striking differences in the numbers of complaints received from different provinces, and the multiplicity of official languages presents challenges for all agencies that deal with the public, including the ombud system.
- All of the ombud schemes (apart from the JSE Ombud) are free to consumers. But there are significant differences in how complaints can be submitted, and about whether a signature or written confirmation is required.
- A single point of entry would help, but only once the complexity and inconsistencies of the existing system have been resolved.

**Areas for potential improvement include ensuring the following:**

- That sufficient personnel and financial resources are allocated, in order to improve the visibility and accessibility of the ombud system
- That those resources are combined behind a common brand, strategy, and policies, in order to deliver information effectively to all who need it (directly or through partner organizations)
- That one or more combined points of entry replace all the separate ones, but only once the complexity and inconsistencies of the existing system have been resolved
- That it is made as simple and informal as possible for consumers to submit a complaint to the ombud system by any reasonable channel and without requiring a formal signature
- That common approaches are developed (and staff trained) to assist consumers facing difficulties because of language, vulnerability, disadvantage, or disability
- That the disproportionate inflow of complaints from different provinces is investigated and any appropriate action taken
- That the ombud system is not expected to carry the responsibility of providing general financial education for consumers, but continues to cooperate with the financial-education activities of public agencies





This chapter considers the extent to which the financial ombud system has a process providing outcomes that are visibly fair, equitable, and consistent.

## 12.1 CRITERIA

**In this chapter, we consider the extent to which the ombud schemes have an informal, easy-to-understand, and flexible process with outcomes that are both fair and seen to be fair.**

- We consider the extent to which the ombud schemes' rules and processes apply
  - Principles of procedural fairness in handling complaints; and
  - Fairness and equitable principles in achieving their complaint-resolution outcomes.
- We also look at the current review and appeal processes from ombud decisions and what role they should play.
- In all of these, we consider consistency across the financial ombud system.

**Complaint handling by ombud schemes needs to be visibly fair and efficient.** We have reviewed the information that was provided to us or is publicly available, but we have not undertaken a detailed operational audit of the processes of each ombud scheme, involving review of a sample of closed cases. That is beyond the scope of the current diagnostic.

## 12.2 INFORMAL, EASY-TO-UNDERSTAND, AND FLEXIBLE PROCESS

**The purpose of a financial ombud scheme is to provide independent, impartial, and fair out-of-court redress through ADR.** In contrast to the courts, the processes of an ombud scheme should

be free to consumers and intended to resolve disputes fairly, informally, and flexibly with no legal representation.<sup>209</sup>

**The financial ombud schemes in South Africa apply the principles of resolving complaints by informal, fair, and cost-effective complaint-handling procedures,** though the JSE Ombud is not necessarily free to the complainant. These principles are set out in the statutory requirements for recognition of ombud schemes, the governance documents and rules (or terms of references) of the industry ombud schemes, and in the legislative basis for the statutory ombud schemes.

- The current industry schemes are recognized under the FSOS Act. Section 11(e) of that act requires that the procedures of a recognized scheme must enable the ombud, among other things, to do the following:
  - Resolve a complaint through mediation, conciliation, recommendation, or determination
  - Act independently in resolving a complaint or in making a determination
  - Follow informal, fair, and cost-effective procedures
  - Where appropriate, apply principles of equity in resolving a complaint
- In addition, section 11(g) of the FSOS Act requires that the ombud schemes treat the questions, concerns, and complaints of consumers equitably and consistently in a timely, efficient, and courteous manner.

- The legislative mandates of the FAIS Ombud and PFA set out that they are to be procedurally fair, economical, and expeditious in resolving complaints in their respective jurisdictions.<sup>210</sup>
- All the ombud scheme rules and procedures enable the parties to resolve complaints without legal representation, although complainants can get assistance from other people who are not legally qualified. Where a party requests legal representation, such as in a hearing or mediation, in many of the schemes the ombud has to approve.<sup>211</sup> The PF Act does not permit legal representation of the parties.<sup>212</sup>
- All the ombud schemes' rules and complaint-handling processes seek to assist resolution as a first step in their process via agreed outcomes such as mediation, conciliation, or settlement, where possible and appropriate. The rules of some ombud schemes explicitly require the ombud initially to seek to resolve matters via an agreed outcome.<sup>213</sup>
- All ombud schemes make it clear to complainants in their communications that they will try to resolve the complaint with the financial provider by agreement as a first step.
- Where they are unable to facilitate an agreed outcome, each ombud scheme's rules and procedures provide for a further review, leading to an assessment of the merits in the form of a nonbinding recommendation or a provisional determination.
- In order for a matter to be closed at this stage, normally both parties must agree to the outcome proposed. Where this is not the case, each ombud scheme's rules and procedures provide that the ombud can determine the complaint on the merits in a ruling or determination.

**While the broad principles that apply to the ombud schemes are similar, there are many differences in the actual complaint-handling processes among the ombud schemes.** An overview of the complaint-handling processes of the different ombud schemes is set out in appendix F. Differences include the following:

- Different requirements on the ways in which a complaint can be submitted<sup>214</sup>
- Varying approaches to formal transfer or referral arrangements to financial providers for premature complaints<sup>215</sup>
- Whether a scheme has a process for the prioritization or triage of complaints
- The approach to dismissing a complaint assessed as having no reasonable prospects of success or as clearly lacking any merit
- The extent to which a scheme resolves matters by facilitating a settlement or other agreed outcome
- The approach to making findings of fact where the facts are disputed
- The use of nonbinding recommendations and provisional determinations
- The numbers of, effect of, and approach to ombud determinations or rulings
- The level of informal engagement with the parties throughout the process, including once an investigation has begun
- The terminology used for the stages in the process and the grades of staff involved in them
- The time frames required for responses from the parties at each stage of the process
- The information provided to the parties when a complaint is closed

At the very least, these differences complicate matters for providers that deal with more than one ombud scheme and for complainants whose case (because of overlapping jurisdictions) is handled by more than one ombud scheme.

## 12.3 PROCEDURAL FAIRNESS

**As ADR bodies, the ombud schemes should have processes for complaint handling and decision-making that are consistent with the principles of procedural fairness.** This is important to support trust and confidence in the ombud scheme's decisions by all parties to a complaint and by the broader community.

- The legislation for the FAIS Ombud and PFA include in their mandates the requirement for resolving complaints in a way that is procedurally fair.
- Section 11 of the FSOS Act containing criteria to recognize an ombud scheme requires the scheme to follow informal, fair, and cost-effective procedures.
- The industry ombud schemes incorporate the requirements for a fair process in their complaint rules and procedures.

**The ombud schemes' complaint-handling processes should apply accepted elements of acting fairly in resolving complaints.**<sup>216</sup> The following are key elements for the parties to the complaint:

- To have a reasonable opportunity to present their side of the complaint
- To be informed of the critical issues they must address
- To have access to all relevant information on the critical issues in the complaint
  - In reaching a fair agreed outcome, or
  - Needed by a decision-maker in making their recommendation or decision on the merits.

**While the rules and procedures of all the ombud schemes provide for a fair complaint-handling process, there are key differences in approach among the existing schemes.** For example:

- The ombud schemes' rules are not consistent in how they treat confidential information.
  - Some scheme rules provide that they can keep information from one party confidential and not share it with the other party to the complaint. But the approach to how the ombud scheme can use this confidential information in making decisions varies.
  - Sometimes the rules clarify that the ombud cannot use confidential information to make an adverse finding against a party to whom it denies the confidential information. In other ombud schemes, while this may be the practice, the rules do not explicitly address the treatment of confidential information.
- There are different approaches to how far the parties can use information from the ombud schemes in subsequent legal proceedings.
  - For the industry ombuds, their rules clarify that the parties cannot use information provided through the ombud process in subsequent legal proceedings and is confidential, except for several exceptions set out in their rules.
  - Some of these exceptions are for the publishing of a final determination or ruling, or where there has been non-compliance with a decision that the ombud then decides to make public.
  - In one ombud scheme, all aspects of the ombud's decision-making, information about the complaint, and identity of the parties is confidential under the rules unless agreed to by the relevant entity and both parties to the dispute.<sup>217</sup>
  - The approach of the statutory ombud schemes to confidential information is set out in the legislation. Under the PF Act, the adjudicator must keep a permanent record of proceedings and evidence relating to the adjudication of a complaint. Any member of the public can get a copy.<sup>218</sup>

- The FAIS Ombud’s rules say that information provided to the ombud is confidential and that the ombud may disclose it to the registrar or to another party to the complaint only to the extent necessary to resolve the complaint, or where required under the act or any other law.<sup>219</sup>
- The extent to which the ombud schemes make use of a provisional determination or ruling before a final binding decision differs.
  - While all the ombud schemes’ rules and procedures provide for the making of nonbinding recommendations or provisional determinations or rulings, the schemes have adopted different practices. Some schemes provide a provisional decision in nearly all cases, giving the parties an opportunity to comment before a final decision is issued. Other schemes usually go straight to a final decision, which may increase the possibility of an appeal in more complex cases.
  - One ombud scheme provides its draft findings and recommendation first to the financial provider, to test whether it might have persuasive reasons to the contrary. Only then is the complainant given the settlement offer or recommendation. Other ombud schemes provide to both parties at the same time, which arguably appears more evenhanded.

## 12.4 BASIS OF DECISION

**International good practice is for an ombud to decide the merits of a case based on what is fair and reasonable (equitable), taking into account the law, financial regulations, any industry codes, and industry good practice.** This means that the ombud can deliver a fair outcome to the parties in all the circumstances of the particular complaint.<sup>220</sup>

- Under the FSOS Act, recognition of an ombud scheme by the Ombud Council requires that the procedures of the scheme must enable the ombud, where appropriate, to apply the principles of equity in resolving a complaint. A similar provision is contained in the criteria for approval of an ombud scheme by the Ombud Council in chapter 14 of the FSR Act—section 196(3)(e)(vii) requires the ombud to apply, where appropriate, principles of equity when dealing with a complaint.
- The ombud schemes can take into account what is fair or equitable in the circumstances of the particular complaint, but the terminology in the law or rules differs across the ombud schemes. Table 12A sets out the decision-making criteria for each ombud scheme, as set out in relevant legislation, governing documents, or rules (boldening added).

**Table 12A. Decision-Making Criteria of Each Existing Ombud Scheme**

Banking Ombud
<p><b>Rules:</b></p> <p><i>Criteria used to resolve disputes include</i></p> <ol style="list-style-type: none"> <li>1. <i>The law, especially [FSOS Act] and [NC Act];</i></li> <li>2. <i>Applicable industry codes or guidelines;</i></li> <li>3. <i>Good banking practice;</i></li> <li>4. <i>Banking practice in other jurisdictions; and</i></li> <li>5. <b>Fairness in all the circumstances.</b></li> </ol> <p><i>The Ombudsman personally may in a case where a recommendation has not been accepted by all parties concerned, make a binding written determination <b>based on the law or the [Banking] Code...</b></i></p>

## Credit Ombud

### Constitution, Mission Statement, and Value Statement:

*In resolving disputes, the [Credit Ombud] shall have regard to **the law, fairness, justice, equity and fundamental human rights and values as prescribed by the principles of “UBUNTU.”***

*The [Credit Ombud] must balance the rights of consumers on the one hand and the rights of the members on the other hand.*

### 30 CRITERIA USED TO RESOLVES DISPUTES

30.1 *The law more particularly but not limited to [FSOS Act], the [NC Act] and the [CP Act].*

30.2 *Applicable industry codes and relevant codes of conduct and/or guidelines.*

### 30.3 **Fairness in all the circumstances**

*In the event of legislation being enacted in the future impacting the credit industry, the criteria referred to may be extended by the Council of the CO.*

### Terms of Reference:

*RULE 6: CRITERIA USED TO RESOLVE DISPUTES*

*[Same as above]*

*RULE 12:*

*The Credit Ombud shall apply the applicable legislation, regulation, Code of Conduct or guidelines, and/or **the principles of fairness and equity** in resolving a dispute.*

## LTI Ombud

### Constitution:

*Mission*

1.2 *The Ombudsman shall seek to ensure that:*

1.2.1 *...*

1.2.2 *...*

1.2.3 *he or she keeps in balance the scale between complainants and subscribing members;*

1.2.4 *he or she **accords due weight to considerations of equity.***

## STI Ombud

### Terms of Reference:

1. *PREAMBLE*

1.1 *....*

1.2 *The Ombudsman acts independently and objectively in resolving disputes and is not under instructions from anybody when exercising his or her authority. The Ombudsman resolves disputes using the **criteria of law, equity and fairness.** These Terms of Reference define the powers and duties of the Ombudsman.*

2.4 *“Ruling” means, with respect to a complaint, a written directive issued by the Ombudsman which is binding on the Insurer and which is **based either in law or equity.***

### RULINGS

7.1 *When all the material facts are agreed or the facts have been established to the Ombudsman’s satisfaction on a balance of probabilities, the Ombudsman may make a Ruling.*

7.2 ***Rulings shall be based on the law and equity.***

## JSE Ombud

### JSE Rules:

*There is no specific reference to equity in the criteria for decision-making, but the JSE says this is implied by the requirement to appoint a former judge or a senior council as the ombud.*

## FAIS Ombud

### Section 20(3) of the FAIS Act:

*The objective of the Ombud is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner and by reference to **what is equitable in all the circumstances**, with due regard to—*

- (a) the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and*
- (b) the provisions of this Act.*

## PFA

### Section 30D(2) of the PF Act as amended by the FSR Act:

*In disposing of complaints in terms of subsection (1) the Adjudicator must-*

- (a) **apply, where appropriate, principles of equity;***
- (b) have regard to the contractual arrangement or other legal relationship between the complainant and any financial institution;*
- (c) have regard to the provisions of this Act; and*
- (d) act in a procedurally fair, economical and expeditious manner.*

Before the FSR Act changes came into force on 1 April 2019, the Adjudicator was required to reach a *just and expeditious resolution of complaints **in accordance with the law.***

- The ombud schemes incorporate their approach to applying fairness and equity in their training materials, process guides, procedures for particular types of complaints, and as part of their internal review processes.
  - The annual reports and other publications highlight examples of an ombud scheme's approach to fairness and equity. These include case studies where equity considerations apply and commentary on the ombud's general approach or decisions based on the application of its equity jurisdiction.
- The profile of complaints across different sectors and products and/or the specific features and complexity of complaints
  - The effectiveness of internal complaint handling by financial providers, including any escalation processes to an internal adjudicator
  - Whether the level of engagement between the industry and the ombud results in providers resolving by themselves cases that they believe the ombud will uphold
- The role of the ombud is to decide complaints fairly and impartially between the parties based on their merits and not to achieve targets for any particular outcome. To do so would contravene the independent, impartial role of an ombud.
  - But trends in uphold rates over time in particular sectors, or significant variations among similar products and services, can be a useful indicator of a need for further review.
  - Information on complaint-uphold rates can also help inform a quality-assurance program and be used as part of a periodic independent review (discussed in chapter 12).

## 12.5 COMPLAINT OUTCOMES

**There are material differences between schemes in the proportion of cases where the complainant obtains a better outcome than what was offered by the financial provider before the complaint was referred to the ombud scheme—though there are many factors involved.**

- Variations in the proportion of complaint-upheld rates can reflect a wide variety of factors, including differences in the following:

**Table 12B. Complainant Achieved a Better Outcome Than That Offered by Financial Provider, 2018–19**

Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
22.9% <sup>221</sup>	57.5%	34.12% <sup>222</sup>	20.00%	Not applicable	Not available <sup>223</sup>	58.89% <sup>224</sup>

Sources: Credit Ombud, annual report. Remainder: data provided in response to WBG questionnaire.

Table 12B shows the proportions reported by the different schemes apart from the FAIS Ombud (which does not report the number/proportion of complaints in which the complainant secured a better outcome than that offered by the financial provider) and the JSE Ombud (which had only one case).

## 12.6 APPEAL MECHANISMS

The term *appeal* is commonly used to cover any mechanism to challenge the decision of an ombud, although (strictly speaking) some of these mechanisms comprise a review or a reconsideration, rather than an appeal.

- By a review mechanism, we mean that there is a body that
  - Can consider only the way the case was handled by the ombud; and
  - (If it disagrees with the ombud) can only send the case back for the ombud to consider again.

- By a reconsideration mechanism, we mean that there is a body that
  - Can consider both the way the case was handled by the ombud and the merits of the case; and
  - (If it disagrees with the ombud) can only send the case back for the ombud to consider again.
- By an appeal mechanism, we mean that there is a body that
  - Can consider both the way the case was handled by the ombud and the merits of the case; and
  - (If it disagrees with the ombud) can substitute its own decision on the merits.

**There are variations in the availability of mechanisms to challenge the decision of an ombud, the grounds on which the decision can be challenged, and the powers of the appeal/review body.**

- All of the ombud schemes (and also the Financial Services Tribunal) are potentially subject to judicial review by the High Court.

**Table 12C. Comparison of Review, Reconsideration, and Appeal Mechanisms**

	What It Can Consider		If It Disagrees with Ombud	
	Process	Merits	Back to Ombud to Decide Again	Can Substitute Its Own Decision
Review	Yes	No	Yes	No
Reconsideration	Yes	Yes	Yes	No
Appeal	Yes	Yes	No	Yes

- Either the financial provider or the complainant could apply for judicial review, but such cases appear to be rare or nonexistent.
  - The High Court would not consider the merits of the case. It would consider whether the ombud failed to follow a fair process or misunderstood its own jurisdiction or the law.
  - If the High Court upheld an application for judicial review, it would require the ombud to decide the case afresh. The High Court would not make its own decision on the case.
  - In the case of the Credit Ombud and the JSE Ombud:
    - The financial provider is bound by the ombud's decision, and there is no mechanism (other than judicial review) to challenge the ombud's decision at present.<sup>225</sup>
    - The complainant is not bound by the ombud's decision and retains any rights to pursue the complaint against the financial provider in the courts.
    - In the case of the Credit Ombud, consumers can also take their complaint to the NCR and potentially the National Consumer Tribunal.<sup>226</sup>
  - In the case of the FAIS Ombud and the PFA:
    - The financial provider is bound by the ombud's decision but can apply for it to be reconsidered by an external body—the Financial Services Tribunal.
    - The complainant is also bound by the ombud's decision and can also apply for it to be reconsidered by the Financial Services Tribunal.
    - The Financial Services Tribunal can consider both process and merits. If it disagrees with the ombud, it can only send the case back to the ombud to be decided afresh.
  - In the case of the Banking Ombud, LTI Ombud, and STI Ombud:
    - The financial provider is bound by the ombud's decision but can appeal to an internal appeal panel established under the rules of the particular ombud scheme.
    - The complainant can also appeal but is not bound by the ombud's decision and retains any rights to pursue the complaint against the financial provider in the courts.
    - The appeal panel can consider both process and merits. If it disagrees with the ombud, it can substitute its own decision.
- Either party to a complaint to the FAIS Ombud or the PFA has a statutory right to apply to the Financial Services Tribunal for reconsideration of an ombud decision.**
- The Financial Services Tribunal was established under section 219 of the FSR Act, with effect from April 1, 2018. It covers decisions by a number of other bodies as well as the FAIS Ombud and PFA. On application by any aggrieved party, the tribunal will reconsider any decision made by either of the statutory ombuds.<sup>227</sup> The tribunal can order that a decision be set aside and send the matter back to the ombud for reconsideration.<sup>228</sup> It cannot make a fresh decision on the merits.
  - Under section 28(5) of the FAIS Act and the FAIS Ombud's Rule 12, a party wishing to apply for reconsideration of a determination by the FAIS Ombud must provide written reasons within one month of the ombud's decision. The ombud will then consider whether to grant permission, taking into account the complexity of the matter and the likelihood of the tribunal reaching a different conclusion. If the ombud refuses permission, the applicant can apply to the tribunal for permission.
  - Under the FSR Act, the parties may appeal a decision by the PFA to the tribunal. Neither the PF Act nor the rules of the PFA provide any requirement that an applicant has to seek permission from the PFA before applying to the tribunal. Under section 30P of the PF Act, any



party who feels aggrieved by a determination of the PFA may, within six weeks after the date of the determination, apply to the High Court, which may consider the merits of the complaint made to the PFA and make any order it deems fit.

- In 2020, the tribunal published 207 decisions, of which only one-third related to the ombud schemes. Three decisions related to the FAIS Ombud (less than 2 percent of tribunal cases), and 64 related to the PFA (31 percent of tribunal cases).
- Of the three cases relating to the FAIS Ombud:
  - Two applications were made by financial providers. Both were successful.
  - One application was made by a complainant. It was rejected.
- Of the 64 cases relating to the PFA:
  - Thirty-three applications were made by financial providers. Eighteen were successful. Fifteen were rejected.

- Thirty-one applications were made by complainants. Five were successful. Twenty-six were rejected.

**The rules of the Banking Ombud,<sup>229</sup> LTI Ombud, and STI Ombud all make provisions for any party to request an appeal against an ombud decision to an appeal panel.<sup>230</sup>**

- The board/council of the scheme<sup>231</sup> appoints an appeal body, which comprises a retired High Court judge sitting either alone or as chair of a panel. The appeal body can consider both procedural issues and the merits. The appeal body can substitute its own decision on the issues in a complaint.
- The common grounds for granting permission to appeal include
  - There are reasonable prospects that the appeal body will reach a different conclusion; and
  - The matter is one of complexity or difficulty; or
  - The matter is of public or policy interest.<sup>232</sup>

**Table 12D. Bindingness/Review/Reconsideration/Appeal**

	Ombud decision binding on financial provider?	Ombud decision binding on complainant?	Internal appeal panel Can consider merits or process Can substitute its own decision	External reconsideration by tribunal Can consider merits or process Can send case back to ombud to decide afresh	Judicial review by High Court Can consider process Can send case back to ombud to decide afresh
Banking Ombud	Yes*	No	Yes	No	Yes
Credit Ombud	Yes*	No	No	No <sup>234</sup>	Yes
LTI Ombud	Yes	No	Yes	No	Yes
STI Ombud	Yes	No	Yes	No	Yes
JSE Ombud	Yes	No	No	No	Yes
FAIS Ombud	Yes	Yes	No	Yes	Yes
PFA	Yes	Yes	No	Yes	Yes

\* If the decision is accepted by the complainant

- There are also several differences between the appeal rules of the three schemes, including the following:
    - Whether the ombud or the appeal body makes the initial decision on whether to grant permission to appeal
    - If the initial decision is by the ombud, whether this is subject to further review by the appeal body
    - A minimum monetary threshold for an appeal to be granted
    - Whether the appeal body can hear fresh evidence or allow the parties to be represented
    - Whether the complainant has to agree to be bound by any decision of the appeal body or remains free to seek redress in the courts
  - There have been no appeals against decisions of the Banking Ombud<sup>233</sup> or the STI Ombud since those schemes introduced the appeal provisions into their rules.
  - In 2018, there were 33 applications for permission to appeal decisions by the LTI Ombud, one of which was granted. The appeal body dismissed the appeal. In 2019, 14 complainants applied for permission to appeal. The ombud granted none, on the basis they did not have reasonable prospects of success.
- There are no independent review mechanisms to test ombud schemes' processes and determinations for independence, adherence to legislation, or fairness (to either the client or financial provider).
  - Clear guidelines or standards should govern the use of the principles of equity and the fair treatment of customers when the ombud considers awards on damages for distress.
  - The ombud schemes should apply equitable principles consistently in deciding cases. The interpretations and decisions are not always consistent between the ombud schemes.
  - Some ombud schemes have not correctly applied the principles of equity, whereas others have done so.
  - Some ombud schemes publish final determinations (which the stakeholders characterized as “name and shame”). This has resulted in some financial providers being unwilling to challenge the ombud’s provisional determinations for fear of reputational harm. They consider this unfair.
  - Fairness and equity should entail equity not only to the complainant but also to the relevant financial institution—that is, both parties to the dispute. Ombud schemes seem to lose sight of this and consider equity only from the complainant’s perspective.
  - The appeal process to the Financial Services Tribunal was run similar to a court process and was not consumer friendly—leaving consumers at the mercy of technical arguments from lawyers that the consumers were unable to counter.
  - Levels of engagement of the ombud schemes vary, including the extent to which they inform the industry about trends and issues to help prevent future complaints.
  - The information provided by the different ombud schemes when a complaint is closed varies. Several financial providers felt that some schemes gave them little information on the basis a closed case had been resolved.

## 12.7 STAKEHOLDER VIEWS

**Although there were positive comments from stakeholders that the ombuds’ processes generally supported fair and balanced decision-making, several industry respondents also highlighted specific concerns.** These stakeholders commented on the following issues:

- Clear guidelines or standards are needed to govern the use of the principles of equity and the fair treatment of both parties to a dispute.

## 12.8 CONCLUSIONS

### Fair Process

**The existing legislative framework, governance, and rules of the ombud schemes and their complaint-handling processes are generally consistent with good practices designed to ensure fair and equitable resolution of complaints.**

- For most of the ombud schemes, an equitable jurisdiction has been a long-standing part of their approach to dispute resolution and decision-making.
- Originally, under the PF Act, the PFA did not have an explicit power to apply the principles of equity. But the amendments to the PF Act by the FSR Act provide that, in disposing of complaints, the adjudicator must now apply principles of equity where appropriate.<sup>235</sup>
- The JSE Ombud differs from the other ombud schemes in most aspects and is more akin to a private arbitration arrangement established for a specific dispute if the need arises.

**All ombud schemes provide for a fair complaint-handling process in their rules and processes, but there are differences in approach.** Consistently applied and fair procedures are important for maintaining the trust and confidence of all stakeholders in the ombud system. It is also important in supporting sound decision-making.

- It is important that all ombud schemes have processes that are fair and are seen to be fair—both by the parties to a complaint and by the broader community.
- The FAIS Ombud and the PFA, as statutory bodies, are subject to the procedural fairness provisions in the Promotion of Administrative Justice Act 3 of 2000 (PAJ Act).<sup>236</sup>
- Though some ombud schemes routinely issue a provisional decision before making a final binding decision, others seldom do so. Industry stakeholders said that they felt a provisional decision was an important aspect of a fair process.

- Subject to defined circumstances or specific categories of complaints, the general international practice of most ombud schemes is to issue a provisional decision or recommendation, so the parties can comment before the ombud makes a final binding decision on more complex matters.
- If the parties get a last opportunity to comment before an ombud makes a final decision, this should assist the ombud to identify and address all issues in contention and may reduce the number of those who wish to appeal.
- The general experience internationally is that ombud schemes are able to facilitate an agreed settlement in a majority of cases. But that ability is underpinned by the parties knowing that the ombud has power to make a decision if agreement is not reached. In South Africa, some ombud schemes go on to make a significant number of formal decisions; others rarely do so. Ombud decisions play an important role in the following areas:
  - Avoiding any perceptions that the ombud is negotiating an outcome with the financial provider at the later stages of a complaint that the financial provider had sufficient opportunities to resolve earlier
  - Avoiding any perceptions that the financial provider is agreeing to a provisional decision only under pressure, despite disagreeing with it, to avoid what it might perceive as the reputational impact of a public determination
  - Where a clear written decision would provide clarity on the ombud's approach to significant or new and emerging issues
  - Where financial providers and their customers would welcome clarification about what the law, regulatory standards, relevant codes, or industry good practice require in specific types of complaints
  - Helping to provide greater transparency to the community about the approach the ombud is taking in applying equitable principles in deciding cases

- The complaint-uphold rates vary among the ombud schemes. While variations in uphold rates can be caused by a wide range of factors, changes over time and differences between sectors can be a useful indicator of a need for further inquiry into any underlying causes.

**Each ombud scheme has differing rules, terminology, and complaint-handling procedures designed to achieve the common aim of fair processes and complaint outcomes.** The lack of consistency results in an ombud system that is

- Confusing for complainants when they have to deal with several ombud schemes for different aspects of the one complaint;
- Complex and costly for financial providers that deal regularly with multiple ombud schemes and their different ways of working;
- Potentially inconsistent in how it applies due process and equitable principles to the resolution of complaints; and
- Less effective in promoting common standards of fair dealing between financial providers and their customers.

### Basis of Decision

**With the exception of the JSE Ombud, the legislation and rules of the ombud schemes identify the principles of equity as key criteria in resolving disputes, but the wording of the rules differs.** While these differences in wording may not have a significant practical impact on the dispute process and decision-making, there would be advantages in having a clearer, common articulation across the ombud system.

- This could help support a better understanding of the role of fairness and equity as the underpinnings of the ombud schemes' approach to resolving disputes.
- It could also help support a consistent approach across the ombud system. If ombud decisions were reviewed by the courts or the tribunal, there would have a common standard against which to do so.

- Consistent with international good practice, any test should be based on the role of an ombud scheme in achieving a fair and reasonable outcome in the circumstances of the particular complaint, taking into account the law, regulatory standards, relevant codes, and industry good practice.

### Appeal Mechanisms

**There are different appeal/review mechanisms, with differing powers, in the current ombud system.**

- Applications for reconsideration of decisions by the two statutory ombud schemes (the FAIS Ombud and PFA) can be made to the Financial Services Tribunal. The tribunal can either dismiss the application or set aside the decision and send it back to the ombud for reconsideration, but the tribunal cannot substitute its own decision.
- Three of the industry ombud schemes (the Banking Ombud, LTI Ombud, and STI Ombud) have their own separate appeal bodies. The appeal body can consider both procedural issues and the merits. The appeal body can substitute its own decision on the issues in a complaint.
- Two of the industry ombud schemes (the Credit and JSE Ombuds) do not have an appeal mechanism. In the case of credit disputes, the NCR and National Consumer Tribunal appear to provide avenues for review of decisions.
- Industry stakeholders felt that an appeal process is important, and there was some support for the Financial Services Tribunal, or something similar, to apply across the ombud system.

**Achieving finality in decisions, as far as practicable, is central to the role of an ombud as an informal, efficient, cost-effective, and timely alternative to the courts.**

- To ensure an effective ADR mechanism, the parties to a dispute should not treat the ombud system as just one stepping-stone in a protracted legal process. Appeals should not form a routine part of the process.

- Internationally, appeal bodies in relation to ombud decisions are the exception, rather than the rule.
  - As financial ombuds are themselves specialist dispute-resolution bodies, majority international practice is not to subject ombuds to the sorts of administrative review that apply to government departments and public agencies.
  - In those jurisdictions where the courts do play a role in relation to ombud decisions, it takes the form of a judicial review of the ombud's decision-making process, rather than an appeal against the merits of the ombud's decision.
  - To cater for special cases involving matters of general industry/consumer impact or significant legal issues, some ombud schemes provide for test cases to be taken to court in limited circumstances and with the financial provider having to pay the costs of both sides.<sup>237</sup>
- Nevertheless, an appeal mechanism appears to be an accepted feature of the current system in South Africa (though use is variable), but it would be clearer, more effective, and provide more consistent outcomes if
  - The ombud system had a single, dedicated appeal mechanism of its own;
  - This had an informal process (so as not to disadvantage consumers);
  - It had specialist knowledge of the work of financial ombuds, as well as financial services and credit;
  - Access was limited to cases with general or systemic implications; and
  - It had discretion, where it thought appropriate, to reach its own decision on the merits.

## Fairness Overall

**The existing rules and processes are generally consistent with international good practices designed to ensure the fair and equitable resolution of complaints.**

- The ombud schemes provide for a fair complaint-handling process in their rules, which also spell out fairness and equity as the basis of their decision-making.<sup>238</sup>
- But there are significant differences in rules, terminology, complaint-handling processes, and appeal procedures among the ombud schemes.
- This lack of consistency results in an ombud system that is
  - Confusing for complainants;
  - Complex and costly for financial providers;
  - Potentially inconsistent in how it applies due process and equitable principles; and
  - Less effective in promoting common standards of fair dealing.

**Areas for potential improvement include the following:**

- The ombud system should have a consistent set of rules and criteria for resolving complaints in a manner that is fair in all the circumstances, taking into account the law, regulatory standards, industry codes, and industry good practice.
- The ombud system should have consistent processes and procedures to apply the principles of fairness in resolving complaints through ADR, including the following:
  - Making the process easy to use and efficient for consumers and financial providers<sup>239</sup>
  - Exchange of information and documents
  - Use of confidential information

- Approach to dismissal of complaints based on no merit or no reasonable prospects of success
- Use of provisional decisions before a final binding decision on more complex matters
- Ombuds regularly making final decisions on cases and publishing them (with the complainant anonymized)
- Where relevant facts of a case are disputed, the ombud system should decide (in the light of the available evidence) what is most likely to have happened, without imposing an onus of proof on the complainant.
- Details of complaint-uphold rates should be published, and this information should help to inform a quality-assurance program and periodic independent reviews.
- The ombud system should have a single, dedicated appeal mechanism of its own, with an informal procedure and specialist knowledge of the work of financial ombuds as well as of financial services and credit.
  - This should have an informal procedure (so as not to disadvantage consumers).
  - It should have specialist knowledge of the work of financial ombuds as well as of financial services and credit.
  - Access should be limited to cases that raise issues with general or systemic implications.
  - The appeal body should have discretion, where it considers this is in the interest of both parties, to reach its own decision on the merits.

This chapter considers whether the financial ombud system has processes that provide a consistently good quality of service and value for money.

## 13.1 CRITERIA

**In this chapter, we assess the efficiency of the ombud system, and how it shows that it provides a quality service and value for money to stakeholders and the community.** As mentioned in the previous chapter, the scope of the current diagnostic does not include a detailed operational audit of the processes of each ombud scheme. Efficiency and value for money require the following:

- Efficient and documented complaint-handling processes
- Resources (staffing and funding) sufficient for the timely resolution of cases
- Skills and expertise in case-handling staff
- Robust quality assurance of the service
- Clear performance and service standards, which are publicly reported
- Periodic independent reviews of the ombud schemes
- In all these, consistency across the financial ombud system

## 13.2 EFFICIENT AND DOCUMENTED COMPLAINT-HANDLING PROCESSES<sup>240</sup>

**The complaint-handling processes of the ombud schemes are documented in various ways.**

All of them

- Have their own individual internal guides and training documents setting out for staff the

processes to use in processing and resolving complaints;

- Have their own individual forms for complainants, and guidance outlining their procedures to assist complainants to understand what to expect when they lodge a complaint; and
- Use an electronic case-management system to track and help manage their handling of complaints.

**Despite having broadly similar complaint-handling stages,<sup>241</sup> the processes, terminology, and time frames differ for each ombud scheme.** Key differences include the following:

- Use of different terminology
- Process and requirements for accepting new complaints
- Transfer or referral-back arrangements to the financial provider for premature complaints
- Jurisdictional limits and initial assessment
- Time frames for responses at each stage of the complaint-handling process
- Use of triage or prioritizing of complaints
- Assessment and investigation processes
- Level of informal engagement with the parties
- Status of information collected in resolving a complaint
- Use of provisional decisions
- Appeal processes

## Time Frames

**Timely resolution of complaints requires an ombud scheme to establish clear time frames for the parties to provide information and responses at each stage of the complaint-handling process.**

The ombud scheme also needs to be able to move the case on when the parties do not meet these time frames (and be able to seek action by the regulator against financial providers who persistently delay).

- All of the ombud schemes' rules and procedures set out clear time frames for responses by financial providers and complainants and include internal guidance for staff on the completion of each step. There is considerable variation across the schemes in the time limits for a response by the parties once the matter becomes a formal complaint handled by the ombud scheme.
- Those ombud schemes that have a transfer process—where they refer premature complaints to the financial provider, in order to give them an opportunity of resolving the complaint directly with the customer—typically allow about 20 days for this process to take place.
- The ombud schemes have various mechanisms to deal with financial providers and complainants who do not respond in a timely fashion. For complainants, the general approach is that the complaint will be closed if the ombud scheme does not receive a response within a set time period. Some ombud schemes will contact the complainant by SMS text and give a last telephone call before doing so.
- For non-responses by financial providers, the mechanisms used by the ombud schemes range from automatically escalating a complaint to the next stage of the process, through levying additional charges (which in one ombud scheme can be up to double or triple the standard case fee), to drawing an adverse inference against the provider and proceeding to decide the complaint on this basis.
- Sometimes, the ability to take the various approaches mentioned above is explicitly set out in the rules, while other schemes base this on general law principles. One ombud scheme publishes in its annual review the names and numbers of second reminder responses where an insurer has over five reminders.<sup>242</sup>
- The PFA said that getting a timely response from the parties to a complaint is a major issue for them. This leads to the longer time taken by the PFA to begin its formal review of a complaint and in the average time taken to resolve complaints compared to the other ombud schemes.
- Table 13A summarizes the time limits that the ombud schemes give when referring a premature complaint to a financial provider, with a view to the provider resolving it directly with the complainant, or when communicating with the financial provider about a complaint that the ombud scheme is considering.

**Table 13A. Time Limits for Financial Providers to Respond**

Time Limit for Financial Provider to	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	JSE Ombud	FAIS Ombud	PFA
Resolve transferred premature complaint directly with customer	20 days	N/A	21 days	21 days	N/A	6 weeks	N/A <sup>243</sup>
Respond to ombud scheme on formal complaint	15 days	10 days	21 days	14 days	3 weeks <sup>244</sup>	2 weeks	30 days



## Transfer or Referral Arrangements.

**Referral of premature complaints to financial providers, to give them an opportunity to resolve them directly with their customers, supports the efficient resolution of complaints—especially if this is built into the computerized case-management system.**<sup>245</sup> This is simpler for the complainant than being turned away and told to go to the financial provider first. It can also ensure that the financial provider takes the complaint more seriously. With a fully functioning process, the ombud scheme can do the following:

- Efficiently track and follow up on the status of complaints with the financial provider
- Take early action when it identifies that a financial provider’s complaint procedure is not dealing fairly with particular types of complaints
- Reduce the number of discouraged complainants who drop out of the process
- Provide safeguards so that complainants are not pressured into accepting outcomes that may not be fair

**There are differences among the existing ombud schemes on whether they have a transfer/referral process and its features.**

- The Banking Ombud and LTI Ombud have long-standing arrangements to refer premature complaints back to the financial provider automatically. As part of the “soft merger” between the LTI Ombud and STI Ombud, the STI Ombud has recently introduced such a process.
- All three track the referrals. If a response is not received within the specified time, they treat the complaint as a formal case under the scheme’s rules. If the financial provider says that the matter has been resolved, all three contact the complainant to confirm whether the matter has been resolved satisfactorily or the complainant wants to the ombud to handle it as a formal complaint.
- The Credit Ombud used to have a formal referral process for premature complaints but informs us

that it has recently had to suspend the process because of resource constraints.

- While the FAIS Ombud does not have a formal referral process (and does not record the number), it says that it does send any premature complaints on to the financial provider—giving it six weeks to resolve it. If the FAIS Ombud receives confirmation that the financial provider has resolved the matter, they confirm the resolution of the complaint in writing with both parties.
- While the PFA previously did not do so, it has informed us that from September 2020 it will refer premature complaints back to the financial provider and that, if the financial provider does not respond within 30 days, it will treat the complaint as a formal case.

## Early Resolution

**All of the ombud schemes seek to resolve disputes at an early stage, but they differ on when and how they channel a complaint to the most appropriate resolution pathway.** Fuller details are in appendix F. Some schemes have distinct pathways for different categories of complaint, while other schemes have a more linear resolution process. An efficient complaint process involves a triage of complaints early in the process to determine the most appropriate resolution approach based on complexity and other factors.

- The Banking Ombud streams cases either to its assessment department (if the initial assessment is that the complaint has no reasonable prospects of success) or to its investigation department (if the complaint requires further investigation and clarification).
- The Credit Ombud classifies complaints as either “simple intervention complaints” (where no further information is required) or more complex “facilitated complaints” (where further information and investigation are required).
- The LTI Ombud assesses complaints on receipt. If they are identified as capable of quick resolution, they go into a fast-track process. An adjudicator

liaises with both parties, mostly by phone, to try to resolve the complaint without the usual formalities of waiting for a written response from the insurer.

- The STI Ombud streams simpler matters (not requiring further information following the initial response) into its fast-track process. Complaints that require further information and investigation are streamed into its standard complaints process.
- In the JSE, its Market Regulation Division investigates all complaints that were not resolved by the financial provider. Only in the rare cases where the division does not resolve the matter do they refer it to the JSE Ombud.
- The FAIS Ombud's initial case-management team undertakes an in-depth review of the merits of a complaint within its jurisdiction. Some are dismissed because they have no reasonable prospect of success or were resolved by the financial provider in the six-week period or have been settled. The rest proceed to the formal investigation stage.
- The PFA case manager on the relevant team responsible for the fund or administrator initially assesses the case. Cases may be closed as outside jurisdiction or may be settled at this stage. The case manager can also organize a conciliation conference. Cases that are not resolved by these processes are referred on for investigation by one of the adjudication teams.

### 13.3 RESOURCES FOR TIMELY RESOLUTION OF CASES

**Funding mechanisms differ between the industry ombuds and the statutory ombuds—though, in all cases, the money comes from financial providers (and, arguably, ultimately their customers).**

- JSE Ombud: This scheme does not have a separate budget or accounts of its own. Under JSE rules, the JSE may require the parties to pay a deposit to cover a portion of the costs of the proceedings, and the ombud may award costs against the losing party.<sup>246</sup>

- Banking Ombud, Credit Ombud, LTI Ombud, and STI Ombud:

- These are funded by levies and/or case fees. The amounts paid by financial providers are based on the size of the provider, the workload that they create, or a combination of these factors.
- Each prepares an annual budget based on expected activities, plans, and staffing levels over the coming year sufficient to cover its operating costs. They base these plans on past trends and a review of case numbers, turnaround times, and other service indicators.
- None of them consults broadly on their budgets and business plans. The boards/councils of the schemes review and approve the budgets.
- Apart from the Credit Ombud, they publish their annual accounts.

- The PFA and FAIS Ombud:

- They prepare annual budgets based on proposed activities and plans for the coming year, for approval by the minister.
- The FSCA then sets levies<sup>247</sup> payable by providers authorized under the FAIS Act (for the FAIS Ombud) and by pension funds registered (or provisionally registered) under the PF Act (for the PFA).

**The major part of the budget of an ombud scheme is the cost of sufficient appropriately qualified staff to operate efficiently and provide a quality service.**

- As part of the budget process, the ombud schemes review both the numbers and skill levels required to handle the volume and types of complaints in the coming year. Staffing numbers are published in annual reviews by all but the JSE Ombud, where this is not relevant.
- Loss of its banking members in 2019 significantly reduced the budget of the Credit Ombud, resulting in a loss of around half of its staff. It says that this led to a period of significant disruption for the Credit Ombud as an organization.

- The FAIS Ombud says the following:
  - During 2018 it undertook an audit of its Case Management Department to review its efficiency and effective use of resources. Based on this review, its staff complement in case management was sufficient to provide an efficient, quality service for the number of complaints received at that time.
  - However, because of the impact of the state of the economy on the levy, it could not fill several senior positions, including a deputy ombud, a risk officer and several assistant ombud positions. This is creating pressure on their ability to finalize decisions in a timely way.

### 13.4 APPROPRIATE SKILLS AND EXPERTISE OF CASE-HANDLING STAFF

**The ombud schemes said that their staff who resolve complaints had the knowledge and skills in resolving disputes, a general understanding of the law, and knowledge of the relevant financial-services sector.**

- All of the ombud schemes seek to recruit staff with qualifications in law or finance, along with experience in the financial-services industry. In some schemes, the professional staff members involved in preparing provisional or final decisions are generally legally qualified.
- The ombud schemes' training plans cover in-house training, mentoring, support to gain external qualifications, and other skills development. Staff members in the ombud schemes have access to knowledge-management systems with information on the usual approach of the scheme to particular products and complaint situations.
- These knowledge-management systems take various forms across the ombud schemes, including handbooks, training manuals, and process guides for the common types of disputes handled by the scheme. These measures help ensure consistency in approach among different

staff members in a scheme in handling common types of complaints.

- The ombud schemes have a range of other methods to support training and staff development, including various forms of assistance for further education, approval of a workplace skills and training plan by an external training authority, and reporting on the progress of training plans in their annual reports.
- The PFA said that it was facing challenges in recruiting and keeping appropriately qualified staff, and that staff turnover was high in recent years.<sup>248</sup> This was because of a combination of pressures: high volumes, the demands of decision writing, a lack of specialist coverage of pension law in current law degrees, and the demand for good staff by higher-paying private-sector firms.
- The industry ombud schemes told us that staff turnover was low; many of their staff have significant longevity of service in their ombud scheme.

### 13.5 ROBUST QUALITY ASSURANCE OF THE SERVICE

**Each of the ombud schemes has a range of procedures to maintain quality, but the extent to which they integrate these individual measures into a structured, documented quality-assurance program differs.**

- A robust, structured quality-assurance program is important to ensure that the service provided by an ombud is of high quality, efficient, consistent, and supports the timely and fair resolution of complaints. It can also be an important mechanism in providing confidence to stakeholders on the quality, fairness, and consistency of the service.
- All of the ombud schemes incorporate in their process a review by a more senior person at key escalation points or decision stages. They document these in the policy and procedure manuals of the scheme.

- The following are examples of when this typically occurs:
  - An ombud scheme dismisses a matter as out of jurisdiction
  - It closes a case as having no reasonable prospect of success
  - A case moves from initial assessment to formal investigation
  - One party does not accept a settlement offer, recommendation, or provisional decision
- Some ombud schemes select a percentage of cases at various stages of the complaints process for review by a senior manager or an ombud against a quality-control checklist.
- One ombud scheme holds a weekly meeting of decision-makers chaired by the ombud or deputy ombud, to discuss issues in the more complex or contentious cases.
- Some ombud schemes also referred us to their appeal mechanisms as forming part of the quality control for the scheme.
- The LTI Ombud reviews 5 percent of closed cases (chosen randomly). The other ombud schemes do not appear to include in their quality-assurance processes a review of a percentage of closed cases.

**As part of their quality assurance, most of the schemes also undertake periodic user surveys, to see what users think of the quality of the service they receive.**

- The Banking Ombud, STI Ombud, and FAIS Ombud survey the parties in every closed complaint.
- The Credit Ombud undertakes a monthly survey of users, the results of which are reported to their council quarterly.
- The LTI Ombud conducts a survey of users every two years, and the PFA conducts one every three years.

## 13.6 CLEAR PERFORMANCE AND SERVICE STANDARDS THAT ARE PUBLICLY REPORTED

**Several ombud schemes report their performance against clear performance standards, while the others report their performance in terms of resolution time frames and a range of other outcomes.**

- None of the ombud schemes appears to have a set of service standards—telling parties what standard of service to expect—published in a prominent position on their websites, but the schemes report on their performance in the following ways:
  - The FAIS Ombud and PFA publish their performance against their service standards in a separate section in their annual reports.
  - The Credit Ombud, LTI Ombud, STI Ombud, and FAIS Ombud publish the outcomes of their stakeholder surveys in their annual reports.
  - All of schemes (save the JSE Ombud) publish in their annual reports data on the numbers of disputes, the time taken to resolve them, and other information about their complaints and complaint handling.<sup>249</sup>
- All of the ombud schemes have a designated person responsible for handling complaints about the standard of service provided by the scheme.
  - The LTI Ombud has a retired judge as an external Independent Assessor and includes a report from the Independent Assessor in its annual report.
  - In the other ombud schemes, the function is carried out internally—by someone such as the head of case management, an assistant ombud, or an ombud.
  - Only the LTI Ombud and STI Ombud include in a prominent position on their websites information about how to make a service complaint.

## 13.7 PERIODIC INDEPENDENT REVIEWS

**International good practice includes periodic independent reviews of an ombud scheme, to support stakeholder confidence in the fair and efficient operation of the scheme.**

- Only the LTI Ombud scheme conducts a periodic independent review of its scheme against international standards.
  - The LTI Ombud scheme’s governing body commissions a periodic independent review every three to five years to assess the scheme based on international good practices and principles for ombud schemes.
  - Reviews were carried out by Prof. J. C. van der Walt in 2005, Adv. Neville J. Melville in 2010, and Dr. de la Rey in 2015. A further review was due in 2020 but deferred because of the COVID-19 pandemic.
  - The LTI Ombud scheme publishes on its website the report of the independent review and its response to any recommendations.
- The other ombud schemes have a range of independent audit and reporting obligations and conduct reviews on specific aspects of their

operations, efficiency, and performance. But these differ from the periodic independent review referred to above, as they do not assess the scheme against international standards for good practice by ombuds.

## 13.8 CONSISTENCY OF APPROACH ACROSS OMBUD SYSTEM

**The complaint-handling processes, ways of classifying and reporting complaints, resolution outcomes, and performance outcomes differ significantly for each ombud scheme.** This makes it difficult to measure the efficiency of the overall ombud system.

- Table 13B sets out information provided by the ombud schemes in response to the WBG questionnaire showing average cost of cases closed, percentage of cases closed within six months, and the number of cases closed per full-time equivalent (FTE) staff member. It excludes the JSE Ombud, because it does not have a budget and staff of its own.
- The information in the table needs to be interpreted cautiously, given the range of factors influencing the figures, including differences in the mix and complexity of cases handled and differences in the terminology used by different ombud schemes.

**Table 13B. Staffing, Costs, and Time Frames in 2019**

	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	FAIS Ombud	PFA
Total expenditure	R 30.2 million	R 16.0 million	R 29.5 million	R 42.8 million	R 40.0 million	R 72.5 million
Total staff	29	12 <sup>250</sup>	37	47	49	60
Expenditure/FTE staff	R 1,042,592	R 1,333,333	R 797,297	R 910,807	R 817,082	R 1,209,100
Total complaints closed	6,333	4,937	3,558 <sup>251</sup>	9,176	4,507	10,289
Expenditure/complaints closed	R 4,774	R 3,241 <sup>252</sup>	R 8,291 <sup>253</sup>	R 4,670	R 8,883	R 7,051
Cases closed/FTE staff	218	411	97 <sup>254</sup>	195	92	171
Cases closed within six months	95.10%	98.48%	87.00% <sup>255</sup>	79.00%	91.18%	49.00% <sup>256</sup>

- While small schemes can benefit from a flat organizational structure and flexibility, the proportion of overhead costs can be relatively high—because any organization needs a minimum number of staff for essential IT, human resources, finance, and organizational-support functions.
- The statutory ombuds (the FAIS Ombud and PFA) also have the administrative costs of complying with the requirements of the PFM Act.

### 13.9 STAKEHOLDER VIEWS

**Industry respondents were broadly supportive of the performance of the current ombud schemes that they deal with regularly.**

- The following key positive features were identified:
  - Independence and good governance
  - Generally efficient complaint-handling processes
  - Specialist expertise
- One of the main areas of value for financial providers is that consumers having free access to an ombud does the following:
  - Reduces litigation costs
  - Results in less adverse media comment
  - Leads to greater confidence in the industry

**Industry stakeholders, however, also raised a range of inconsistencies and other issues.**

- They highlighted inconsistencies in the following:
  - Time frames
  - Availability of a transfer/referral back
  - Approaches to decision-making (including the application of equity principles)
  - Degree of legalistic approach
  - Appeal processes

- Public performance reporting
- Degree of engagement with the industry

- They considered that these differences led to confusion for consumers, delays, complexity, and an increased cost for industry.
- They expressed concern that differences in rules among the ombud schemes (for example, on the amount that can be awarded) can lead to forum shopping by consumers.
- They thought that some ombud schemes appeared to deliver a notably better and more efficient service than others.
- Resource constraints (based on limited funding sources) combined with an increase in the number of cases had an impact on dealing with matters efficiently.
- The entire process can seem very lengthy—especially when viewed from a consumer’s perspective—and there is little visibility on the status of a complaint during the process.
- In the absence of a reliable benchmark, it is not possible to comment on value for money.
- In respect of value for money, a weakness is the negative financial impact of regulatory and ombud levies/case fees on financial providers.

### 13.10 CONCLUSIONS

**The existing arrangements for each ombud scheme cover many of the features of international good practice designed to ensure that the financial ombud system provides a consistently good quality of service and value for money.**

- The ombud schemes all have well-developed and documented complaint-handling processes with a focus on the timely resolution of complaints.
- Each ombud scheme prepares an annual budget based on expected volumes and types of complaints and operational plans for the year.

- The ombud schemes have recruitment, human resources, skill-development, and training plans designed to ensure that the scheme has the expertise and qualified staff.
- All of the ombud schemes have internal quality-assurance activities built into their complaint-handling processes.
- Several of the ombud schemes report their performance standards and the results of their stakeholder surveys and have prominent information on how to make a service complaint.
- One ombud scheme (the LTI Ombud) includes a report from an external reviewer in its annual report and conducts periodic independent reviews of the scheme every three to five years.

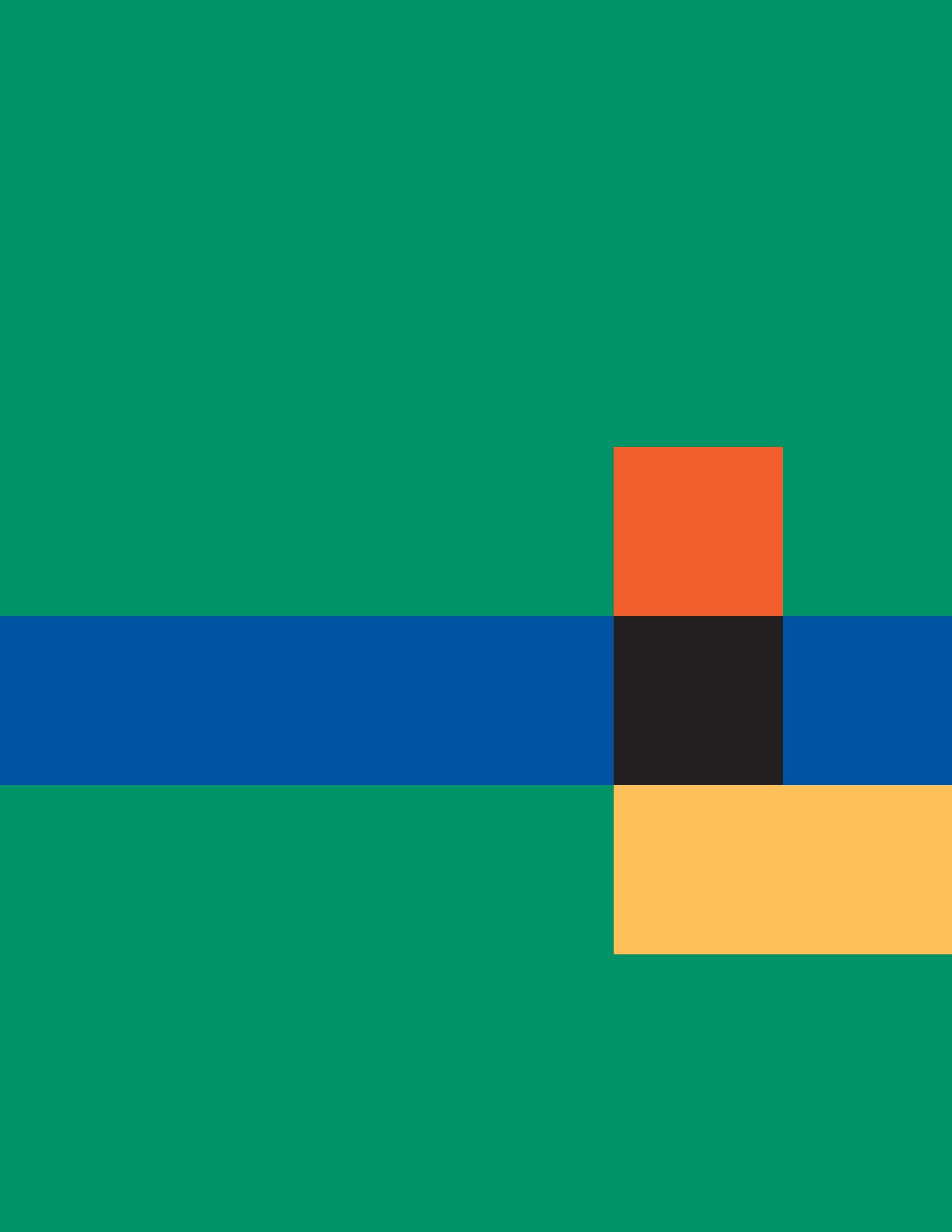
**However, there are gaps for some of the ombud schemes and challenges for the ombud system as a whole.**

- Several of the ombud schemes said that they have staffing challenges that make meeting time and quality standards a challenge.
- One ombud scheme has highlighted the challenges it faces in getting a timely response from the parties to a complaint, and that this lengthens the time it takes to resolve complaints.
- The multiplicity of schemes and their different approaches to reporting performance makes it difficult to assess the costs and efficiency of the ombud schemes and the ombud system.
- The large number of smaller schemes, each with its own IT system, case management, and other organizational support, causes duplication of effort and increased costs. This is particularly relevant for investment in IT systems, which underpin the efficient complaint-handling processes of a modern ombud scheme.
- The JSE Ombud model differs significantly from the other ombud schemes, and its process and practices do not conform to the usual model of an ombud of the type contemplated by the international good practices used in this assessment. It is more akin to a form of a private

arbitration established under the JSE rules on a case-by-case basis for a specific dispute when the need arises.

**Areas for potential improvement include the following:**

- There should be a consistent set of rules and processes for handling complaints, including the following:
  - Transfer of complaints sent to the incorrect ombud scheme
  - Transfer/referral process for premature complaints across all sectors
  - Time frames for responses from financial providers across the ombud system
  - Use of early triage and streaming of disputes
  - Engagement and interaction with the parties
  - Information exchange
  - Use of provisional decisions
  - Decision making
  - Appeals
- A common case-handling and document-management IT infrastructure should be created.
- A well-structured quality-assurance program should be developed—including review of a percentage of closed cases—with clear quality, time, and fairness criteria linked to process and quality improvements.
- There should be a published service charter including details of how a service complaint can be made, the process for doing so, and who handles the service complaint.
- Annual reports should include reporting against common service and performance standards.
- Any ombud scheme should commission an independent review of its operations (comparing them against international good practice) every three to five years and publish the report.





This chapter considers how far the financial ombud system is clear and open to scrutiny about its work—and the lessons that can be drawn from it to improve market outcomes for consumers.

## 14.1 CRITERIA

**The report considers the information that the ombud system makes available about the work that it does and about systemic issues that arise.**

Issues considered include the following:

- Does any financial ombud scheme publish a report at least yearly?
  - Does this give information about the cases it has handled and the way in which it has handled them?
  - Does it publish other information about its work or plans?
  - Does it provide generic information to assist early resolution of complaints?
  - Does its case-handling system record all the relevant information about each case?
  - Is it clear how far any information that it collects in dealing with complaints is treated as confidential?
  - Does it identify systemic issues, and new/emerging issues, that may require action by regulators?
  - In all these, is there consistency across the financial ombud system?
  - Does it provide industry-wide information, to reduce complaints and improve market outcomes for consumers?
- 14.2 ANNUAL REPORT**
- All the ombud schemes, apart from the JSE Ombud, publish an annual report—though differences in content, processes, and terminology make it difficult to compare some aspects of their work.**
- The industry schemes are free to issue their annual reports without having to obtain prior approval of the contents from anyone external to the scheme. The report from the FAIS Ombud is first approved by its audit committee (which it shares with the FSCA), and the report from the PFA is first approved by the Minister of Finance.
  - Table 14A summarizes what the ombud schemes said about the contents of their reports. There are many similarities, but comparison identified the following differences and gaps:
    - Reporting of the time taken to resolve complaints tends to be based on an average across all complaints (which can be misleading), rather than by method of resolution.
    - As mentioned in chapter 12, not all schemes are clear about the numbers of cases in which the outcome was more favorable to the complainant than what (if anything) the provider had offered.
    - Some but not all include data on how complainants heard about the ombud scheme. There is limited data on the proportions of complaints from consumers or businesses.
    - There is limited socioeconomic data (geographical spread, language, age group, social group, or gender) about complainants that would assist in tracking accessibility, as well as assisting market conduct regulators and policy makers with broader market-monitoring and policy work.
    - In most of the reports, it is not clear what action has been taken to address systemic issues with regulators, providers, and consumers—and what impact this has had on improving market outcomes for consumers.

- As mentioned in chapter 13, not all ombud schemes have service standards that can be reported against.
- Most include the annual accounts, or a summary of them, but some do not. Not all industry schemes show remuneration of, and meeting attendance by, members of boards/councils.

**The differences in content, processes, and terminology also make it difficult to gain a system-wide view across the financial sector.**

An important role for an ombud system, alongside resolving individual complaints, is to highlight actual and potential systemic issues that can harm market outcomes for consumers and to highlight these for action by regulators or the industry. But

**Table 14A. Contents of Ombud Schemes Annual Reports**

Does the Annual Report Include	Banking Ombud	Credit Ombud	LTI Ombud	STI Ombud	FAIS Ombud	PFA
Numbers and types of complaints received?	Y	Y	Y	Y	Y	Y
Number and types outside jurisdiction?	Y	Y	N	Y	Y	Y
Number in jurisdiction that the scheme declined to deal with?	N	Y	N	N	Y	Y
Number of complaints that were discontinued?	Y	Y	N	N	Y	Y
Number of complaints that were resolved?	Y	Y	Y	Y	Y	Y
Number resolved in favor of the complainant?	Y	Y	Y	Y	Y	Y
Number resolved in favor of the financial provider?	Y	Y	N	Y	Y	Y
Time taken to resolve different types of complaints?	Y	Y	Y	Y	N	Y
The rate of provider compliance with outcomes? <sup>257</sup>	N	N	N	Y	Y	Y
Representative case studies to illustrate work handled?	Y	Y	Y	N	Y	Y
Systemic/significant problems in the financial system?	Y	Y	Y	N	Y	Y
The scheme's governance arrangements?	N	Y	Y	Y	Y	Y
How the ombud's independence is preserved?	Y	Y	Y	Y	Y	N
Arrangements for quality control?	N	Y	Y	N	Y	N
Cooperation with other ombud schemes?	Y	Y	N	N	Y	Y

Whether it tells the regulator about systemic problems in the financial system?	N	N	Y	Y	N	N
Whether it tells the regulator about systemic problems with individual providers? <sup>258</sup>	N	N	Y	Y	N	N
Source: Replies by ombud schemes to WBG questionnaire						

in South Africa, the differences in content and terminology make it more difficult to identify and compare system-wide issues (whether relating to particular products or providers) and the impact of the ombud system in improving customer outcomes.

### 14.3 OTHER PUBLISHED INFORMATION

**There are differences in the other information that the ombud schemes publish in addition to their annual reports.**

- All the schemes, apart from the JSE Ombud, publish details of their approach to common complaints.
- All the schemes, apart from the Credit Ombud and JSE Ombud, publish ombud final decisions.
- Some of the schemes publish regular newsletters.
- Only the Credit Ombud publishes casework data more often than annually.
- Only the Credit Ombud and PFA consult publicly about changes in their processes.
- All the schemes, apart from the FAIS Ombud and JSE Ombud, help to train consumer advisers.
- All, apart from the FAIS Ombud and JSE Ombud, help to train providers' complaints departments.

### 14.4 CASE-HANDLING INFORMATION AND DATA

**All of the ombud schemes, apart from the JSE Ombud, have computerized complaint-handling systems.**

- In the Banking Ombud, Credit Ombud, STI Ombud, and FAIS Ombud, the electronic files in the case-handling system form the primary record of each complaint.
- In the LTI Ombud, the electronic files in the complaint-handling system form the primary record of each complaint, though a paper file is also created when a case is investigated.
- In the PFA, complaint files comprise a mix of electronic records, in the complaint-handling system, and paper records.
- All these complaint-handling systems, except the FAIS Ombud's system, are event driven, so that prompts appear when actions are due.
- All these complaint-handling systems produce management data on case numbers, outcomes, and the time taken.
- The JSE Ombud does not have a computerized case-handling system, but its case numbers are very small.
- Apart from the PFA, all of the ombud schemes treat case information as confidential—subject to exceptions (such as publication of ombud decisions or where ordered by a court).

- But all of the ombud schemes, apart from the JSE ombud, say they have power to publish ombud decisions, naming the financial provider.
- And all of the ombud schemes, apart from the FAIS Ombud and JSE Ombud, say they have power to publish complaint data about named financial providers.
- All of the ombud schemes say they are able to report serious regulatory breaches to the relevant financial regulator.<sup>259</sup>
- All of the ombud schemes, apart from the Banking Ombud and STI Ombud, say they are able to report any crime to those who investigate or prosecute crime.
- The STI Ombud and (since their soft merger) the LTI Ombud have biannual meetings with the FSCA to discuss industry-related systemic issues as well as complaint trends.
- Under the FAIS Act and its rules, the FAIS Ombud is required to give the FSCA copies of ombud determinations and to report information that may prompt the FSCA to consider action under the FAIS Act—either generally or in relation to a particular matter.
- The PFA provides the FSCA with quarterly reports identifying problems, trends, problematic retirement funds, and conduct matters.

## 14.5 COMMUNICATING WITH THE FINANCIAL REGULATORS

**The FSCA and all the ombud schemes each have information that is relevant to the other in the fulfillment of their respective functions.** The FSCA is in the process of concluding memorandums of understanding with the ombud schemes, to strengthen collaboration, especially in respect of sharing of information. Currently, there are variations in the communications, interactions, and reporting between the FSCA and the different schemes.

- The Banking Ombud gives the FSCA a monthly report on complaint statistics per bank and has quarterly meetings with the FSCA.
- The Credit Ombud has regular quarterly meeting with the FSCA in order to share information on its work program.
- The LTI Ombud gives the FSCA quarterly data, plus information about types of complaints and any concerns it has about particular providers, which are discussed at meetings held at six-month intervals.
- The STI Ombud tells the FSCA if and when it has concerns about specific insurers and is likely to align with the LTI Ombud in regular supply of information.

**The NCR and the ombud schemes that deal with complaints about credit (the Banking Ombud and Credit Ombud) each have information that is relevant to the other in the fulfillment of their respective functions.** Currently, there are variations in the communications, interactions, and reporting between the NCR and the two different schemes.

- The NCR and Credit Ombud are in the process of finalizing a memorandum of understanding that provides for biannual reports on statistics as well as cooperation on other matters, such as consumer education.
- The Banking Ombud says that the NCR has never approached it for data or information; it always invites the NCR to functions such as the launch of the annual report; an NCR manager has attended some functions; but there has been no interaction with NCR senior management.

**Effective market-conduct regulation can be assisted by the availability to regulators of good-quality information.** In that context, the current differences in the ways that different ombud schemes classify and report complaints is unhelpful—though the regulators are probably hampered even more by the lack of consistent standards for the ways in which providers identify, handle, classify, and report complaints.

## 14.6 STAKEHOLDER VIEWS

**Stakeholders generally considered the ombud system to be open about its work, and valued the comprehensive annual reports issued by the ombud schemes.** Some stakeholders commented on differences in the information covered by the different annual reports or indicated that they found some ombud schemes more open than others to discussing issues that arise. One said they should follow the corporate governance requirements in the King IV Report.<sup>260</sup>

## 14.7 CONCLUSIONS

**The ombud schemes are generally open to public scrutiny about the work that they have done, but differences in content and terminology hamper system-wide comparisons and conclusions.**

- These differences make it difficult to compare the performance of the different parts of the ombud system and to analyze its effectiveness as a whole.
- They also make it more difficult to reduce the causes of complaints and improve consumer outcomes through identification of trends across the financial system, including new and emerging issues.
- Although the existing ombud schemes are generally open about the work that they have done, they are less open publicly about their proposed plans for future changes.

**There is dialogue between the ombud schemes and the FSCA, and between the Credit Ombud and the NCR, about issues identified by the ombud schemes in the course of their work—and that dialogue is to be covered by memorandums of understanding.** It would be helpful if

- A similar dialogue, backed up by a memorandum of understanding, were established between the Banking Ombud and the NCR;

- The memorandums of understanding created a standardized approach for mutual exchange of information, with feedback on actions taken in response; and
- The memorandums were published by the regulators and the schemes, so that the nature and extent of the information exchange is publicly understood.

**Areas for potential improvement include the following:**

- Annual reports with comparable contents, including the following:
  - Data on the performance of the ombud scheme
  - Socioeconomic information about users
  - Sectoral and system-wide issues in the market that harm outcomes for consumers
- Prompter reporting of some key issues and data<sup>261</sup> (perhaps quarterly)
- Greater public engagement in developing future plans and processes
- Comparable and documented arrangements for information sharing with the FSCA and NCR, including the following:
  - Mutual exchange of information
  - Feedback on actions taken in response
  - Publication of the extent of that information sharing



This chapter summarizes our assessment of the Ombud Council and our conclusions about its place in a reformed financial ombud system.

## 15.1 CRITERIA

**In assessing the role of the Ombud Council, we have considered it in relation to the following two aspects:**

- Its currently envisaged role as regulator of the financial ombud system, including its power to effect changes in the system
- Whether it could be appropriate for it to become, as some have suggested, the governing body of a consolidated ombud scheme

## 15.2 EMERGING POSITION

**As explained more fully in chapter 6, the Ombud Council is given extensive powers under chapter 14 of the FSR Act, which came into force on November 1, 2020.**

- As of December 1, 2020:
  - The minister had appointed six members of the Ombud Council (excluding the Chief Ombud), though their names had not yet been announced.
  - The minister had not yet appointed the Chief Ombud, as the recruitment process for that post had not been completed.
- The role of the Ombud Council is to assist in ensuring that financial customers have access to affordable, effective, independent, and fair ADR processes, including by the following:
  - Recognizing industry ombud schemes
  - Promoting cooperation and coordination among ombuds
  - Striving to protect the independence and impartiality of ombuds

- Promoting public awareness of ombuds and ombud schemes and their services
- Taking steps to facilitate access by financial customers to appropriate ombuds
- Resolving jurisdictional overlaps among different ombud schemes
- Monitoring the performance of ombud schemes<sup>262</sup>
- Before recognizing an industry ombud scheme, the Ombud Council must submit the scheme's rules to the FSCA and be satisfied that the scheme satisfies a number of criteria, including the following:
  - A significant number of members and sufficient resources and capacity
  - Specified scope and adequate and appropriate provision for making complaints
  - Requirements for members to tell customers about the scheme
  - Rules that are legally binding on members and require them to comply with its determinations
  - Adequate provision about the employment terms and conditions of the ombud
  - The ombud is required to apply, where appropriate, principles of equity<sup>263</sup>
- To ensure access to affordable and effective, independent and fair ADR processes, the Ombud Council may make rules for ombud schemes on the following:
  - Their rules and their governance
  - The qualifications and experience of ombuds
  - Fit-and-proper person requirements for ombuds and members of governing bodies

- The definition and type of complaints to be dealt with and dispute-resolution processes
- Any other matter appropriate and necessary for achieving the council's statutory objectives<sup>264</sup>
- The Ombud Council has a number of other powers over ombud schemes, including the following:
  - It may suspend or revoke the recognition of a scheme.<sup>265</sup>
  - It may direct an ombud or scheme not to contravene a relevant financial-sector law.<sup>266</sup>
  - It may debar an individual who has contravened a financial-sector law or an Ombud Council rule.<sup>267</sup>
  - It may issue an administrative penalty for breach of a relevant financial-sector law.<sup>268</sup>
  - It may conduct supervisory on-site inspections and investigations of ombud schemes.<sup>269</sup>
  - Any changes to the rules of a recognized industry scheme must be approved by the council.<sup>270</sup>
- If there is no recognized industry scheme or statutory scheme that covers complaints about a particular financial product/service, the Ombud Council may—after consulting relevant ombud schemes—designate one or more ombud schemes to deal with them.<sup>271</sup>
- The Ombud Council must operate one or more centers to assist financial customers to formulate complaints and identify the appropriate ombud scheme.<sup>272</sup>

### 15.3 INDEPENDENCE

**As the Ombud Council is given significant, and sometimes intrusive/coercive, powers (for example, on-site inspections and administrative penalties) over financial ombud schemes, it is appropriate to consider its independence.** So we have considered whether the FSR Act provisions ensure that the Council

- Has members, including the Chief Ombud, who are independent, recruited through a transparent

process, appointed for a sufficient term (typically at least three years), and protected from removal without just cause;

- Controls its own resources and has a funding structure that ensures that those providing the funds cannot influence its work;
- Cannot be subjected, directly or indirectly, to influence by parties to disputes handled by financial ombud schemes, regulators, or politicians; and
- Publishes regular reports on its work and on issues that give rise to complaints.

**We have concerns about the independence of the Ombud Council in its role as regulator, and we do not consider that it is sufficiently independent to become the governing body of a consolidated ombud scheme.** There appear to be no requirements for

- The members of the council, including the Chief Ombud, to be chosen by a transparent process, following a public advertisement;
- The council collectively to provide a balance of understanding in respect of the regulation of financial providers, the legitimate concerns of consumers of financial services and credit, and the legitimate concerns of the financial industry;
- The members of the council to be appointed on terms that secure their independence (including from the minister), and for a sufficient term (typically at least three years);
- The Chief Ombud to be appointed by an independent body (rather than the minister), and their pay to be linked to some appropriate external benchmark;
- The Chief Ombud to be appointed on terms that secure their independence (including from the minister), and for a minimum term of five years;
- The Chief Ombud not to have worked in a financial institution (or an industry body for the sectors) in the previous three years;
- The Chief Ombud to be protected from removal—except for incapacity, misconduct, or other just cause and only by an independent body; or



- The Ombud Council to publish regular public reports on its work and on issues that give rise to complaints.

**It is also relevant to consider how far the Ombud Council, in its regulatory role, protects/enhances (and does not diminish) the necessary independence of individual ombuds.**

- It will help to protect/enhance the independence of ombuds that, under the FSR Act
  - The objectives of the Ombud Council include ensuring an ADR system that is independent by striving to protect the independence and impartiality of ombuds;
  - In considering whether to recognize an industry ombud scheme, the Ombud Council must be satisfied that its rules make adequate provision about the employment terms and conditions of the ombud; and
  - Rules made by the Ombud Council itself must not interfere with the independence of an ombud.
- Some of the powers currently given to the Ombud Council by the FSR Act, however, raise the following concerns:
  - These powers include intrusive/coercive powers (for example, on-site inspections, debarring individuals, and imposing administrative penalties) that go far beyond international comparators for oversight of ombud schemes.
  - These powers appear to copy powers given to the FSCA to enable it to regulate commercially driven, profit-making financial institutions. They are inappropriate for the regulation of independent, impartial, not-for-profit, dispute-resolution bodies.
  - Though some of the Ombud Council's powers may assist in the short term to drive through changes in the light of this report, their nature and extent are likely to diminish the independence of the ombud system.
  - The problem is exacerbated by the deficiencies that we have identified in the Ombud Council's

own independence, but these powers would still be excessive if the Ombud Council's independence were addressed.

## 15.4 EFFECTIVENESS

**Giving the Ombud Council's chief executive the title of "Chief Ombud" is bound to create unfortunate confusion about the role of the Chief Ombud and that of the Ombud Council.** The name implies (and some stakeholders we have spoken to believe) that the Chief Ombud will oversee the decisions in individual cases handled by the various ombud schemes—which is not the case. This is likely to add further confusion to a system that, as demonstrated by this report, is already overly confusing.

**The Ombud Council has powers that could help in welding the existing financial ombud schemes into a system that provides consistent redress in all appropriate areas of financial services.** As mentioned earlier, the Ombud Council can make rules on ombud scheme rules and governance, the qualifications and experience of ombuds, the propriety of ombuds and members of governing bodies, the definition and type of complaints to be dealt with, dispute-resolution processes, and any other matter appropriate and necessary for achieving the Ombud Council's statutory objectives.

**The Ombud Council's ability to simplify the system, however, is unnecessarily constrained by the following two statutory prohibitions:**

- The prohibition on an industry ombud scheme dealing with anything that falls within the scope of a statutory ombud scheme, without any flexibility for the Ombud Council to modify this, will perpetuate the problem of many single transactions falling across two ombud schemes.<sup>273</sup>
- The designation of the FAIS Ombud as the backup ombud schemes for any financial provider that has not joined an industry scheme, without any flexibility for the Ombud Council to modify this, will constrain its ability to create logical jurisdictional boundaries.<sup>274</sup>

**There appear to be no automatic adverse consequences (that the Ombud Council or FSCA can enforce) for a financial institution that fails to join an ombud scheme.** Under section 211(3) of the FSR Act, a financial institution (as defined in the act) must be a member of any recognized industry ombud scheme that covers the financial product/services that it provides. It must tell its customers about applicable ombud schemes and how to contact them, in accordance with rules issued by the Ombud Council. But the consequences for a financial institution that fails to do so are not set out.

**In addition, there appear to be no automatic adverse consequences (that the Ombud Council or FSCA can enforce) for a financial institution that joins an ombud scheme but then ignores it.** Under section 215 of the FSR Act, a financial institution must comply with the rules of a recognized industry ombud scheme of which it is a member, and a financial customer (as defined in the act) may enforce those rules as if they were part of their contract. But that throws the enforcement obligation on financial customers, few of whom would be in a position to take the court action required.

**The Ombud Council is required to operate one or more centers to assist financial customers to formulate complaints and identify the appropriate ombud scheme.** This adds a signposting stage to the existing complex situation.

- As explained in chapter 13, the initial receipt of a complaint is a crucial stage in the ombud process, where effective triage can facilitate appropriate understanding, routing, and handling of the complaint. This requires the initial stage to be handled by people who fully understand the scope, powers, and approach of the relevant ombud scheme.
- The first contact with a complainant should be a key step in a well-designed end-to-end complaint-handling process, not an extra layer added on at the front end. Effective complaint handling requires as much as possible to be sorted by the front-line contact person—and to minimize handoffs from one person to another, which can discourage less-confident complainants and lead them to give up.

- For these reasons, a properly functioning center that gives effective access to all of the ombud schemes will be difficult to achieve until the complexity and inconsistencies of the existing system have been resolved, so that the same rules and processes apply across the system. And if this is achieved by consolidation of ombud schemes, the consolidated scheme will be better placed than the Ombud Council to provide one or more points for such cross-sector access.

**It appears that the Ombud Council's powers are restricted to complaints by financial customers as defined in the FSR Act,<sup>275</sup> which leaves out some potential complainants.** The definition includes beneficiaries as well as customers but does not appear to cover

- Prospective customers, for complaints about the financial institution's wrongful offer to provide a service (perhaps involving unlawful discrimination);
- A guarantor or a surety for a loan (or credit) that was provided to a customer by the financial institution;
- Someone whose credit history has been (incorrectly) recorded by a credit bureau (so that their ability to borrow has been adversely affected); or
- A non-customer from whom a debt is being (incorrectly) claimed (such as where the lender has wrongly confused them with the actual debtor).

## 15.5 STAKEHOLDER VIEWS

**Non-ombud stakeholders knew little of the Ombud Council, and the few that had heard of it misunderstood the intended role of the Chief Ombud.** The ombud schemes, whose views may be tempered by the prospect of coming under its oversight, knew a lot about the Ombud Council.

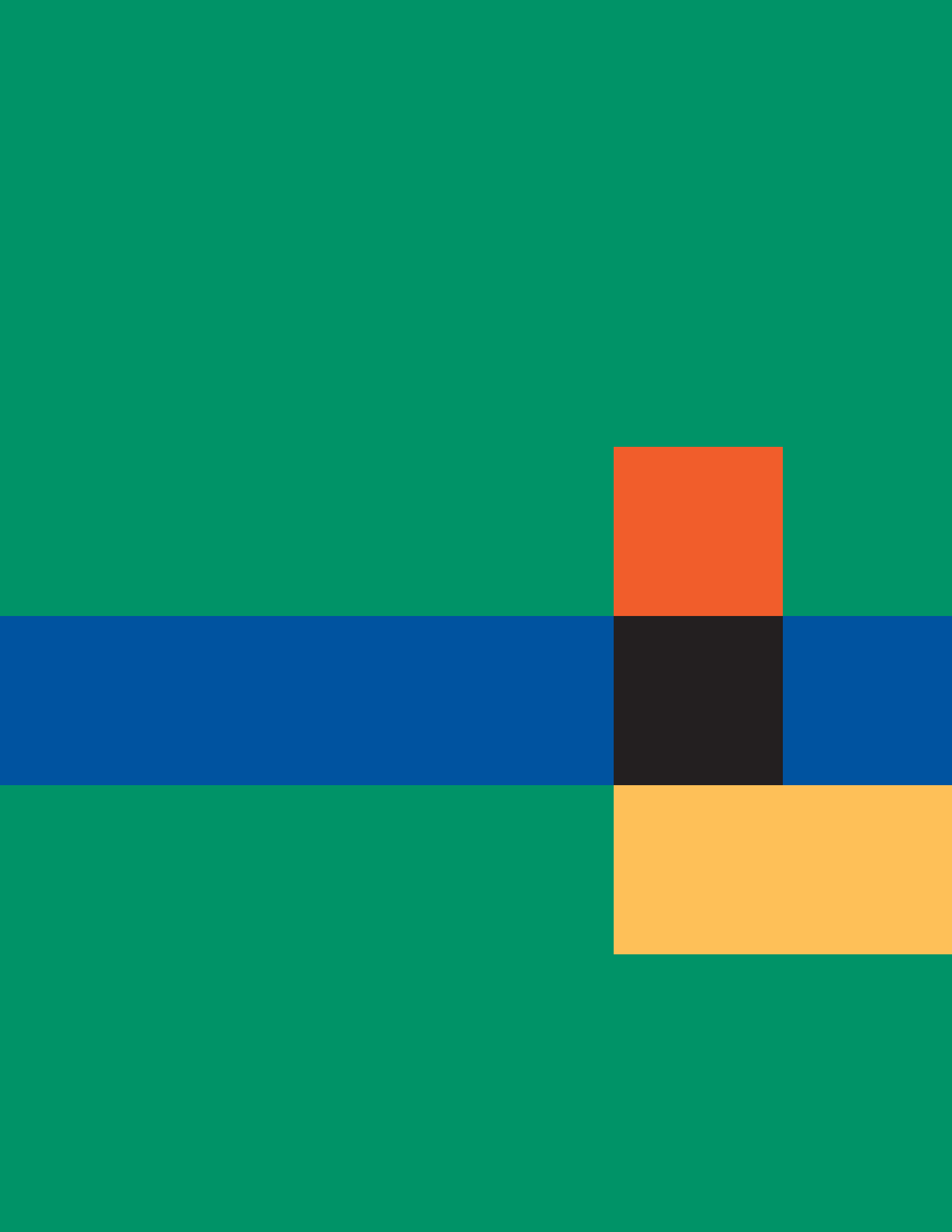
- One of the ombud schemes saw a major role for the Ombud Council in promoting public awareness of ombud schemes and the services they provide.

- Another saw the main advantage of chapter 14 of the FSR Act as being that all registered credit providers will be compelled to belong to an ombud scheme.
- Another welcomed the Ombud Council’s clear mandate and capability to harmonize and improve the ombud system, with strong oversight powers.
- Another considered that the Ombud Council’s effectiveness would depend in large measure on the people who were appointed. It welcomed the prospect of more standardization and cooperation but feared overstandardization that did not take account of the features of different financial sectors.
- All the industry ombud schemes welcomed the fact that the Ombud Council would fill the vacuum left when the FSOS Council was disbanded, leaving no existing body to approve rule changes or to sanction the merger of the LTI Ombud and STI Ombud.
- One expressed concern that neither the Ombud Council nor the FSCA appeared to have been given powers to take action against financial providers that fail to join an ombud scheme or, if they do join, fail to cooperate with it and abide by its decisions.
- All the ombud schemes considered that the powers given to the Ombud Council appeared to be sufficient for it to fulfill its statutory objectives.
- The Ombud Council is not sufficiently independent to act as an intrusive regulator of independent ombud schemes and still less to become the governing body of a consolidated system.
- Some of the Ombud Council’s intrusive/coercive powers over ombud schemes may damage the perceived independence of the ombud schemes.
- Those of the Ombud Council’s functions and powers designed to encourage standardization and cooperation, while appropriate for the currently fragmented system, would be unnecessary (and cease to be cost effective) if there were a significant consolidation of the ombud system.
- To enable consolidation of the system and the creation of clear jurisdictional boundaries, the Ombud Council should have power (where appropriate) to do the following:
  - Authorize a recognized industry ombud to deal with a complaint against a financial provider that is already within its jurisdiction, even if part or all of the complaint falls within the jurisdiction of a statutory ombud scheme.
  - Designate a recognized industry ombud as the backup ombud scheme in a particular sector (or sectors) to exercise jurisdiction over any financial provider that has not joined an industry scheme in that sector (or those sectors).

## 15.6 CONCLUSIONS

**The powers of the Ombud Council could help implement and oversee reforms resulting from this report, but there are a number of significant concerns about its constitution and powers.**

- The title “Chief Ombud” is likely to create confusion over the true role and responsibilities of the chief executive of the Ombud Council and should be replaced by another title more consistent with the role—such as Chief Executive or Director-General.
- There should be explicit adverse consequences (that can be implemented by the Ombud Council or the FSCA) if a financial institution does not join relevant ombud schemes or, having joined, does not comply with their decisions.<sup>276</sup>
- Properly functioning centers that give effective access to all of the ombud schemes will be difficult to achieve and have limited value unless and until the complexity and inconsistencies of the existing system have been resolved, and a consolidated ombud system will be better placed to provide such cross-sector access points as part of an integrated complaint-handling process.



This chapter summarizes our assessment of the current ombud system, as set out more fully in chapters 8 to 15.

## 16.1 OVERVIEW

### Criteria

**In assessing the financial ombud system, we have taken into account both international good practice and local conditions in South Africa (including the views of stakeholders).** Chapter 2 sets out the available sources of guidance on international good practice for financial ombuds and the key attributes that can be distilled from that guidance.

### Upsides

**The current financial ombud system provides an important ADR service for many consumers of financial services in South Africa.**

- In a complex environment, the existing system
  - Provides free access to out-of-court dispute resolution for many consumers;
  - Is generally seen by stakeholders as independent, professional, expertise based, and engaged; and
  - Has rules and processes that incorporate fair and equitable principles.
- The Banking, Credit, LTI, STI, and FAIS Ombuds and the PFA have several strengths, including the following:
  - A commitment to delivering high-quality, efficient, and independent dispute resolution
  - A clear focus on measuring and improving customer service
  - Examples of process improvements, system enhancements, and efforts to expand community outreach activities

**Our findings on the current system should not be seen as any criticism of those involved with the work and governance of the existing schemes.** We have been impressed by their professionalism and commitment. They are

- Doing an effective job within the constraints of the differing structures that they have inherited;
- Skilled, knowledgeable, and committed to continuous improvement; and
- Respected nationally and internationally.

### Downsides

**Current arrangements are based on sector-specific arrangements plus piecemeal statutory reforms. This has resulted in an ombud system that is fragmented and lacks overall coherence and is affected by various gaps and deficiencies affecting individual schemes.** The more deeply we looked, the more complex and inconsistent the system appears. As explained in chapters 8 to 15, issues include the following:

- Jurisdictional boundaries that are unclear
- Overlaps, including between industry and statutory ombud schemes
- Gaps in coverage and mismatches with new products
- Significantly differing rules, eligibility, processes, powers, and appeal mechanisms
- Differing governance arrangements
- Differing funding, with some duplication of levies
- Uncoordinated outreach and accessibility activities

- Lack of socioeconomic-data collection by the schemes, raising doubts about accessibility to all

**These create complexity and inconsistency for consumers, financial providers, and the ombud schemes themselves.** That complexity and inconsistency cause inefficiencies and cost money. The fragmentation of the system hampers improvements in its visibility and accessibility. And it hampers developments in training and systems that could be achieved if the structure were more coordinated.

## 16.2 CONCLUSIONS

**The development of the individual financial ombud schemes to date has produced significant benefits for consumers and the financial sector, but the overall system and its components will need significant changes to make it fit for purpose now and in coming years.**

- We acknowledge the benefits provided by the current ombud schemes and the valuable work of those involved with them.
- But we consider that some fundamental changes are essential in order to fit the system better for the present and the future.
- And we raise issues about the governance of the Ombud Council and the nature and extent of some of its powers.
- We go on (in the next chapter) to make specific recommendations for reform.

### Effectiveness of Scope<sup>277</sup>

**We consider that there are material inconsistencies in the coverage of financial providers and activities, in the coverage of complaints, and in time limits and that these significantly undermine the effectiveness of the system.** In our assessment, all of this complexity must inevitably create the following:

- Inconsistency in whether otherwise-similar complaints are covered, simply because of the identity of the ombud scheme concerned

- Inconsistency in processes, approach, and outcomes among otherwise-similar complaints, simply because of the identity of the ombud scheme into whose jurisdiction they fall
- Confusion for consumers and consumer advisers and delay—with about 12 percent of complaints having to be referred from one ombud scheme to another
- Serious risk that some consumers may be so discouraged by the complexity that they may be deterred from pursuing their complaint at all or may give up prematurely
- Additional work for financial providers—training staff, understanding the requirements applicable to different ombud schemes, and correct signposting;
- Additional work for the initial stages of ombud schemes—training staff, understanding eligibility/limits/gaps/overlaps, and referring complainants to other schemes; and
- Scope for forum shopping by vexatious complainants able to use the complexity in order to pursue issues through multiple channels.

**Areas for potential improvement include ensuring the following:**

- That the ombud system covers all products and services that consumers are likely to see as financial (including credit and payment services, and also cooperative banks and other cooperative financial institutions)
- That any boundaries between the scope of different ombud schemes are clear and logical, avoiding overlaps, and can be expressed in terms intelligible to a consumer
- Consistency in defining who is able to refer a complaint to a financial ombud and harmonization between this and the definition of “complainant” in the COFI Bill)
- Consistent and less inflexible time limits within which a complaint must be referred to a financial ombud

## Effectiveness of Interaction and Powers<sup>278</sup>

**There are material inconsistencies, and deficiencies, in the definition of what constitutes a complaint, relevant obligations for financial providers, redress a financial ombud can award, and the effect and enforcement of ombud decisions, and these significantly undermine the effectiveness of the system.** In our assessment, all of these issues must inevitably create the following:

- Inconsistency in how financial providers treat complaints and to what extent financial providers tell complainants about the ombud system
- Inconsistency (and, in some cases, inadequacy) of outcomes among otherwise-similar complaints, simply because of the identity of the ombud scheme into whose jurisdiction they fall
- Encouragement of forum shopping, where jurisdictional boundaries are unclear, because one ombud scheme may have power to award much more redress than another ombud scheme
- Confusion for financial providers about what is expected of them, and confusion for consumers and consumer advisers about what redress is available and how it can be enforced

**Areas for potential improvement include ensuring the following:**

- A consistent and sufficiently comprehensive definition of what constitutes a complaint—to be used by ombud schemes, financial providers, and regulators—that confirms that an oral expression of dissatisfaction suffices and that a complaint does not have to be in writing
- Consistent requirements for financial providers (set by the regulator) about how providers should resolve complaints fairly, give information about the ombud system, and give a clear written final decision on complaints within a specified time
- Consistent and sufficient redress powers for all of the ombuds in the financial ombud system (and, if differing maximum limits are deemed necessary, there should be a logical link to specific categories of product readily understandable by consumers)

- Consistency in how far financial ombud decisions are binding on the parties, and consistency in the availability of effective mechanisms and support for complainants in enforcing those decisions

## Independence<sup>279</sup>

**The existing governance arrangements cover many of the features of international good practice designed to demonstrate independence of operation and decision-making.**

- Casework decisions are reserved to the ombuds by the governance documents of the industry schemes and by the legislation covering the statutory schemes.
- The four main industry ombud schemes have boards/councils with a diversity of well-qualified and experienced members, well able to stand up for the scheme's independence.
- Only a minority of the members of the boards/councils are from the industry, and all the chairs are currently independent of the industry.
- Individual industry schemes have also adopted various practices to bolster public perception of their independence, such as appointing a retired judge as ombud and/or as chair of the board/council.
- They were all recognized by the FSOS Council as having independently appointed ombuds, free to act independently in resolving cases, and sufficient resources to function efficiently and in a timely manner.

**Nevertheless, there are some material inconsistencies (and some deficiencies) in the mechanisms to underpin the independence of the ombud schemes and ombuds.** Some of the current practices of the ombud schemes may go some way to mitigate these deficiencies, but we do not think that relying on good practice is a substitute for ensuring that proper protections are built into the formal governance frameworks. Moreover, the statutory schemes lack an independent governing body to appoint the ombuds and help protect their independence.

**Areas for potential improvement include incorporation of formal requirements that ensure the following:**

- That the ombud is
  - Appointed by, and accountable to, a governing body that is itself demonstrably independent,
  - Is chosen by a transparent and public process, so as to instill public confidence, and
  - Appointed on terms that secure their independence from those who appointed them, the financial industry, consumer bodies, financial regulators, and politicians;
- That the governing body's members
  - Are chosen in a balanced and independent way that instills public confidence—and not chosen by industry members,
  - Are appointed on terms that secure their independence from those who appointed them, the financial industry, consumer bodies, financial regulators, and politicians, and
  - Include an independent chair and exclude serving politicians and regulators;
- That the independent governing body has power to
  - Approve the budget, and
  - Make changes to the scope and powers of the ombud scheme, subject to any regulatory approvals;
- That, in exercising its powers, the independent governing body will at all times have regard to the importance of
  - Preserving the independence, integrity, and fairness of the decision-making process, and
  - Ensuring that the scheme is appropriately resourced to carry out its objectives in a timely and efficient manner; and
- That the ombud scheme has, and controls, its own resources and funding.

## **Accessibility<sup>280</sup>**

**The visibility and accessibility of the ombud system are less than they would be if there were combined resources using a standard approach.**

- Coordination could improve things substantially, especially in getting information to those without internet access. The amount of help available to complainants who are vulnerable, disadvantaged, or disabled is variable, as is the degree of outreach to more rural areas.
- There are striking differences in the numbers of complaints received from different provinces, and the multiplicity of official languages presents challenges for all agencies that deal with the public, including the ombud system.
- All of the ombud schemes (apart from the JSE Ombud) are free to consumers, but there are significant differences in how complaints can be submitted and whether a signature or written confirmation is required.
- A single point of entry would help, but only once the complexity and inconsistencies of the existing system have been resolved.

**Areas for potential improvement include ensuring the following:**

- That sufficient personnel and financial resources are allocated, in order to improve the visibility and accessibility of the ombud system
- That those resources are combined behind a common brand strategy and policies in order to deliver information effectively to all those who need it (directly or through partner organizations)
- That one or more combined points of entry replace all the separate points, but only once the complexity and inconsistencies of the existing system have been resolved
- That it is made as simple and informal as possible for consumers to submit a complaint to the ombud system by any reasonable channel and without requiring a formal signature



- That common approaches are developed (and staff trained) to assist consumers facing difficulties because of language, vulnerability, disadvantage or disability
- That the disproportionate inflow of complaints from different provinces is investigated and any appropriate action is taken
- That the ombud system is not expected to carry the responsibility of providing general financial education for consumers but continues to cooperate with the financial-education activities of public agencies

### Fairness<sup>281</sup>

**The existing legislative framework, governance, and rules of the ombud schemes and their complaint-handling processes are generally consistent with international good practices designed to ensure the fair and equitable resolution of complaints.**

- The ombud schemes provide for a fair complaint-handling process in their rules, which (excepting the JSE Ombud) also spell out fairness and equity as the basis of their decision-making.
- But there are significant differences in rules, terminology, complaint-handling processes, and appeal procedures among the ombud schemes.
- This lack of consistency results in an ombud system that is
  - Confusing for complainants;
  - Complex and costly for financial providers;
  - Potentially inconsistent in how it applies due process and equitable principles; and
  - Less effective in promoting common standards of fair dealing.

**Areas for potential improvement include the following:**

- The ombud system should have a consistent set of rules and criteria for resolving complaints in a manner that is fair in all the circumstances,

taking into account the law, regulatory standards, industry codes, and industry good practice.

- The ombud system should have consistent processes and procedures for applying the principles of fairness in resolving complaints, including the following:
  - Making the process easy to use and efficient for consumers and financial providers
  - Exchange of information and documents
  - Use of confidential information;
  - Approach to dismissal of complaints based on no merit or no reasonable prospects of success
  - Use of provisional decisions before a final binding decision on more complex matters
  - Ombuds regularly making final decisions on cases and publishing them (with the complainant anonymized)
- Where relevant facts of a case are disputed, the ombud system should decide (in the light of the available evidence) what is most likely to have happened, without imposing an onus of proof on the complainant.
- Details of complaint-uphold rates should be published, and this information should help to inform a quality-assurance program and periodic independent reviews.
  - The ombud system should have a single dedicated appeal mechanism of its own. This should have an informal procedure (so as not to disadvantage consumers).
  - It should have specialist knowledge of the work of financial ombuds as well as of financial services and credit.
  - Access should be limited to cases with general or systemic implications.
  - The appeal body should have discretion, where it considers this is in the interest of both parties, to reach its own decision on the merits.

## Efficiency<sup>282</sup>

**The existing arrangements for each ombud scheme cover many of the features of international good practice designed to ensure that the financial ombud system provides a consistently good quality of service and value for money.**

- The ombud schemes all have well-developed and documented complaint-handling processes with a focus on the timely resolution of complaints.
- Each ombud scheme prepares an annual budget based on expected volumes and types of complaints and operational plans for the year.
- The ombud schemes have recruitment, human resources, skill-development, and training plans designed to ensure that the scheme has the expertise and qualified staff.
- All of the ombud schemes have internal quality-assurance activities built into their complaint-handling processes.
- Several of the ombud schemes report their performance standards and results of their stakeholder surveys and have prominent information on how to make a service complaint.
- One ombud scheme (the LTI Ombud) includes a report from an external reviewer in its annual report and conducts periodic independent reviews of the scheme every three to five years.

**However, there are gaps for some of the ombud schemes and challenges for the ombud system as a whole.**

- Several of the ombud schemes said that they have staffing challenges that make meeting time and quality standards a challenge.
- One ombud scheme has highlighted the challenges they face in getting a timely response from the parties to a complaint and that this lengthens the time they take to resolve complaints.

- The multiplicity of schemes and their different approaches to reporting performance makes it difficult to assess the costs and efficiency of the ombud schemes and the ombud system.
- The large number of smaller schemes, each with its own IT systems, case management, and other organizational support, causes duplication of effort and increased costs. This is particularly relevant for investment in IT systems, which underpin the efficient complaint-handling processes of a modern ombud scheme.
- The JSE Ombud model differs significantly from the other ombud schemes, and its process and practices do not conform to the usual model of an ombud of the type contemplated by the international good practices used in this assessment. It is more akin to a form of a private arbitration established under the JSE rules on a case-by-case basis for a specific dispute when the need arises.

**Areas for potential improvement include the following:**

- There should be a consistent set of rules and processes for handling complaints, including the following:
  - Transfer of complaints sent to the incorrect ombud scheme
  - Transfer/referral process for premature complaints across all sectors
  - Time frames for responses from financial providers across the ombud system
  - Use of early triage and streaming of disputes
  - Engagement and interaction with the parties
  - Information exchange
  - Use of provisional decisions
  - Decision-making
  - Appeals

- A common case-handling and document-management IT infrastructure should be created.
- A well-structured quality-assurance program should be developed—including review of a percentage of closed cases—with clear quality, time, and fairness criteria linked to process and quality improvements.
- There should be a published service charter including details of how a service complaint can be made, the process for doing so, and who handles the service complaint.
- Annual reports should include reporting against common service and performance standards.
- Any ombud scheme should commission an independent review of its operations (comparing them against international good practice) every three to five years and publish the report.
- A similar dialogue, backed up by a memorandum of understanding, were established between the Banking Ombud and the NCR;
- The memorandums of understanding created a standardized approach for mutual exchange of information, with feedback on actions taken in response; and
- The memorandums were published by the regulators and the schemes, so that the nature and extent of the information exchange is publicly understood.

**Areas for potential improvement include the following:**

**Openness<sup>283</sup>**

**The ombud schemes are generally open to public scrutiny about the work that they have done, but differences in content and terminology hamper system-wide comparisons and conclusions.**

- These differences make it difficult to compare the performance of the different parts of the ombud system and to analyze its effectiveness as a whole.
- They also make it more difficult to reduce the causes of complaints and improve consumer outcomes through identification of trends across the financial system, including new and emerging issues.
- Although the existing ombud schemes are generally open about the work that they have done, they are less open publicly about their proposed plans for future changes.

- Annual reports with comparable contents, including the following:
  - Data on performance of the ombud scheme
  - Socioeconomic information about users
  - Sectoral and system-wide issues in the market that adversely affect outcomes for consumers
- Prompter reporting of some key issues and data<sup>284</sup> (perhaps quarterly)
- Greater public engagement in developing future plans and processes
- Comparable and documented arrangements for information sharing with the FSCA and NCR, including the following:
  - Mutual exchange of information
  - Feedback on actions taken in response
  - Publication of the extent of that information sharing

**There is dialogue between the ombud schemes and the FSCA, and between the Credit Ombud and the NCR, about issues identified by the ombud schemes in the course of their work, and that dialogue is to be covered by memorandums of understanding.** It would be helpful if

## Ombud Council<sup>285</sup>

**The powers of the Ombud Council could help implement and oversee reforms resulting from this report, but there are a number of significant concerns about its constitution and powers.**

- The title “Chief Ombud” is likely to create confusion over the true role and responsibilities of the chief executive of the Ombud Council and should be replaced by another title more consistent with the role, such as Chief Executive or Director-General.
- The Ombud Council is not sufficiently independent to act as an intrusive regulator of independent ombud schemes and still less to become the governing body of a consolidated system.
- Some of the Ombud Council’s intrusive/coercive powers over ombud schemes may damage the perceived independence of the ombud schemes.
- Those of the Ombud Council’s functions and powers designed to encourage standardization and cooperation, while appropriate for the currently fragmented system, would be unnecessary (and cease to be cost effective) if there were a significant consolidation of the ombud system.
- To enable consolidation of the system and the creation of clear jurisdictional boundaries, the Ombud Council should have power (where appropriate) to do the following:
  - Authorize a recognized industry ombud to deal with a complaint against a financial provider that is already within its jurisdiction, even if part or all of the complaint falls within the jurisdiction of a statutory ombud scheme
  - Designate a recognized industry ombud as the backup ombud scheme in a particular sector (or sectors) to exercise jurisdiction over any financial provider that has not joined an industry scheme in that sector (or those sectors)
- There should be explicit adverse consequences (that can be implemented by the Ombud Council or the FSCA) if a financial institution does not join relevant ombud schemes or, having joined, does not comply with their decisions.
- Properly functioning centers that give effective access to all of the ombud schemes will be difficult to achieve and have limited value unless and until the complexity and inconsistencies of the existing system have been resolved, and a consolidated ombud system will be better placed to provide such cross-sector access points as part of an integrated complaint-handling process.





**Detailed Recommendations**

This chapter sets our recommendations for reform of the financial ombud system and for ensuring that there is a smoothly managed transition.

## 17.1 OPTIONS FOR REFORM

### Proposed Approach

**Our recommendations take into account not only the principles of good ombud practice but also the constitutional, legal, cultural, economic, and other circumstances in South Africa.**

- We have been informed by international good practice and by how some things have worked (or not) in other countries, but we have not sought to transplant one existing model from elsewhere in the world to South Africa. We have devised what we believe will work best in the local circumstances.
- We are not starting with a blank sheet of paper; there is already a system in place. So we have placed a high priority on the need to keep the ombud system operational, and the need to retain the stakeholder support that underpins it, through the transition to a reformed system.
- We have sought to avoid the risks of either a “big bang” or an incremental approach that are sometimes presented as alternatives. Both, in their own ways, risk disrupting the current operation of the system, loss of expertise, and a failure to implement reforms properly.
- Rather, we propose early action to set clear directions for the reforms and put in place a clear independent governance framework to manage a staged implementation plan with a clear timetable, to reduce uncertainty for the current schemes and their staffs and manage the transition risks.

### Stakeholder Views

**Most stakeholders acknowledge the need for reform, but there is little consensus on the precise nature and extent of the reforms required.** There are legitimate concerns that

- A changed system might involve less independence, more bureaucracy, less professionalism and expertise, and loss of stakeholder support;
- The performance of even a well-designed system depends on the appointment of the right people on the governance bodies and as its leadership; and
- There is a significant risk of losing current expertise and operating capabilities during the transition to a reformed system.

Successfully addressing these concerns will be critical to gaining general stakeholder support for any reforms, and we have taken them into account in our proposals for reform and transition.

### Potential Models

**We do not recommend adoption of any of the three models mentioned in the NT’s 2017 Consultation Document.**

- These were the following:
  - Model 1: A hybrid model building on current FSR Act provisions
  - Model 2: A centralized model, establishing a single statutory ombud scheme
  - Model 3: Industry ombuds with strong oversight by the Ombud Council

- We have carefully reviewed all three models in the light of the assessment criteria and the strengths and weaknesses of the current ombud system. While each model has some benefits, the best of which we have sought to retain in our recommendations, they all have significant disadvantages. This is confirmed by the divergent stakeholder comments we received on the three models.
- None of the three models addresses all the weaknesses in the current ombud system that we have identified, including key material deficiencies relating to the nature of involvement by both industry and government, jurisdictional coverage, complexity, inconsistency in rules and processes, transparency, and accessibility.

**Models 1 and 3 would retain multiple schemes with an overlay of more consistent standards and rules**, along with an enhanced single entry point that would direct complainants to one or more existing schemes. We do not consider this to be a viable end point. The shared call center established by the existing schemes failed in practice. International experience is that getting real consistency across separate schemes is unlikely to be possible, and that just adding a single entry point on top of the current multiple-scheme structure will not be effective.<sup>286</sup>

**Model 2 would create a single statutory scheme.** While we consider consolidation as an important element of the recommended reforms, we do not support consolidation for its own sake through a single statutory scheme.

- While a single statutory scheme might (at first sight) appear to be a straightforward policy option, it would not be consistent with international good practice, would lack critical stakeholder support, and would pose material risks for a smooth transition to a new reformed ombud system
- The framework for statutory ombuds in South Africa (with no independent governing body and appointment of the ombud by a politician) lacks independence, and, in view of past events, stakeholders in South Africa are very cautious about appointments made by politicians.

- Some stakeholders have mentioned that the United Kingdom has a statutory financial ombud. But the UK arrangements for statutory bodies are very different from those in South Africa. The independence of the UK Financial Ombudsman Service is underpinned at several levels in the following ways:

- A minister appoints the board of the Financial Conduct Authority, but, like all such ministerial appointments, the process is overseen by the Commissioner for Public Appointments.<sup>287</sup>
- The Financial Conduct Authority appoints the board of the Financial Ombudsman Service and is required by law to do so on terms that secure the board members' independence from the authority in the operation of the service.<sup>288</sup>
- The board of the Financial Ombudsman Service appoints the ombudsmen and is required by law to do so on terms that are consistent with the ombuds' independence.<sup>289</sup>

- Stakeholders in South Africa consider that statutory bodies are bureaucratic, inflexible, and more expensive. The 2017 Consultation Document itself conceded that statutory ombuds show significantly higher costs, explained to some extent by the statutory inflexibility afforded to running these schemes, especially governance requirements imposed by the PFM Act.
- It is essential that there is a smooth transition from the existing system to the new one, in order to ensure that complaints from consumers are still being handled throughout the change and to preserve existing knowledge, expertise, and stakeholder goodwill. Even in countries where a fully statutory ombud was established (such as the United Kingdom), a smooth transition would have been impossible without the active support of stakeholders (including the governing bodies of the existing ombud schemes).
- So this report favors a non-statutory model (overseen by the existing statutory Ombud Council). Forcing existing schemes into a fully statutory ombud would not secure the cooperation



of essential stakeholders. Without stakeholder cooperation, there is a significant risk of a worse outcome, because the handling of cases would not proceed smoothly through the transition, and knowledge, expertise, and goodwill would be lost.

## Negotiations among Industry Schemes

**Recent negotiations between four of the industry schemes (the Banking, Credit, LTI, and STI Ombuds) about moving toward a merger between 2021 and 2024 are welcome but do not provide a sufficient platform for reform.**

- Although these discussions can help identify issues and potential solutions on a range of practical system and process issues,
  - They will not be able to resolve the issues raised by the cross-cutting statutory jurisdiction of the FAIS Ombud;
  - They envisage a gradualist approach that will not tackle some of the fundamental issues at the outset in order to provide a secure platform for reform; and
  - We do not consider that they provide a secure foundation for extending the ombud system to all authorized providers of financial services (including credit).
- As explained later, we consider it essential that a new independent governance framework should be established at the outset, to manage consolidation, with the ability to decide the end point and how to get there. This is not a role for the Ombud Council, though its approval of some aspects will be required in its continuing role as oversight regulator.

## 17.2 A NEW MODEL

### Outline

**We recommend a new model that builds on the strengths of the existing ombud system while addressing the complexity and other weaknesses that we have identified.** The full details are set out in the recommendations in section 17.3. Broadly,

in addition to some standardization of the interface between financial providers and the ombud system, we recommend the following:

- A new National Financial Ombud (NFO), independent of both industry and government, should cover the whole of the financial sector (including credit)—apart from retirement funds—and absorb the work of the Banking, Credit, LTI, STI, JSE, and FAIS Ombuds.
- The consolidation should be managed by the NFO’s governing body, which should be established at the earliest possible opportunity, so that it can oversee the process and make any necessary design decisions.
- The statutory PFA, reformed and renamed “Retirement Funds Ombud,” should continue to have jurisdiction over retirement funds but should add jurisdiction over advice/intermediary services concerning retirement funds where it is provided by any person or entity that is otherwise within its jurisdiction.
- The statutory provisions relating to the Ombud Council should be modified in order to increase its independence, rename its chief executive, and modify its powers in order to facilitate (and then adapt to) the new structure that we recommend.

### National Financial Ombud:

- The NFO should be demonstrably independent—not only from the financial industry but also from the government. It should have the governance arrangements set out in our recommendations and preferably take the corporate form of a nonprofit company without members.<sup>290</sup>
- The NFO should not be a statutory body. This will make it easier to undertake the transition, retain the flexibility to adapt to future changing circumstances and products, retain the support of existing stakeholders, and avoid bureaucracy.
- The NFO will need to obtain recognition from the Ombud Council. As explained later, it will require some statutory underpinning (through extending the powers of the Ombud Council) in order to ensure that its coverage is comprehensive.

- The NFO should incorporate the work of all the industry ombud schemes (the Banking, Credit, LTI, STI, and JSE Ombuds), plus that of the statutory FAIS Ombud. Its jurisdiction should extend to cover all financial providers authorized by the PA/FSCA and NCR.
- The new NFO would handle all complaints that seek redress from providers of financial services and credit, to enable the NCR and FSCA to focus on dealing with enforcement, systemic sector-wide issues, and broader financial-literacy efforts.

#### **Retirement Funds Ombud:**

- We do not recommend incorporating the work of the PFA into the NFO at this stage.
  - Retaining a separate scheme for retirement funds at this stage will avoid adding further complexity to what will already be a complex transition. This can be reviewed after the NFO has been fully implemented and has settled down.
  - The nature of the PFA’s work is somewhat different. Its jurisdiction, wide range of parties (both regulated and unregulated entities), and types of disputes differ from other financial-sector ombud schemes.
  - There is no international best practice as a guide in this area; some pension ombud schemes remain separate (for example, the United Kingdom), while others have been part of a broader ombud consolidation (for example, Australia).
  - The major issue in the pension-funds sector is employers not paying over contributions. This is primarily an issue for the FSCA to address and will not be solved by changing the ombud system. We think this needs to be resolved before consolidation with other ombuds is considered.
- Pending a future consideration of its relationship with the NFO, the PFA’s governance should be enhanced to underpin its independence. Contingent on that being accepted, its name should be changed to the “Retirement Funds Ombud” or—if the change in terminology envisaged by

the COFI Bill does not come about—the “Pension Funds Ombud.”

- The name change will make its role clearer to consumers and also facilitate working jointly with the NFO to enhance the outreach and accessibility of the ombud system.
- For the same reason, there should be significant harmonization between the processes, powers, and terminology used by the RFO and NFO.
- The RFO’s jurisdiction should be clarified.
  - It should continue to have jurisdiction over retirement funds but should add jurisdiction over advice/intermediary services concerning retirement funds where that is provided by any person or entity that is otherwise within its jurisdiction.
  - This reasonably clear jurisdictional boundary with the new NFO should not prevent the NFO arranging with the RFO for the NFO to deal with the whole of a complaint that includes advice or intermediary services relating to a retirement fund where that is part of a wider complaint against a provider that is otherwise within the NFO’s jurisdiction.

#### **Ombud Council:**

- The statutory provisions relating to the Ombud Council should be modified in order to increase its independence, rename its chief executive, and modify its powers in order to facilitate (and then adapt to) the new structure that we recommend.
- This includes extending its powers (as detailed in our recommendations) so that it can authorize the NFO to handle complaints about advice/intermediary services, give the NFO automatic jurisdiction, and make NFO’s ombud final decisions enforceable in the same way as a court judgment.
- It also includes reviewing its statutory powers with a view to repealing any intrusive or coercive powers that are no longer appropriate or cost effective in the light of the reform of the ombud system arising from our recommendations.

## Transition

**International experience shows that a carefully planned and managed transition is crucial to achieving the benefits of reform without disrupting the work of handling complaints.**

- The reform process is inherently complex. It is important to retain the expertise of existing personnel and to keep broad stakeholder support for the work of the ombuds.
- It will help to minimize uncertainty if as much as possible can be done early—with cooperation from the ombud schemes, under existing legislation, and with the support of the Ombud Council.
- Cooperation would be facilitated if the South African authorities were to share this report in full with the relevant stakeholders. The WBG may be able to provide further assistance with the transition.
- But some changes, primarily affecting the statutory ombud schemes and the Ombud Council, will ultimately require legislative changes (possibly through the forthcoming COFI Bill).

**The transition to the NFO will be best managed by establishing its governing body at the earliest possible opportunity, so that it can oversee the consolidation process and make any necessary design decisions.**

- There will need to be a mechanism for speedy appointment of the initial NFO board while ensuring that broad stakeholder support is retained. We recommend that this be done by an electoral college comprising one member each from the FSCA, NCR, Ombud Council, and the four main industry schemes. (The JSE's role in the current ombud system is minimal.)
- Further detailed work by the NFO board on the operational details of transition will be required once a formal policy decision is made on the main reform proposals. However, we contemplate that from the time a formal policy decision is made, transition will involve the following three stages (with the following indicative time frames):

- Stage 1 (within six months): Choose and establish the NFO board—with power to decide on the new constitution, single rulebook, funding model, operational systems, and transitional plans. Once this has been done, seek approval for the NFO from the Ombud Council.
- Stage 2 (within 12 months): Progressively transfer staff and assets to the NFO. As in other countries that have undergone a similar process, this may involve ombuds and staff holding dual appointments for a period so the NFO can continue the work of the current schemes until the formal handover.<sup>291</sup>
- Stage 3 (within two years): Formal handover to the NFO, which would handle all new complaints under the NFO rules, process, and powers.
- Additional clarification on the implementation of the proposed new ombud system—including the order of events and the many steps that do not require legislation—is set out in appendix G to this report.
- The existing ombud schemes have been living in the shadow of proposed reforms for a long time. To their credit, they have continued to focus on resolving complaints and improving the service they provide. But early decisions and action on reform are now needed, to avoid creating further uncertainty and destabilizing the system, which would damage the effectiveness of the system.

## 17.3 RECOMMENDATIONS

**The following recommendations are interrelated and should be considered as a whole.** Otherwise, the reformed system would be unbalanced. We have not recommended any interim set of reforms.

- The reforms will work to create a system that works across sectors only if there are clear decisions at the outset about what the end point looks like.
- In part, the piecemeal reforms of the past have resulted in the complexity and lack of coherence of the current system described in this report.

- Once a policy decision on the end point of a reformed ombud system is made, the transition can take place in the phases described above, with earlier progress on those aspects that do not require statutory changes.

**In these recommendations:**

- Part (a) is of general application.
- Part (b) applies to the NFO.
- Part (c) applies to the RFO.
- Part (d) applies to both the NFO and RFO.
- Part (e) applies to the Ombud Council.

**The following recommendations envisage legislative changes (directly or by creation of**

**delegated powers) through the COFI Bill or some other legislative vehicle:**

- Changes of general application:
  - A1  A2  A3  D6
- Changes relating to the FAIS Ombud:
  - B1  B2  B3  B6  C1
  - C2
- Changes relating to the PFA:
  - C1  C2  C3  C4  C5
  - C6  C7  C10  C12  D2
  - D4  D5  D7  D8  D10
  - D11  D12  D15
- Changes relating to the Ombud Council:
  - E1  E2  E3  E4  E5 (B2, B3)
  - E6  E7  E8

**General**

Interaction and Powers
<p><b>Recommendation A1: General: Standard Definition of Complaint</b></p>
<ul style="list-style-type: none"> <li>• There should be a consistent definition of what constitutes a complaint—to be used by ombud schemes, financial providers, and regulators.</li> <li>• The definition should include an oral expression of dissatisfaction and not require a complaint to be in writing.</li> <li>• It should be made clear that a complaint can be made in any of South Africa’s 11 official languages.</li> </ul>
<p><b>Note on recommendation A1:</b></p> <p>This will assist understanding and ensure consistency. It will also facilitate accessibility by ensuring that complaints to financial providers do not have to be in writing and can be referred to the NFO through any communication channel, including by phone.</p>
<p><b>Recommendation A2: General: Requirements for Financial Providers</b></p>
<p>There should be consistent requirements for financial providers (set and enforced by legislation or the relevant regulators) about how providers should</p> <ul style="list-style-type: none"> <li>• Resolve complaints fairly;</li> <li>• Give a clear written final decision on complaints within a specified maximum time; and</li> <li>• Give complainants information about the ombud system.</li> </ul>
<p><b>Recommendation A3: General: Consequences for Financial Providers</b></p>
<p>There should be explicit adverse consequences (that can be implemented by the Ombud Council or the FSCA) if financial institutions (as defined in the Financial Sector Regulation Act 9 of 2017) fail to</p> <ul style="list-style-type: none"> <li>• Join relevant ombud schemes;</li> <li>• Cooperate with the ombud schemes; or</li> <li>• Comply with ombud scheme decisions.</li> </ul>

## NFO

New National Financial Ombud Scheme
<b>Recommendation B1: National Financial Ombud</b>
A new NFO, independent of both industry and government, should be established to cover the whole of the financial sector (including credit)—apart from retirement funds—and absorb the work of the Banking, Credit, LTI, STI, JSE, and FAIS Ombuds.
Scope
<b>Recommendation B2: NFO: Providers Covered</b>
The NFO's jurisdiction should cover all financial providers that <ul style="list-style-type: none"> <li>• Are authorized by the PA or FSCA to provide financial services, or authorized by the NCR to provide credit services; or</li> <li>• Were so authorized by the PA, FSCA, or NCR (or their predecessors) at the time of the act/omission complained about.</li> </ul>
<p><b>Notes on recommendation B2:</b></p> <ul style="list-style-type: none"> <li>• The FSR Act already requires financial institutions (as defined) to join an ombud scheme in the sector(s) where they operate, but this involves the ombud scheme administering a membership scheme—and leaves a gap in jurisdiction over those financial institutions that fail to join.</li> <li>• So it would be better if the NFO's jurisdiction were automatic. We recommend that legislation should give automatic jurisdiction to any non-statutory ombud scheme (for example, the NFO) identified for the purpose by the statutory Ombud Council.</li> <li>• Before exercising that power, the Ombud Council would no doubt satisfy itself that the NFO's funding arrangements were fair and appropriate, particularly in relation to small providers serving a social or community purpose.</li> <li>• In the credit sector, the NFO would become the first port of call for complainants who are seeking redress, leaving the NCR (as a regulator) to focus on situations where complainants are seeking for the regulator to discipline the provider.</li> <li>• In the JSE, the NFO would replace the ombud stage of the existing JSE process—without preventing JSE's Market Regulation Division from continuing to look at complaints before they come to the NFO.</li> </ul>
<b>Recommendation B3: NFO: Products/Services Covered</b>
<ul style="list-style-type: none"> <li>• The NFO's jurisdiction should cover complaints about acts or omissions in the provision (or ancillary to the provision) of regulated financial services (including regulated credit services)—with the exception of complaints about retirement funds.</li> <li>• A financial provider should be liable for the acts/omissions of its agents, and the acts/omissions of any predecessor provider that it took over (or whose customer relationships it acquired).</li> </ul>
<p><b>Notes on recommendation B3:</b></p> <ul style="list-style-type: none"> <li>• By “regulated financial services (including regulated credit services),” we mean           <ul style="list-style-type: none"> <li>– Any financial services that are currently authorized, licensed, regulated, or registered under any existing financial-sector legislation;</li> <li>– Any credit services that are currently authorized, licensed, regulated, or registered under the NC Act; and</li> <li>– Any future extension of these (whether under the COFI Bill or other legislation).</li> </ul> </li> <li>• Current legislation gives the FAIS Ombud statutory jurisdiction over advice/intermediary services, even for financial providers covered by another ombud scheme, and prohibits industry ombuds from dealing with advice/intermediary services aspects of complaints unless the FAIS Ombud declines to deal with the complaint.</li> <li>• We recommend that, until the FAIS Ombud is wound up, the legislation should enable the Ombud Council to authorize a recognized industry ombud to deal with a complaint against a financial provider that is already within its jurisdiction, even if part or all of the complaint falls within the jurisdiction of the FAIS Ombud.</li> <li>• Pending enactment of the legislation mentioned in the previous note, the NFO could be enabled to deal with all aspects of a complaint (including advice/intermediary services) if the FAIS Ombud routinely declined to deal with such complaints and/or the FAIS Ombud personally were appointed also as an ombud in the NFO.<sup>292</sup></li> </ul>

- The exclusion of retirement funds should not prevent the NFO arranging with the RFO for the NFO to deal with the whole of a complaint that includes advice or intermediary services relating to a retirement fund where that is part of a wider complaint against a provider that is otherwise within the NFO's jurisdiction.

#### Recommendation B4: NFO: Complainants Covered—Consumers and Businesses

- The NFO should accept complaints from consumers.
- The NFO board, after publicly consulting stakeholders, should specify whether the NFO will accept complaints from all businesses or only businesses up to a specified size.
- The same eligibility for businesses should apply across all financial sectors. If it is to be businesses of a specified size, the test should
  - Be a clear and simple one (for example, turnover or number of staff);
  - Apply equally to sole traders, partnerships, incorporated entities, and unincorporated entities; and
  - Apply at the date the complaint is referred to the NFO.

#### Notes on recommendation B4:

- All of the existing ombud schemes accept complaints from consumers.
- Only one of them distinguishes between incorporated and unincorporated businesses.
- Three have (differing) turnover limits for businesses: R 1 million, R 8 million, and R 10 million.

#### Recommendation B5: NFO: Complainants Covered—Non-Customers

- The NFO should accept complaints not only from customers but also from non-customers likely to be adversely affected by acts/omissions of a financial provider.
- The NFO board, after public consultation with stakeholders, should settle either
  - A test to be applied by an ombud; or
  - A list of non-customers eligible to complain.

#### Notes on recommendation B5:

- If the NFO board decides to adopt a test, it might be along the lines of “a complainant whose relationship with the financial provider is (in the opinion of an ombud) sufficiently close to give the complainant appropriate standing to refer a complaint to the NFO.”
- Alternatively, if the NFO board decides to adopt a list, we encourage it to include the following:
  - Prospective customers, for complaints about the financial provider's wrongful refusal to provide a service (perhaps involving unlawful discrimination)
  - Users of cash machines (ATMs), payment services, and holders of electronic money, provided by the financial provider
  - A guarantor or surety<sup>293</sup> for a loan (or credit) that was provided to a customer by the financial provider
  - 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 beneficial owner under a collective investment scheme that is managed by the financial provider
  - A beneficiary under a pension taken out by someone else (such as a pension taken out by an employer or by someone for their own benefit and the benefit of their family/dependents)
  - Someone whose credit history has been (incorrectly) recorded at a credit bureau (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)

## Interaction and Powers

### Recommendation B6: NFO: Maximum Compensation Limits

- The minister should speedily review the maximum compensation limit for the FAIS Ombud, which was set in 2004 at R 800,000. Indexed to the South African Consumer Prices Index, that would be equivalent to well in excess of R 2 million in 2020.
- By the time of the formal handover to the NFO (indicative timescale two years), the NFO board, after publicly consulting stakeholders, should settle more generally
  - Whether to set a maximum that can be awarded for loss;
  - Whether to set a maximum that can be awarded for distress/inconvenience; and
  - If there are to be maximums, what they should be.
- If the NFO board considers there should be different provisions for loss in different sectors, for clarity and simplicity
  - There should be the smallest possible number of alternatives; and
  - They should be clearly linked to types of product or provider in a way that will be clear and logical to complainants.
- If the NFO board considers there should be a limit for distress/inconvenience, for clarity and simplicity, there should be one limit across all sectors.
- The NFO board should review the adequacy of any maximum limit (in the light of inflation and any other relevant factors) at least every two years.

#### Notes on recommendation B6:

- Currently, there is a wide range. At one extreme, the FAIS Ombud cannot award more than R 800,000 (about \$53,333). At the other extreme, the LTI Ombud has no limit on awards for loss, though it has a limit of R 50,000 (about \$3,333) for distress/inconvenience.
- This means, for example, that a complaint about loss caused by a long-term insurer's failure to pay out on a long-term insurance policy that it advised the complainant to take out is subject to
  - A limit of R 800,000 if the failure to pay out was because the complainant was advised (by the insurer itself) to take out the wrong policy; but
  - No limit if the failure to pay out was because the insurer did not comply with the terms of the policy itself.
- Many stakeholders raised the fact that the limit applicable to the FAIS Ombud is notably low. As mentioned above, it would have increased to more than R 2 million if it had kept pace with the Consumer Prices Index. So that should be tackled at the earliest possible date.
- The other limits were not an issue raised by stakeholders, so we propose a longer timescale for the complex issue of harmonizing them—though they will need to be harmonized in a way that is clear and makes sense to consumers.
- If the NFO board does fix a maximum, they may consider providing (as in some other countries, such as the United Kingdom) for the possibility of the ombud making a nonbinding recommendation for any amount in excess of the limit.
- We do not consider that the NFO should exclude cases where the loss could exceed any maximum limit (as the Banking Ombud currently does), but it should make clear to the complainant at the outset any limit on what the ombud can award.

## Independence

### Recommendation B7: NFO: Speedy Appointment of Governing Body

The governing body of the NFO (the NFO board) should be established at the earliest possible opportunity, so that it can oversee the consolidation process and make any necessary design decisions.

### Recommendation B8: NFO: Corporate Form

The NFO should be a non-statutory corporate body, preferably established in the form of a not-for-profit company without members.

**Note on recommendation B8:**

- The Consumer Goods and Services Ombud is an example of a not-for-profit company without members.

**Recommendation B9: NFO: Functions of NFO Board**

- The functions of the NFO board should include the following:
  - Appointing the NFO chief ombud and other ombuds
  - Safeguarding the ombuds' independence
  - Ensuring that the NFO has adequate resources to handle its work
  - Adopting the budget and a funding structure
  - Amending the NFO's rules and scope (subject to approval by the Ombud Council)
  - Overseeing the efficiency and effectiveness of the NFO
  - Advising on the strategic direction of the NFO
  - Ensuring effective relationships with stakeholders
- The NFO board should be
  - Prohibited from being involved in individual complaints against financial providers; and
  - Required to delegate executive management of the NFO (including staff recruitment) to its chief ombud.

**Note on recommendation B9:**

- We have included “ensuring effective relationships with stakeholders” in the NFO board's functions in order to ensure retention of existing good relationships.
- The best ways of doing this are likely to change over time, so we do not recommend building specific liaison arrangements into the NFO rules.

**Recommendation B10: NFO: Funding**

- The NFO should be free for consumers and directly funded by the financial industry.
- The NFO board should adopt a funding arrangement that is sufficiently flexible to
  - Accommodate fluctuations in volumes;
  - Reflect the size and volume of complaints by industry participants; and
  - Avoid overburdening small financial providers.

**Notes on recommendation B10:**

- As a non-statutory body, the NFO will be outside the scope of the PFM Act. Its funding will be raised under its rules, developed by the NFO board and approved by the Ombud Council.
- The funding model should be designed by the NFO board, in consultation with the relevant stakeholders, and not by the South African authorities.
- As part of the approval process, the NFO will need to satisfy the Ombud Council that the funding model is fair and provides sufficient funds.
- Levies: Funding could come through levies payable by all financial providers within the jurisdiction of the scheme. This funding source
  - Gives the ombud scheme a reasonable degree of certainty about the amount of funding it will receive each year;
  - Gives financial providers a degree of stability and predictability of the amount payable, enabling them to budget ahead; and
  - Reflects the increased consumer confidence that all financial providers benefit from when consumers know there is somewhere they can go if things go wrong.



- Case fees: Funding could come through case fees payable by financial providers against which complaints are referred to the ombud scheme. This funding source
  - Creates a significant degree of uncertainty for the ombud scheme about the amount of funding it will receive;
  - Creates a degree of volatility in the amounts that will be payable by financial providers, making it more difficult for them to budget ahead; but
  - Reflects the workload that those financial providers generate for the ombud scheme irrespective of the outcome of cases.
- Levies and case fees: Some ombud schemes balance these factors by
  - Charging all financial providers a combination of levies and case fees (for example, raising half their funding by levies and half by case fees); or
  - (To simplify levy collection) charging larger providers a levy plus (lower) case fees and smaller providers just a (larger) case fee.
- For a fuller discussion of options, see chapter 5 of the 2018 *Guide to Setting Up a Financial Services Ombudsman Scheme* (available at [http://networkfso.org/assets/guide-to-setting-up-a-financial-services-ombudsman-scheme\\_info-network\\_march2018.pdf](http://networkfso.org/assets/guide-to-setting-up-a-financial-services-ombudsman-scheme_info-network_march2018.pdf))

#### Recommendation B11: NFO: Size of NFO Board

The NFO board should have an odd number of members—not fewer than five and not more than nine—including the chair.

##### Note on recommendation B11:

- A board of nine is a bit large but may be needed for the initial board in the early years of the NFO, so as to provide the range of expertise necessary, including governance, finance, change management, human resources, dispute resolution, and business systems.
- If so, the size of the board could be reduced below nine in the future.

#### Recommendation B12: NFO: Appointment of Initial NFO Board Members

The first members of the NFO board should be appointed by consensus among a non-statutory electoral college comprising one representative each from the following:

- The FSCA
- The NCR
- The governing body of the Banking Ombud
- The governing body of the Credit Ombud
- The governing body of the LTI Ombud
- The governing body of the STI Ombud
- The Ombud Council

##### Notes on recommendation B12:

- The proposed process for selecting the first members of the NFO board is intended to facilitate its speedy creation. The electoral college is a single-use device.
- Because of the crucial role to be played by the NFO board, it is important that its composition has the confidence of all concerned.
- That is why the electoral college should choose all the members of the NFO board by consensus (rather than getting each member of the electoral college to appoint one).
- It is essential that the members of the electoral college understand ombuds and their work, and that the electoral college is not so large that consensus is difficult to attain.

- As the FAIS Ombud does not have a governing body, the FSCA is included in order ensure that the interests of those covered by its jurisdiction are taken into account.
- As the Credit Ombud covers only part of the credit sector, the NCR is included in order ensure that the interests of those covered by the whole of the credit sector are taken into account.
- The Ombud Council is included because it will need to approve NFO's rules. Such approval might be delayed if the Ombud Council had concerns about any NFO board member.
- The electoral college will have finished its work before the NFO rules are produced for approval, so there should be no conflict for the Ombud Council.
- The JSE Ombud does not have a governing body, and the JSE is not included because its Market Regulation Division will retain its role, and the number of ombud cases is minimal.
- The Council of Debt Collectors should not be included. It has disciplinary powers but does not provide an ombud-like service, and including it would spur claims from other sectors.

#### Recommendation B13: NFO: Appointment of Subsequent NFO Board Members

Subsequent members of the NFO board should be appointed by the NFO board itself, by a transparent process, following a public advertisement.

##### Notes on recommendation B13:

- Our later recommendations on openness and external reviews should prevent the NFO board from becoming inward looking, even though it appoints its own future members.

#### Recommendation B14: NFO: Expertise of NFO Board

Collectively, the membership of the NFO board should provide a balance of understanding in respect of the following:

- Effective corporate governance
- ADR
- Regulation of financial providers
- The legitimate concerns of financial consumers
- The legitimate concerns of the financial industry

##### Note on recommendations B13 and B14:

- There are additional recommendations affecting the NFO board in section (d): recommendations D7 and D8.

### Fairness

#### Recommendation B15: NFO: Basis of Complaint Resolution

The NFO should create a consistent set of rules and criteria (applicable across all sectors) for resolving complaints in a manner that is fair (equitable) in all the circumstances, taking into account the law, regulatory standards, industry codes, and industry good practice.

##### Note on recommendation B15:

- The financial ombud should take into account the law, any regulatory standards, any industry codes, and industry good practice, but, to reach a fair (equitable) outcome, the financial ombud 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 business's standard-form contract may be oppressive and/or unconscionable.

### Recommendation B16: NFO: Processes and Procedures

- The NFO should have consistent processes and procedures (applicable across all sectors) to apply the principles of fairness in resolving complaints, including the following:
  - Making the process easy to use and efficient for complainants and providers
  - The terminology used for the stages in the process and the staff involved in them
  - The level of informal engagement with the parties throughout the process
  - The time frames required for responses by the parties at each stage of the process
  - Triage and prioritization of complaints
  - Use of confidential information
  - Exchange of information and documents
  - Approach to dismissal of complaints with no merit or no reasonable prospects of success
  - Use of mediation
  - Use of nonbinding recommendations and provisional determinations
  - Use of provisional decisions before a final binding decision on more complex matters
  - Ombuds regularly making and publishing final decisions on cases
  - The information provided to the parties when a complaint is closed
  - How far parties can use information from the NFO in any subsequent legal proceedings
- Where relevant facts of a case are disputed, the ombud should decide (in the light of the available evidence) what is most likely to have happened, without imposing an onus of proof on the complainant.

### Recommendation B17: Appeals

- The NFO board should establish a single independent appeal mechanism of its own with
  - An informal procedure (so as not to disadvantage consumers); and
  - Specialized knowledge of the work of financial ombuds, as well as of financial services and credit.
- The availability of an appeal should depend on whether the proposed appellant first satisfies the appeal body that
  - The case raises general or systemic implications for the financial sector or a significant part of it; and
  - There is *prima facie* evidence that the NFO ombud misunderstood the law, misunderstood the scope of the NFO's jurisdiction, or did not follow a fair process.
- If the appeal is upheld, the appeal body should have discretion whether to
  - Remit the case to the NFO for redetermination; or
  - If it considers that it would benefit both parties, reach its own decision on the merits.

#### Notes on recommendation B17:

- The NFO should have an internal appeal mechanism of its own, with an informal process and used to the specialized processes of an ombud—rather than the more formal statutory Financial Services Tribunal, whose role under the FSR Act covers a broad range of administrative decisions by different bodies.
- A possible model for the NFO is a panel of three: a retired High Court judge as chair and retired judges or senior counsel as members. Applications for leave to appeal would be considered on the papers by the chair or another panel member designated by the chair.
- Appeals could be considered by one, two, or all three members, as the chair decides is appropriate to the case in hand. They should be able to substitute their own decision on the merits, where that would be better for both parties than having to go through the rigmarole of reconsideration by an ombud.

## RFO

Reformed and Renamed Retirement Funds Ombud Scheme
<b>Recommendation C1: Retirement Funds Ombud</b>
The statutory PFA, reformed and renamed “Retirement Funds Ombud” (RFO), should continue to have jurisdiction over retirement funds but should add jurisdiction over advice/intermediary services concerning retirement funds provided by any person/entity that is otherwise within its jurisdiction.
Scope
<b>Recommendation C2: RFO: Jurisdiction</b>
<ul style="list-style-type: none"> <li>• The RFO’s jurisdiction should continue the statutory jurisdiction of the PFA under the Pension Funds Act of 1956 (as amended), plus advice and intermediary services in respect of retirement funds where that advice/intermediary service is provided by any person/entity that is otherwise within its jurisdiction.</li> <li>• It should cover complaints about acts or omissions by any person/entity that is within the RFO’s jurisdiction.</li> <li>• Such a person/entity should also be liable for the acts/omissions of its agents, and the acts/omissions of any predecessor that it took over (or whose customer relationships it acquired).</li> </ul>
<b>Recommendation C3: RFO: Complainants Covered—Non-Customers</b>
The RFO should accept complaints not only from customers and members of retirement funds but also from non-customers/non-members likely to be adversely affected by acts/omissions of any person/entity that is within its jurisdiction, including the following: <ul style="list-style-type: none"> <li>• Prospective customers, for complaints about the financial provider’s wrongful refusal to provide a service (for example, involving unlawful discrimination)</li> <li>• A beneficiary under a pension taken out by someone else (such as a pension taken out by an employer or by someone for their own benefit and the benefit of their family/dependents)</li> </ul>
Independence
<b>Recommendation C4: RFO: Governing Body</b>
The RFO should have its own governing body (the RFO board) to <ul style="list-style-type: none"> <li>• Enhance and safeguard its independence; and</li> <li>• Appoint and support its ombuds.</li> </ul>
<b>Recommendation C5: RFO: Functions of RFO Board</b>
<ul style="list-style-type: none"> <li>• The functions of the RFO board should include the following:               <ul style="list-style-type: none"> <li>– Appointing the RFO chief ombud and other ombuds</li> <li>– Safeguarding the ombuds’ independence</li> <li>– Ensuring that the RFO has adequate resources to handle its work</li> <li>– Adopting the budget and funding structure</li> <li>– Exercising the power to set processes and procedures (see section 30Y of the PF Act)</li> <li>– Overseeing the efficiency and effectiveness of the RFO</li> <li>– Advising on the strategic direction of the RFO</li> <li>– Ensuring effective relationships with stakeholders</li> </ul> </li> <li>• The RFO board should be               <ul style="list-style-type: none"> <li>– Prohibited from being involved in individual complaints against financial providers; and</li> <li>– Required to delegate executive management of the RFO (including staff recruitment) to its chief ombud.</li> </ul> </li> </ul>

**Notes on recommendation C5:**

- The budget should be approved by the RFO board, but the amount required should be raised—as now—through a levy collected by the FSCA.
- For the purposes of the PFM Act, the RFO ombud will be the accounting officer, but the RFO board will exercise the oversight currently provided by FSCA subcommittees.

**Recommendation C6: RFO: Size of RFO Board**

The RFO board should have an odd number of members—not fewer than five and not more than nine—including the chair.

**Note on recommendation C6:**

- A board of nine is a bit large; seven or five would be better, provided the membership covers the range of expertise needed in the early years of the RFO.

**Recommendation C7: RFO: Appointment of Initial RFO Board Members**

The first members of the RFO board should be appointed by consensus among an electoral college comprising the following:

- One representative from the FSCA
- One representative from the Ombud Council
- The current Pension Funds Adjudicator

**Notes on recommendation C7:**

- The proposed process for selecting the first members of the RFO board is intended to facilitate its speedy creation.

**Recommendation C8: RFO: Appointment of Subsequent RFO Board Members**

Subsequent members of the RFO board should be appointed by the RFO board itself, by a transparent process, following a public advertisement.

**Notes on recommendation C8:**

- Our later recommendations on openness and external reviews should prevent the RFO board from becoming inward looking, even though it appoints its own future members.

**Recommendation C9: RFO: Expertise of RFO Board**

Collectively, the membership of the RFO board should provide a balance of understanding in respect of the following:

- Effective corporate governance
- ADR
- Regulation of retirement funds
- The legitimate concerns of retirement fund beneficiaries
- The legitimate concerns of the financial industry, employers, and retirement funds

**Note on recommendations C8 and C9:**

- There are additional recommendations affecting the RFO board in section (d): recommendations D7 and D8.

**Fairness**

**Recommendation C10: RFO: Basis of Complaint Resolution**

The RFO should create a set of criteria for resolving complaints in a manner that is fair in all the circumstances, taking into account the law, regulatory standards, industry codes, and industry good practice.

### Recommendation C11: RFO: Processes and Procedures

- The RFO should have processes and procedures to apply the principles of fairness in resolving complaints, including the following:
  - Making the process easy to use and efficient for complainants and providers
  - The terminology used for the stages in the process and the staff involved in them
  - The level of informal engagement with the parties throughout the process
  - The time frames required for responses by the parties at each stage of the process
  - Triage and prioritization of complaints
  - Use of confidential information
  - Exchange of information and documents
  - Approach to dismissal of complaints with no merit or no reasonable prospects of success
  - Use of mediation
  - Use of nonbinding recommendations and provisional determinations
  - Use of provisional decisions before a final binding decision on more complex matters
  - Ombuds regularly making and publishing final decisions on cases
  - The information provided to the parties when a complaint is closed
  - How far parties can use information from the RFO in any subsequent legal proceedings
- Where relevant facts of a case are disputed, the ombud should decide (in the light of the available evidence) what is most likely to have happened, without imposing an onus of proof on the complainant.

### Recommendation C12: Appeals

The availability of an appeal should depend on whether the proposed appellant first satisfies the Financial Services Tribunal that

- The case raises general or systemic implications for the retirement-fund sector or a significant part of it; and
- There is *prima facie* evidence that the RFO ombud misunderstood the law, misunderstood the scope of the RFO's jurisdiction, or did not follow a fair process.

#### Note to recommendation C12:

- Reconsideration of cases from the RFO would continue to go to the tribunal for the time being, to avoid the complexity of establishing a separate appeal mechanism of its own for the RFO—remembering that the possible merging of the RFO into the NFO will come up for consideration once the NFO is fully established.

## NFO and RFO

### Scope

#### Recommendation D1: NFO and RFO: Referral of Complaints to One Another

The NFO and RFO should agree and publish a simple and documented process for referral to the other of complaints that are not within the jurisdiction of the scheme that receives them but appear to be within the other's jurisdiction—including "hot transfers" of phone calls.

**Note to recommendation D1:**

As mentioned previously, the NFO can arrange with the RFO for the NFO to deal with the whole of a complaint that includes advice or intermediary services relating to a retirement fund where that is part of a wider complaint against a provider that is otherwise within the NFO's jurisdiction.

**Recommendation D2: NFO and RFO: Time Limits for Complainants**

- Complainants should be able to refer a complaint to the NFO/RFO for at least three years from whichever is the later of the following:
  - The date of the act/omission complained about; or
  - The date on which that complainant could realistically have known that they had cause to complain to the ombud.
- An ombud should have discretion to waive the time limit if the failure to comply with it arose from circumstances outside the complainant's control (such as illness).

**Note on recommendation D2:**

- The reference to "that complainant" is intended to denote a subjective test based on the ombud's assessment of the particular consumer's degree of knowledge and sophistication, rather than an objective test—important in view of the large number of unsophisticated consumers in South Africa.

**Interaction and Powers****Recommendation D3: NFO and PFA: Referral of Complaints to the Provider**

- This recommendation relates to any complaint that is referred to the NFO/RFO in circumstances where the NFO/RFO considers that the financial provider has not been given a sufficient opportunity to consider the complaint (a premature complaint).
- The NFO/RFO should accept the premature complaint but, before investigating it, may refer it to the financial provider and set a time limit for the provider to try to settle the complaint with the complainant—in which event the NFO/RFO will monitor the outcome.

**Notes on recommendation D3:**

- In the case of the RFO, the reference to "financial provider" includes any person or entity that is within the RFO's jurisdiction, even if it is not an authorized financial provider.
- As chapter 9 shows, some financial providers are currently subject to differing rules in complaint handling, and some are not subject to any rules on complaint handling at all. So some financial providers may have fully functioning complaints processes, and others may have no special resources to handle complaints.
- Until all financial providers have fully functioning processes for handling complaints, the NFO/RFO needs to be able to make a subjective judgment about whether a financial provider has an effective complaint-handling system and whether to refer a premature complaint to the financial provider before investigating it. But the NFO/RFO should not simply reject premature complaints.

**Recommendation D4: NFO and RFO: Redress**

An ombud who upholds a complaint should have power to award any one or more of the following forms of redress:

- Compensation for the following:
  - Loss caused directly by the financial provider's unfair act/omission
  - Consequential loss that would not have arisen but for the provider's unfair act/omission
  - Distress/inconvenience caused to the complainant by the provider's unfair act/omission
- Interest on compensation in appropriate circumstances
- A direction—which requires the financial provider to put things right by doing, or not doing, something (specified by the ombud) in relation to the particular complainant

**Note on recommendation D4:**

- In the case of the RFO, the reference to “financial provider” includes any person or entity that is within the RFO’s jurisdiction, even if it is not an authorized financial provider.

**Recommendation D5: NFO and RFO: Effect of an Ombud Final Decision**

Subject to any appeal:

- If the complainant accepts an ombud final decision
  - The financial provider should be bound by the decision (whether or not the provider accepts the decision); and
  - The complainant should be bound by the decision they have accepted and should not be free to pursue the same issue against the same provider in the courts.
- If the complainant does not accept an ombud final decision
  - Neither party should be bound by the decision; and
  - The complainant should be free to pursue the same issue against the provider in the courts.

**Notes on recommendation D5:**

- In the case of the RFO, the reference to “financial provider” includes any person or entity that is within the RFO’s jurisdiction, even if it is not an authorized financial provider.
- In the case of the NFO, the provisions on the effect of an ombud decision would sit in the rules, approved by the statutory Ombud Council. In the case of the RFO, they would sit in amended statutory provisions.

**Recommendation D6: NFO and RFO: Enforcement of a Binding Ombud Final Decision**

- An ombud final decision that has become binding (and has not been overturned on appeal) should be enforceable through the court system in the same way as a court judgment.
- The enforcement process should be able to be initiated by the complainant or (so that it can assist vulnerable complainants) by the NFO/RFO on behalf of the complainant.

**Note on recommendation D6:**

- The legislation should provide accordingly for any non-statutory ombud scheme (for example, the NFO) recognized by the statutory Ombud Council.
- Decisions of the statutory PFA are already binding in the same way as court judgments.

**Independence****Recommendation D7: NFO and RFO: Restrictions on Membership of Board**

- The chair and at least half of the other members of the NFO/RFO board should not be people who
  - Work in a financial provider or an association of financial providers, or have done so in the previous three years; or
  - Have (or have a close family member with) a beneficial interest of more than 5 percent in a financial provider.
- To avoid any perceived conflict of interest, none of the members of the NFO/RFO board should be
  - Someone who works in an association of financial providers (because they will owe a duty to the members of their association);
  - A serving financial regulator (to avoid any confusion between the differing roles of regulation and dispute-resolution); or
  - A politician who holds an elected national or provincial office, or has done so in the previous three years (to avoid any possible link with political controversy).



**Note on recommendation D7:**

- In the case of the RFO, the reference to “financial provider” includes any type of person or entity that is within the RFO’s jurisdiction, even if it is not an authorized financial provider.

**Recommendation D8: NFO and RFO: Terms of Appointment of Board**

- Ordinarily, members of the NFO/RFO board should be
  - Appointed for terms of not less than three and not more than five years; and
  - Be eligible for reappointment, subject to a maximum length of service of nine years.
- Exceptionally, up to one-third of the first members of the NFO/RFO board may be appointed for terms of not less than two years, to facilitate creating continuity through a system of staggered terms.
- Members of the NFO/RFO board should be appointed on terms that
  - Secure their independence from the industry, consumer bodies, financial regulators, and politicians;
  - Protect them from removal—except for removal by the NFO/RFO board because of incapacity, misconduct, or other just cause;
  - Require them to act in the public interest, to disclose any conflict of interest, and not to be involved in any discussion/decision where they have a conflict;
  - Require them to preserve the independence, integrity, and fairness of the decision-making process; and
  - Require them to ensure that the NFO/RFO is appropriately resourced to carry out its objectives in a timely and efficient manner.

**Recommendation D9: NFO and RFO: Functions of Ombuds**

- Only an ombud should be able to make a final decision on the following:
  - Whether a complaint is (or is not) within the NFO/RFO’s jurisdiction
  - The procedure for the resolution of any complaint
  - The outcome of a complaint
- Only the NFO/RFO chief ombud or a senior ombud should be able to establish the NFO/RFO’s approach to particular types of cases.

**Recommendation D10: NFO and RFO: Appointment of Ombuds**

Ombuds should be

- Selected by a transparent process, following a public advertisement; and
- Appointed by the NFO/RFO board.

**Recommendation D11: NFO and RFO: Restrictions on Appointment of Ombuds**

Anyone appointed as the NFO/RFO chief ombud or as a senior ombud should not be someone who

- Works in a financial provider or an association of financial providers, or has done so in the previous three years; or
- Has (or has a close family member with) a beneficial interest of more than 5 percent in a financial provider.

**Note on recommendation D11:**

- In the case of the RFO, the reference to “financial provider” includes any person or entity that is within the RFO’s jurisdiction, even if it is not an authorized financial provider.

### Recommendation D12: NFO and RFO: Terms of Appointment of Ombuds

- The NFO/RFO chief ombud and any senior ombud should be
  - Appointed for terms of not less than five years;
  - Eligible for reappointment, subject to a maximum length of service of 10 years; and
  - Told whether they are to be reappointed at least a year before the end of their first term.
- All ombuds should be appointed on terms that
  - Secure their decision-making independence from the NFO/RFO board, the industry, consumer bodies, financial regulators, and politicians;
  - Protect them from removal—except for removal by the NFO/RFO board because of incapacity, misconduct, or other just cause;
  - Require them to act in the public interest, to disclose any conflict of interest, and not to be involved in any complaint where they have a conflict;
  - Require them to preserve the independence, integrity, and fairness of the decision-making process; and
  - Protect their pay from being influenced by the outcome of cases (for example, by linking it to at least that of an equivalent grade of judge or another relevant comparator).

#### Note on recommendation D12:

- This should not prevent the NFO/RFO board from appointing a specialist part-time ombud (or ombuds)—on similar terms that secure their independence—to decide specific cases where the NFO/RFO chief ombud advises that specialist expertise is required that is not available among the existing ombuds.

### Accessibility

#### Recommendation D13: NFO and RFO: Free for Complainants

The NFO and RFO should each continue to be free of charge to complainants, so that cost does not create a barrier to access.

#### Recommendation D14: NFO and RFO: Cross-Sector Points of Entry

- The NFO board should resolve the complexities and inconsistencies in the rules and processes of the existing ombud schemes as quickly as possible.
- As soon as possible after that, the NFO and RFO should establish one or more points through which complainants can submit complaints in relation to all financial sectors covered by either scheme.

#### Recommendation D15: NFO and RFO: Receiving Complaints

The NFO/RFO should each ensure that they are able to accept complaints

- By any reasonable channel of communication that is available to consumers; and
- Without necessarily requiring them to be received in writing or with a signature.

#### Recommendation D16: NFO and RFO: Accessibility

The NFO and RFO should agree a common strategy to train staff and combine resources in improving the visibility and accessibility of the financial ombud system, including the following:

- Equalizing visibility and accessibility in different urban and rural localities by partnering with advice agencies and other widely located bodies, and by periodic visits
- Targeted use of the press, radio, and social media that takes account of the differing audiences that they address
- Taking full account of the needs of consumers who are disadvantaged, vulnerable, disabled, or unused to receiving information and transacting business in English

- Identifying and reporting publicly on the socioeconomic profile of complainants, to help better identify those to whom the ombud system is less visible or accessible
- Taking active steps to make the ombud system more visible and accessible to underrepresented groups of potential complainants
- Cooperating with the consumer financial-education activities of public agencies (but not being the body primarily responsible for consumer financial education)

**Note on recommendation D16:**

- New methods of remote working adopted by the existing ombud schemes in response to the COVID-19 pandemic have demonstrated that it is not necessary for all of an ombud scheme's staff to be in one location. But we do not consider it feasible for the NFO and RFO to spread their offices widely around the country in a way that will deal in itself with the accessibility issue. That needs to be tackled in other ways.
- The intention is to coordinate and increase the activities of the ombud system in making itself visible and accessible to consumers and in feeding back the lessons that can be derived from the cases that the ombud system has handled. But it is not the function of the ombud system (nor is it resourced to be) the source of overall financial education for citizens with a view to increasing their financial literacy. These are the responsibility of the state but often delegated to financial regulators—or, in a few countries, to a specialist agency. (See, for example, [www.moneyadvice.service.org.uk/en/corporate/about-us](http://www.moneyadvice.service.org.uk/en/corporate/about-us).)

**Efficiency**

**Recommendation D17: NFO and RFO: Resources and Expertise**

The NFO/PFA should each have the following:

- Sufficient skilled staff and other resources to ensure the timely resolution of its intended workload
- An integrated computerized case-management and document-management infrastructure to
  - Support the staff in managing the handling and resolution of complaints;
  - Provide information to monitor the efficiency of operations; and
  - Provide information to assist efforts to improve accessibility
- Clearly documented processes, procedures, and policies on the handling and resolution of complaints and on communication with users of the service
- A knowledge-management system to provide staff with ready access to regularly updated information and material relevant to their work
- A training, mentoring, and validation program to ensure that staff handling complaints have the necessary specialist knowledge and experience

In addition, their budgets should include sufficient provision for these.

**Recommendation D18: NFO and RFO: Performance and Quality**

- The NFO/RFO should each have and report against the following:
  - Published service and performance standards
  - A robust quality-assurance program to monitor quality, consistency, and timeliness
  - Regular sampling of user views on the quality of service they received
- The NFO/RFO should have a published procedure for complaints about the level of service, including the following:
  - How a service complaint can be made
  - How it will be handled and by whom
  - A final stage that is conducted by an independent external person
- At least every five years, the NFO/RFO board should commission an independent skilled person to review the NFO/RFO's operations (comparing them against international good practice) and publish the report.

## Openness

### Recommendation D19: NFO and RFO: Annual Report

The NFO/RFO should each publish an annual report from its board and chief ombud that includes (at least) the following:

- The numbers and types of complaints that
  - Were received;
  - Were outside its jurisdiction;
  - Were referred to the other;
  - Were referred to financial providers as premature complaints;
  - The scheme declined to deal with (even though in jurisdiction);
  - Were discontinued;
  - Were resolved without an ombud final decision;
  - Were resolved by an ombud final decision;
  - Were appealed;
  - Were resolved in favor of the complainant; and
  - Were resolved in favor of the financial provider
- The following:
  - Performance against its timeliness and quality standards
  - The outcomes of any service complaints
  - Socioeconomic information on the distribution of its complainants
  - Plans to reach underrepresented groups of potential complainants
  - Representative case studies
  - Any systemic or significant problems identified in the financial system
- The following (or links to them should be published on the NFO/RFO websites):
  - The NFO/RFO's governance arrangements
  - The names and backgrounds of the members of its board
  - The names and backgrounds of its ombuds
  - Its rules
  - Its arrangements for information sharing with regulators
  - Its visibility and accessibility program
  - Its quality assurance program
  - Details of staff numbers (by role)
  - Its annual accounts

### Recommendation D20: NFO and RFO: Quarterly Reports

The NFO should publish, and the RFO should consider publishing, a quarterly report of

- Key statistics; and
- New and emerging issues.

### Recommendation D21: NFO and RFO: Consultation

As part of its wider program of engagement with stakeholders, the NFO/RFO should each consult publicly on the following:

- Future business plans
- Proposed budgets
- Proposed funding arrangements
- Proposed changes to its scope, powers, and processes

### Recommendation D22: Relations with Regulators

- The NFO/RFO and the FSCA/NCR (as the case may be) should provide one another, on a regular basis, with appropriate information to assist the other in fulfilling its functions.
- The arrangements, including the scope of the information that may be exchanged, should be documented and published.
- The NFO/RFO and the FSCA/NR (as the case may be) should take account of the information provided in fulfilling their functions.
- In particular:
  - The NCR should take account of reports from the NFO about complaints against credit providers that turned out to be unauthorized; and
  - The FSCA should take account of reports from the RFO about non-payment of pension contributions by employers.
- The NFO, RFO, FSCA, and NCR should each nominate a person to be responsible for the management of the liaison and exchange of information with the others.

## Ombud Council

### Modified Ombud Council

#### Recommendation E1: Ombud Council

The statutory provisions relating to the Ombud Council should be modified in order to increase its independence, rename its chief executive, and modify its powers in order to facilitate (and then adapt to) the new structure of the ombud system.

### Independence

#### Recommendation E2: Ombud Council: Appointment of Council Members

The statutory provisions for the appointment by the minister of the members of the Ombud Council (other than the Chief Ombud) should be amended so that

- They are required to be chosen by a transparent process, following a public advertisement;
- They are required to provide a balance of understanding in respect of
  - The regulation of financial providers,
  - The legitimate concerns of consumers of financial services and credit, and
  - The legitimate concerns of the financial industry; and
- They are appointed on terms that secure their independence (including from the minister), and for a minimum term of at least three years; while
- They retain the existing statutory safeguards concerning their dismissal.

### Recommendation E3: Ombud Council: Appointment of Chief Ombud

The statutory provisions for the appointment of the Chief Ombud should be amended so that the Chief Ombud

- Is to be appointed by the other members of the Ombud Council and chosen by a transparent process, following a public advertisement;
- Is to be appointed on terms that secure their independence (including from the minister), and for a minimum term of five years;
- Must not have worked in a financial institution (or an industry body for the sectors) in the previous three years; and
- Is to be protected from removal—except for incapacity, misconduct, or other just cause and only by the other members of the Ombud Council.

### Effectiveness

### Recommendation E4: Ombud Council: Renaming the Chief Ombud

The title “Chief Ombud” is likely to create confusion over the true role and responsibilities of the chief executive of the Ombud Council and should be replaced by something more consistent with the role—such as Chief Executive or Director-General.

### Recommendation E5: Ombud Council: Extension to Powers

To facilitate consolidation of the system, the Ombud Council should be given power (where it considers it appropriate) to

- Authorize a recognized non-statutory ombud (for example, the NFO) to deal with a complaint against a financial provider that is already within its jurisdiction, even if part or all of the complaint falls within the jurisdiction of a statutory ombud scheme; and
- Designate a recognized non-statutory ombud (for example, the NFO) as the automatic ombud scheme in a particular sector (or sectors) to exercise jurisdiction, with binding decisions, over any financial provider in that sector (or those sectors).

#### Note to recommendation E5:

- This is to facilitate the establishment of the NFO as a cross-sector ombud scheme. See recommendations B2 and B3 and the notes to them.

### Recommendation E6: Ombud Council: Common Points of Entry to the System

The Ombud Council’s current statutory duty to establish and operate one or more centers to facilitate financial customers’ access to appropriate ombuds should be modified, so that it becomes a power to require the NFO and RFO to establish and operate effective access points in relation to all financial sectors covered by either scheme.

#### Notes to recommendation E6:

- As explained more fully in chapter 15 of this report, the consolidated ombud system will be better placed than the Ombud Council to provide fully effective points that provide such cross-sector access as part of an integrated complaint-handling process.
- Involvement of the Ombud Council, which does not handle complaints and whose oversight role is unseen by most of the public, could confuse potential complainants.

### Recommendation E7: Ombud Council: Review of Powers

Once the NFO has been established, and in the light of the consolidation of the system and the increased independence of governance, the NT should review the statutory powers of the Ombud Council with a view to repealing any intrusive or coercive powers that

- Are no longer appropriate in the light of the reform of the ombud system;
- Are no longer cost effective in the light of the reform of the ombud system; and/or
- May be perceived as infringing the independence of the reformed ombud system.

### Openness

### Recommendation E8: Ombud Council: Reports

The Ombud Council should be required to publish regular public reports (at least annually) on its work.





# Appendixes





# OVERVIEW OF OMBUD SYSTEM DATA

	Banking Ombud	Credit Ombud	FAIS Ombud	LTI Ombud	STI Ombud	PFA	JSE Ombud
No. financial providers covered	34	118	All	53	53	As set out in the PF Act	240 <sup>294</sup>
Date of financial/data year-end	February 28	December 31	March 31	December 31	December 31	March 31	N/A
Annual budget:							
• Total income	R 32.5 million	R 14.8 million	R 57.2 million	R 29.5 million	R 45.2 million	R 63.9 million	N/A
• Total expenditure	R 30.2 million	R 16.0 million	R 40 million	R 29.5 million	R 42. million	R 72.5 million	N/A
No. staff:							
• Total full-time equivalent (FTE)	29	12 <sup>295</sup>	49	37	47	60	0
• No. ombuds <sup>296</sup>	1	1	1	13	1	19 <sup>297</sup>	1
• Total casework staff FTE <sup>298</sup>	21	5	24	21	42	29 <sup>299</sup>	0
• Total other staff FTE <sup>300</sup>	7	6	24	3	4	12	0

	Banking Ombud	Credit Ombud	FAIS Ombud	LTI Ombud	STI Ombud	PFA	JSE Ombud
Enquiries <sup>301</sup> received:							
• By phone	-	-	N/A	17,877	-	-	-
• By e-mail or in writing	-	-	N/A	460	-	-	-
• Total	26,257 <sup>302</sup>	37,269	N/A	18,337	3,420	2,565	1
Total complaints received <sup>303</sup>	6,472	29,510	8,835	10,509	13,787	11,399	1 <sup>304</sup>
Total complaints referred to an FSP <sup>305</sup>	4,709	4,439	Not recorded <sup>306</sup>	4,051	294	9,445	0
Total complaints referred to another ombud scheme or official agency	900–1,000 +/-	Only from August	2,467	3,266	616 from July	1,355	N/A

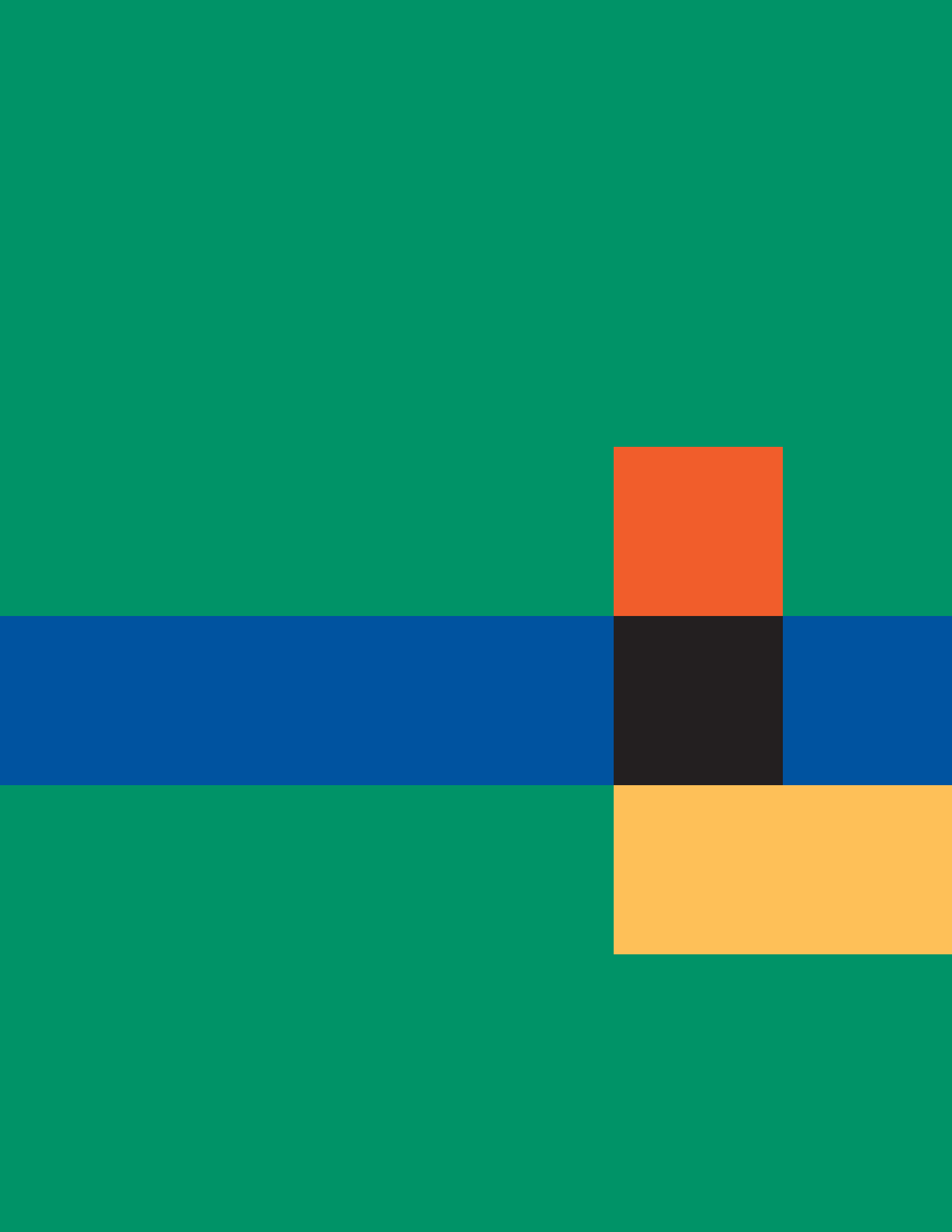
	Banking Ombud	Credit Ombud	FAIS Ombud	LTI Ombud	STI Ombud	PFA	JSE Ombud
Top five other ombud schemes or official agencies to which complaints were referred (with numbers if possible):		Only from August					N/A
1	CGSO <sup>307</sup>	Banking O 153	NCR 382	STI O 1,079	LTI O 325	FSCA 734	
2	Credit O	NCR 162	STI O 300	PFA 665	FAIS O 138	GEPF <sup>308</sup> 359	
3	MIO <sup>309</sup>		Banking O 116	FAIS O 645	CGSO 50	LTI O 90	
4	STI O		LTI O 72	Statutory O 340	MIO 35	Transnet 52	
5	LTI O		FSCA 47	Banking O 194	CMS <sup>310</sup> 35	DEL 33	
Total no. cases <sup>311</sup> opened	6,472	4,439	5,750	3,192 (3,574) <sup>312</sup>	10,367	11,399	88 <sup>313</sup>
Total no. cases closed	6,333	4,937	4,507	3,558	9,167	10,289	84 <sup>314</sup>

	Banking Ombud	Credit Ombud	FAIS Ombud	LTI Ombud	STI Ombud	PFA	JSE Ombud
Average no. days from receipt of a complaint to final closure:							
• All cases	57	43	21	110	117.92	180	90 <sup>315</sup>
• Cases settled <sup>316</sup>		N/A	Not recorded	90	101.58	120	90
• Cases resolved by formal decision			Not recorded	124	122.98	210	90
Percentage of cases settled within the following time periods from receipt of the complaint:							
• Up to three months	63.7%	68.4%	81.76%	67.96%	59%	0%	100%
• Over three, up to six months	31.4%	30.07%	9.42%	22.80%	20%	71.29%	0
• Over six, up to nine months	4.1%	1.4%	5.41%	6.40%	13%	26.70%	0
• Over nine, up to 12 months	0.8%	0.06%	Not recorded	2.10%	6%	1.41%	0
• Over 12 months	0%	0	Not recorded	0.74%	2%	0.6%	0

	Banking Ombud	Credit Ombud	FAIS Ombud	LTI Ombud	STI Ombud	PFA	JSE Ombud
Percentage of cases resolved by formal decision within the following time periods from receipt:	Do not distinguish between settled and formal decisions <sup>317</sup>	N/A	Not recorded				
• Up to three months				41%	46%	0%	100%
• Over three, up to six months				43%	29%	19.94%	0
• Over six, up to nine months				11%	19%	75.60%	0
• Over nine, up to 12 months				3.6%	5%	3.60%	0
• Over 12 months				1.4%	1%	0.86%	0
Outcome of cases:							
Withdrawn by customer	<i>Complainant withdrew case 0,47%</i>	227	<i>Dismissed<sup>319</sup> 4,790</i>	1.88%	505	56	0
Better than any redress offered by the FSP before the complaint was referred to the ombud scheme	<i>Complaint fully upheld 17.7%</i>		<i>Referred 2,599</i>	34.12%	1,893	4,582	0
No better than any redress offered by the FSP before the complaint was referred to the scheme	<i>Complaint partly upheld 5.12%</i>		<i>Settled 1,850</i>	56%	614	737	1
No award made but information provided to complainant	<i>Complaint not upheld 72.01%</i>		<i>Determined 13</i>	Not recorded separately	Data not available	2,405	

	Banking Ombud	Credit Ombud	FAIS Ombud	LTI Ombud	STI Ombud	PFA	JSE Ombud
Other outcome (please provide details)	<i>Information given; no finding made 4.7%</i>		<i>Total 9,252</i>	<i>Complainant accepted insurer's unfavorable decision 8 percent</i>	<i>Abandoned 134</i> 30		0
Total amounts agreed or ordered to be paid to complainants (in R)	R 20,418,920	R 6,900,000	R 57,263,775 (statutory maximum is R 800,000)	R 874,286 under Rule 3.2.5, plus R 200,400,000 in lump sums. This amount does not include recurring income disability benefits, annuities, and so forth	R 94,934,891	Impossible to provide; calculations of benefits left to retirement fund to compute in terms of its rules	0

Source: Data provided by each ombud scheme in response to WBG diagnostic team's questionnaire



## Background Information

In 2017 a consultation policy document *A Known and Trusted Ombud System for All*<sup>320</sup> was issued by the National Treasury. Following on from this, the National Treasury and the Financial Sector Conduct Authority have asked the World Bank to review South Africa's financial ombud system.

The review team is tasked with:

- evaluating the existing financial ombud system against international good practice
- suggesting opportunities to address any identified weaknesses/gaps
- considering the potential for further reform and alternative models

The diagnostic will not evaluate financial service providers' internal complaints handling arrangements (other than considering financial ombud schemes' interactions with these where relevant).

The scope of the diagnostic assessment will cover the following:

- the existing financial ombud system
- the individual financial ombud schemes
- the statutory provisions for the creation of an Ombud Council
- potential alternative structures

The review team is led by Nina Pavlova Mocheva from the World Bank. The questionnaire was developed with specialist input from two former senior financial ombuds with international experience—Shane Tregillis (from Australia) and David Thomas (from the United Kingdom).

## Consulting Financial Ombud Schemes and Other Stakeholders

As part of the preliminary consultation with stakeholders, this questionnaire is being sent to the following financial ombud schemes:

- Credit Ombud
- Ombudsman for Short Term Insurance
- Johannesburg Stock Exchange Ombud
- Ombudsman for Banking Services
- Ombudsman for Long Term Insurance
- Pension Funds Adjudicator
- Ombud for Financial Services Providers (FAIS Ombud)

## International Good Practice

Guidance on international good practice includes –

- *on the role of an ombud system in the wider context of financial consumer protection:*
  - World Bank good practices for financial consumer protection;<sup>321</sup>
  - OECD high-level principles on financial consumer protection;<sup>322</sup> and
  - OECD effective approaches to implementing those high-level principles;<sup>323</sup>
- *on the principles and practices relating to an ombud system specifically:*
  - World Bank report on fundamental principles for financial ombudsmen;<sup>324</sup>

- INFO Network<sup>325</sup> guide on effective approaches to fundamental principles;<sup>326</sup> and
- INFO Network guide on setting up an ombudsman;<sup>327</sup>
- *on the principles and practices relating to ombud systems in general:*
  - EU<sup>328</sup> recommendation 1998/257/EC on out-of-court settlement of consumer disputes;<sup>329</sup>
  - EU directive 2013/11/EU on alternative dispute resolution for consumer disputes;<sup>330</sup>
  - Ombud Association<sup>331</sup> guide to principles of good governance;<sup>332</sup>
  - Ombud Association guide to principles of good complaint handling;<sup>333</sup>
  - Australia and New Zealand benchmarks for industry based customer dispute resolution;<sup>334</sup> and
  - Australia and New Zealand key practices for industry based customer dispute resolution;<sup>335</sup>

## Criteria

While the different guidance on international good practice uses varying terminology, the key attributes are similar. In respect of the overall system and the individual schemes, the World Bank team will be focusing on:

- Effectiveness  
*consistent redress in all appropriate sectors of financial services*
- Independence  
*visibly objective, impartial and unbiased*
- Accessibility  
*well-known, easy to use and free for consumers*
- Fairness  
*processes and decisions visibly fair and equitable*
- Efficiency  
*good quality of service and value for money*

- Openness  
*clear, and open to scrutiny, about its work and the lessons that can be drawn from it*

## Structure of the Questionnaire

The attached questionnaire consists of 9 sections, covering:

- 1 Basic information
- 2 Effectiveness
- 3 Independence
- 4 Accessibility
- 5 Fairness
- 6 Efficiency
- 7 Openness
- 8 Looking ahead
- 9 Data

## Instructions for Respondents

- Please send your scheme's response in electronic form to: [saombuddiagnostic@worldbank.org](mailto:saombuddiagnostic@worldbank.org) by July 17, 2020.
- To make it easier for you, and to assist comparability of data, many of the questions are in yes/no format.
- Other questions have answer boxes, which you can expand in order to make sufficient room for your scheme's answer.
- If you want to refer to a document that is already published on the internet, it will suffice if you provide the internet address and page/paragraph number, rather than attaching it.
- If (exceptionally) you need to add additional information, please add this at the end of the questionnaire – quoting the question number.
- If you need to provide documents as attachments, you can do so, by attaching them to the email with the responses to the questionnaire. To the extent

possible, please provide a list with documents titles attached, at the end of the questionnaire.

- Feel free to provide any further comments that your scheme would like to make. But your response need not be formal or lengthy.

- We will treat factual details of your scheme as public. But we will treat any opinions you express as non-attributable—we will not say who they came from without your permission
- If you have queries, please email them to [nmocheva@ifc.org](mailto:nmocheva@ifc.org)

## Definitions

To ensure comparability amongst the responses from the different financial ombud schemes, please note the following explanations of terms used in the questions, and reflect them in your answers—

consumer =	someone who buys a financial service mainly for personal or household use. It also includes small businesses, if your scheme covers complaints from them.
complainant =	someone who makes a complaint to a financial service provider or refers a complaint to your scheme.
constitutional rules =	the rules setting out the governance, scope and powers of your scheme, whether contained in a law, terms of reference or other documents.
direction =	a requirement, issued by an ombud, that a financial service provider must put things right by doing, or not doing, something (specified by the ombud) in relation to a particular complainant.
ombud =	the person (or people) in your scheme, whatever their job title, with power to make final decisions on complaints—sometimes called an ombudsman, adjudicator, arbiter or mediator.
redress =	compensation (payable by the financial service provider) or other remedies awarded by your scheme in favor of a complainant.

## Questions

1	BASIC INFORMATION				
	<i>About your scheme</i>				
<b>1a)</b>	<b>Name of ombud scheme</b>				
[101]	What is the official name of your ombud scheme? <input type="text"/>				
<b>1b)</b>	<b>Contact for this questionnaire</b>				
[102]	If we have any questions about your scheme's answers to this questionnaire, whom should we contact? <table border="1"><tr><td>Full name</td></tr><tr><td>Job title</td></tr><tr><td>Email address</td></tr><tr><td>Phone number</td></tr></table>	Full name	Job title	Email address	Phone number
Full name					
Job title					
Email address					
Phone number					

**1c) Constitutional documents**

[103] The rules of your scheme (whether contained in a law, terms of reference or other documents) that set out your scheme's:

- governance;
- scope; and
- powers

Please provide titles and weblinks. If they are not published on the internet, please supply electronic copies. You can use the below reference number (for example, CD1) to refer to the document in other answers to this questionnaire. Please expand the table below, if you provide more than 5 titles.

<b>CD1</b>
<b>CD2</b>
<b>CD3</b>
<b>CD4</b>
<b>CD5</b>

**1d) Policies and procedures**

[104] Any documented policies/procedures that your scheme has concerning:

- internal guidance on your complaint/case-handling process (or process map);
- externally-published summary of your process;
- outreach and awareness-raising (and how they are assessed);
- accessibility;
- defining and dealing with vulnerable consumers;
- fairness in decision-making;
- quality-assurance;
- skills-development and training.



Please provide titles and weblinks. If they are not published on the internet, please supply electronic copies. You can use the reference number (for example, PP1) to refer to the document in other answers to this questionnaire.

<b>PP1</b> —internal guidance on your complaint/case-handling process (or process map)
<b>PP2</b> —externally published summary of your process
<b>PP3</b> —outreach and awareness-raising (and how they are assessed)
<b>PP4</b> —accessibility
<b>PP5</b> —defining and dealing with vulnerable consumers
<b>PP6</b> —fairness in decision-making
<b>PP7</b> —quality-assurance
<b>PP8</b> —skills-development, training and assessment

**1e) (Senior) ombud**

[105] Please give the full name and brief background of your ombud or, if you have more than one, of your most senior ombud.

**1f) Governing board/council**

[106] Please give the full names and brief backgrounds of the members of your governing board or council (if any).

*Consistent redress in all appropriate sectors of financial services*

**2a) Financial service providers covered**

[201] Which types of financial service providers are covered by your scheme?

[202] Please explain whether this coverage arises from a financial service provider:

- being regulated for a particular activity or activities;
- being a member of a particular industry association;
- joining your scheme individually; or
- being covered in some other way.

[203] Are they covered automatically, or do they have to volunteer to join? Automatic/Volunteer

[204] Do they comprise all of the financial services providers in the relevant sectors? Yes / No

[205] If they do not comprise all of the financial services providers in the relevant sectors, please say:

- which providers are not covered by your scheme;
- why they are not covered; and
- which ombud scheme (if any) they are covered by.

[206] Do they include businesses where provision of the financial service is only ancillary (for example, to a sale of goods or services)? Yes / No

[207] Please say which documents cover the points in section (2a), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2b) Financial service activities covered**

[208] In respect of the financial service providers that are covered by your scheme, which of the following activities are covered by your scheme?

- |  |          |
|--|----------|
| • accepting deposits                     | Yes / No |
| • lending (unsecured)                    | Yes / No |
| • intermediation for lending (unsecured) | Yes / No |
| • lending (secured)                      | Yes / No |
| • intermediation for lending (secured)   | Yes / No |
| • issuing credit/debit/charge cards      | Yes / No |

- providing other payment services Yes / No
- issuing electronic money Yes / No
- short-term insurance (general insurance) Yes / No
- long-term insurance (life and investment) Yes / No
- intermediation for insurance Yes / No
- providing investments Yes / No
- intermediation for investments Yes / No
- providing occupational pensions Yes / No
- providing private pensions Yes / No
- intermediation for pensions Yes / No
- running a credit bureau Yes / No
- debt collection Yes / No
- any activities ancillary to the financial service Yes / No
- any others (please say what they are) Yes / No

[209] If any activities are specifically excluded from your scheme, please say:

- which activities are specifically excluded; and
- which constitutional document or law excludes them.

[210] If any of the activities covered by your scheme are also covered by another ombud scheme, please say:

- which activities;
- which other ombud scheme
- the reason for the overlap; and
- how cases are allocated between the schemes in practice.

[211] Does your scheme's jurisdiction cover matters that are the subject of rights, rules, codes, standards or guidance under the Consumer Protection Act 2008 or other general non-financial sector legislation? If yes, please give details Yes / No

[212] In your scheme, are financial service providers held liable for the acts/omissions of their agents? Yes / No

[213] In your scheme, is a successor financial service provider held liable for acts/omissions by a predecessor provider where the successor took over the predecessor (or bought the predecessor's customer relationships)? Yes / No

[214] Please say which documents cover the points in section (2b), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2c) Types of complainants covered**

[215] Does your scheme cover complaints from consumers—meaning someone acting mainly for purposes outside their trade, business or profession? Yes / No

[216] If the financial service was provided in (or from) South Africa, is the consumer covered even if they live outside the country? Yes / No

[217] Does your scheme cover complaints by all businesses? Yes / No

[218] Does your scheme cover complaints by just smaller businesses? Yes / No

[219] If it covers complaints by just smaller businesses, how are they defined?

[220] Can your scheme handle a financial services complaint by one financial service provider against another financial service provider, if they are otherwise eligible? Yes / No

[221] Please say which documents cover the points in section (2c), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2d) Non-customers covered**

Does your scheme take complaints from the following non-customers who have been affected by the activities of a financial service provider—

[222] prospective customers, for complaints about the financial service provider's wrongful refusal to provide a service (perhaps involving unlawful discrimination)? Yes / No

[223] users (and prospective users) of payment services, and holders (and prospective holders) of electronic money, provided by the financial service provider? Yes / No

[224] a guarantor or surety for a loan (or credit) that was provided to a customer by the financial service provider? Yes / No

[225] a beneficiary under an insurance policy taken out by someone else (e.g., a policy taken out by an employer to benefit its employees, or by someone to benefit their family/dependents)? Yes / No

[226] a beneficiary under a collective investment managed by the financial service provider (such as a holder of units in a unit trust)? Yes / No

[227] 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)? Yes / No

[228] someone whose credit history has been (incorrectly) recorded by a credit bureau (so that their ability to borrow has been adversely affected)? Yes / No

[229] someone from whom a debt is being (incorrectly) claimed (such as where the lender has wrongly confused them with the actual debtor)? Yes / No

[230] any other non-customers? (Please say who)

[231] Please say which documents cover the points in section (2d), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2e) Time limits**

Time limits within which a complaint must be referred to your scheme—

[232] Is there a time limit from the date of the act/omission that caused the dispute? Yes / No

[233] If so, what is the time limit?

[234] Does that time limit reflect what is usual in South Africa's courts? Yes / No

[235] Is the legal time limit for taking a case to court interrupted whilst an ombud considers the case? Yes / No

[236] In cases where the consumer could not have known there was a problem at the time, is the time limit extended to run from the date when the consumer knew (or should reasonably have known) that they had grounds for complaint? Yes / No

[237] Is there also a time limit from the date on which the financial service provider issued a written final decision on the consumer's complaint? Yes / No

[238] If so, what is the time limit?

[239] Does this time limit only apply if that final decision warned the consumer of the time limit and gave the consumer contact details for the relevant financial ombud scheme? Yes / No

[240] Does an ombud have discretion to extend time limits where the consumer was prevented (for example, by illness) from complying with the time limit? Yes / No

[241] Please say which documents cover the points in section (2e), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2f) Complaints against financial service providers**

[242] How does your scheme define a complaint against a financial service provider?

[243] Does that definition align with the proposed definition<sup>336</sup> in the proposed COFI Bill?<sup>337</sup> Yes / No

[244] Does it include an oral (rather than written) expression of dissatisfaction? Yes / No

[245] Is there a requirement that there has been some loss or material inconvenience to the complainant? Yes / No

[246] Please say which documents cover the points in section (2f), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2g) Complaint-handling by financial service providers**

[247] Are financial service providers covered by your scheme subject to a requirement to deal with complaints fairly and promptly? Yes / No

[248] If so, are these set by:

- the law Yes / No
- your scheme's constitutional rules Yes / No
- a financial regulator's rules Yes / No
- an industry code? Yes / No

Under the relevant rules are financial service providers within your scheme's jurisdiction required to—

[249] have an accessible, effective and fair internal complaints process, which is published? Yes / No

[250] issue a written response to a complaint, with reasons, within a specified time? Yes / No

[251] tell complainants that, if they are still dissatisfied, they can go to the ombud scheme? Yes / No

[252] have a single person with overall responsibility for the handling of complaints? Yes / No

[253] respond promptly to communications from the ombud scheme? Yes / No

[254] provide information and documents requested by the ombud scheme? Yes / No

[255] comply promptly with an ombud's decision? Yes / No

[256] If a consumer sends a complaint to you before raising it with the financial service provider, does your scheme offer to send it on to the financial service provider? Yes / No

[257] If your scheme sends such a complaint on to the financial service provider, does your scheme track the outcome? Yes / No

[258] If a consumer sends a complaint to you after reaching the end of the financial service provider's complaint-handling procedure, are there any circumstances in which your scheme may refer the complaint back to the financial service provider? Yes / No

[259] What are those circumstances?

[260] Please say which documents cover the points in section (2g), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2h) Early termination**

In the following circumstances, does your scheme have a discretionary power to dismiss cases at an early stage where it is readily apparent that the case should not proceed further?

[261] the complainant has not suffered any loss or material inconvenience? *Yes / No*

[262] the financial service provider is already offering adequate compensation? *Yes / No*

[263] the complainant is acting unreasonably? *Yes / No*

[264] the complaint is about the legitimate exercise of commercial judgement? *Yes / No*

[265] the complaint is about investment performance (rather than investment suitability)? *Yes / No*

[266] the complaint is of a kind that only a court can deal with properly? *Yes / No*

[267] the complaint was the subject of court proceedings in which the court issued a judgement on the merits of the case? *Yes / No*

[268] 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 ombud scheme)? *Yes / No*

[269] the complaint was previously considered by your scheme (or a predecessor scheme), unless material new evidence (that would change the outcome) has since become available? *Yes / No*

[270] other grounds (please say what)

[271] Please say which documents cover the points in section (2h), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2i) Obtaining information**

Does an ombud have power to compel the provision of relevant information and documents (unless they are protected from disclosure by law) from—

[272] the complainant? *Yes / No*

[273] the financial service provider complained against? *Yes / No*

[274] any other financial service provider covered by your scheme that holds relevant information? *Yes / No*

[275] Please say which documents cover the points in section (2i), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2j) Redress**

Redress that an ombud can award if they uphold a complaint in favor of the consumer—

- [276] Can the ombud require the financial service provider to pay compensation to the consumer for loss caused directly by the financial service provider's unfair act/omission? Yes / No
- [277] Can the ombud require the financial service provider to pay compensation to the consumer for consequential loss which would not have arisen but for the unfair act/omission? Yes / No
- [278] Can the ombud require the financial service provider to pay compensation to the consumer for any material distress or inconvenience caused to the consumer? Yes / No
- [279] Does the ombud have power to award interest on the compensation in appropriate circumstances? Yes / No
- [280] Does the ombud have power (instead of, or as well as, awarding compensation) to make a 'direction'—which requires the financial service provider to put things right by doing, or not doing, something (specified by the ombud) in relation to the particular complainant? Yes / No
- [281] Is the overall aim 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? Yes / No
- [282] Is there an upper limit on the amount of compensation that an ombud can award (or the amount of any money payable to, or for the benefit of, the consumer as the result of a direction)? Yes / No
- [283] If so, how much is the upper limit (in South African Rand)? If there are differing limits for different types of complaint or loss, please explain what.

- [284] When was the upper limit last formally reviewed?

- [285] What was the benchmark or basis for the upper limit?

- [286] Please say which documents cover the points in section (2j), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**2k) Effect of an ombud decision**

- [287] Does an ombud decision bind the consumer only if the consumer accepts it? Yes / No
- [288] Does an ombud decision bind the consumer whether the consumer accepts it or not? Yes / No
- [289] If an ombud decision binds the consumer, can the consumer also pursue the same complaint against the financial service provider in court? Yes / No
- [290] If the consumer accepts an ombud decision, does the decision bind the financial service provider whether the financial service provider accepts it or not? Yes / No



- [291] If the consumer accepts an ombud decision, does the decision bind the financial service provider whether the financial service provider accepts it or not? Yes / No
- [292] Is there any appeal against an ombudsman decision? Yes / No
- [293] If there is an appeal against an ombudsman decision, please say:
- who, if anyone, has to agree to there being an appeal;
  - on what grounds an appeal can be made; and
  - who hears the appeal?
- 
- How, and by whom, a binding ombud decision can be enforced if a financial service provider is slow to pay—
- [294] If the financial service provider is regulated, can it be subject to sanction by the financial regulator? Yes / No
- [295] Can the consumer enforce the decision in court? Yes / No
- [296] Can your scheme help the consumer to enforce the decision? Yes / No
- If the financial service provider becomes insolvent—
- [297] Is there a relevant compensation/indemnity fund? Yes / No
- [298] Can it pay out on the basis of an ombud's decision, without having to make a fresh investigation of its own? Yes / No
- [299] Can your scheme (with the consent of the complainant) pass its records on the case to the compensation/indemnity fund? Yes / No
- [299A] Please say which documents cover the points in section (2k), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.
- 

### 3

## INDEPENDENCE

*Visibly objective, impartial, and unbiased*

### 3a) Board/council

- [301] Does your scheme have its own board/council? Yes / No
- [302] Does your scheme's board/council have power to make changes to the scope and powers of your scheme without the financial industry or consumer bodies having a veto? Yes / No
- [303] Does the board/council consult relevant stakeholders before making such changes? Yes / No
- [304] Are members of the board/council barred from becoming involved in deciding cases?  
Does their role include:
- [305] appointing the ombud(s)? Yes / No
- [306] safeguarding the independence of the ombud(s)? Yes / No
- [307] ensuring that your scheme has adequate resources to handle its work? Yes / No

- [308] adopting the budget? Yes / No
- [309] overseeing the efficiency and effectiveness of your scheme? Yes / No
- [310] advising on the strategic direction of your scheme? Yes / No
- [311] Who appoints the members of the board/council?

- [312] Are the members of the board/council chosen by a transparent process, following a public advertisement? Yes / No
- [313] Are serving politicians barred from being appointed as members of the board/council? Yes / No
- [314] Are serving financial regulators barred from being appointed as members of the board/council? Yes / No
- [315] Are all members of the board/council required to be of good character? Yes / No
- [316] Is someone associated with the financial industry<sup>338</sup> barred from being chairman of the board/council? Yes / No
- [317] Are people associated with the financial industry barred from forming a majority of the board/council? Yes / No
- [318] Does the board/council collectively provide a balance of understanding in respect of:
- the regulation of financial service providers;
  - the legitimate concerns of consumers of financial services; and
  - the legitimate concerns of the financial industry? Yes / No
- [319] Are the members of the board/council appointed on terms that secure their independence from: those who appointed them; the financial industry; consumer bodies; financial regulator(s); and politicians? Yes / No
- [320] Are members of the board/council appointed for a term of at least three years? Yes / No
- [321] Are members of the board/council protected from removal—except for incapacity, misconduct or other just cause and only by a body that is independent of the financial industry and independent of consumer bodies? Yes / No
- [322] Are members of the board/council required to act in the public interest? Yes / No
- [323] Are members of the board/council required to disclose any conflict of interest and not be involved in any connected discussion/decision? Yes / No
- [324] Please say which documents cover the points in section (3a), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**3b) Ombud(s)**

- [325] Who appoints any ombuds?

- [326] Is any ombud chosen by a transparent process, following a public advertisement? Yes / No
- [327] Is anyone who has worked in a financial service provider (or an industry body for the sectors) covered by the ombud scheme in the previous three years barred from being an ombud? Yes / No

- [328] Is any ombud required to have appropriate dispute-resolution skills? Yes / No
- [329] Is any ombud required to be of good character? Yes / No
- [330] Is any ombud appointed on terms that secure their independence from: those who appointed them; the financial industry; consumer bodies; financial regulator(s); and politicians? Yes / No
- [331] Are senior financial ombuds appointed (or reappointed) for a term of at least five years? Yes / No
- [332] If an ombud can be reappointed: do the reappointment criteria and process preserve their independence? Yes / No
- [333] If they can be reappointed, are they told the outcome at least one year before the previous term ends? Yes / No
- [334] Is any ombud protected from removal—except for incapacity, misconduct or other just cause and only by a body that is independent of the financial industry and independent of consumer bodies? Yes / No
- [335] Is any ombud required to act with integrity? Yes / No
- [336] Is any ombud required to disclose any conflict of interest and not be involved in any connected case? Yes / No
- [337] Is any ombud's pay linked to some appropriate external benchmark (for example, an equivalent grade of judge)? Yes / No
- [338] Is any ombud's pay protected from being influenced by the outcome of cases, and protected from reduction or suspension? Yes / No
- [339] Is the day-to-day management of your scheme delegated to the ombud (or the chief ombud if there is more than one ombud)? Yes / No
- [340] Does the ombud (or the chief ombud if there is more than one ombud) have the right to select the staff of your scheme? Yes / No
- Under your scheme's constitutional rules, can only an ombud:
- [341] decide finally whether any case is within your scheme's jurisdiction? Yes / No
- [342] choose the procedure for the resolution of any case? Yes / No
- [343] decide the final outcome of any case? Yes / No
- [344] Is a decision by an ombud protected from being overturned except by the courts (or a tribunal with equivalent independence and standing)? Yes / No
- [345] Please say which documents cover the points in section (3b), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.
- 3c) Resources**
- [346] Does your scheme choose, appoint and employ its own staff? Yes / No
- [347] Does your scheme have its own budget—which is not part of the budget of another body? Yes / No
- [348] Is the proposed yearly budget, covering your scheme's income and outgoings, prepared by the (chief) ombud and adopted by the board/council? Yes / No
- [349] Does anyone else have to approve the budget and, if so, who?
- 
- [350] Is the funding structure designed so that those providing the funds (whether from the public sector or private sector) cannot influence the work of your scheme? Yes / No

[351] Does any funding from the industry come through levies, case fees or a combination of these? (Please explain briefly)

[352] Please say which documents cover the points in section (3c), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

## 4

### ACCESSIBILITY

*Well-known, easy to use, and free for consumers*

#### 4a) Visibility

Are financial service providers covered by your scheme required to tell customers in writing about your scheme:

[401] on the financial service provider's website? Yes / No

[402] at the point of sale? Yes / No

[403] in contracts? Yes / No

[404] if the customer makes a complaint? Yes / No

[405] in its final written decision on a complaint? Yes / No

Does the information on your scheme's own website include:

[406] the members of the governing body and their backgrounds? Yes / No

[407] the name of any financial ombud and their background? Yes / No

[408] the method of appointment and term of office of any ombud? Yes / No

[409] which financial service providers are covered? Yes / No

[410] which activities are covered? Yes / No

[411] which complainants are covered? Yes / No

[412] what non-customer complainants are covered? Yes / No

[413] any time limits within which a dispute must be referred to the ombud scheme? Yes / No

[414] any minimum or maximum value of disputes that your scheme can handle? Yes / No

[415] any grounds on which your scheme may decline to deal with a case? Yes / No

[416] what redress an ombud can award? Yes / No

[417] the effect of an ombud's decision on the financial service provider and the complainant? Yes / No

[418] how, and by whom, an ombud's decision can be enforced? Yes / No

[419] what information is kept confidential, and what may be published? Yes / No

[420] your scheme's most recent annual report? Yes / No

- [421] any current consultations? Yes / No
- [422] the outcome of any recent consultations? Yes / No
- [423] whether the complainant must first complain directly to the financial service provider? Yes / No
- [424] anything else the complainant must do before referring a dispute to your scheme? Yes / No
- [425] any requirements on how financial service providers handle complaints? Yes / No
- [426] whether or not your scheme handles enquiries? Yes / No
- [427] whether or not your scheme actively facilitates agreed fair outcomes (for example, by mediation, conciliation or other means)? Yes / No
- [428] whether or not your scheme actively investigates cases? Yes / No
- [429] whether or not bringing a dispute to your scheme suspends any time limit for taking the dispute to court? Yes / No
- [430] the language(s) in which disputes can be submitted and can be handled? Yes / No
- [431] In what languages (other than English) can complaints be submitted and be handled?

For potential complainants who do not have access to the internet, does your scheme ensure that information is also readily available through:

- [432] consumer advice organizations? Yes / No
- [433] local consumer advice centers? Yes / No
- [434] public libraries? Yes / No
- [435] local government authorities? Yes / No
- [436] elected representatives? Yes / No
- [437] the press? Yes / No
- [438] television? Yes / No
- [439] radio? Yes / No
- [440] social media? Yes / No

[441] In what other ways?

[442] Does your scheme take active steps to help make consumers (especially vulnerable and disadvantaged consumers) aware of its services? Yes / No

[443] Please say which documents cover the points in section (4a), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**4b) Easy to use and free for consumers**

Can complaints be submitted to your scheme—

- |       |  |          |
|-------|--|----------|
| [444] | online?                                    | Yes / No |
| [445] | by post?                                   | Yes / No |
| [446] | by free-call telephone?                    | Yes / No |
| [447] | by paid-for telephone call?                | Yes / No |
| [448] | face-to-face meeting?                      | Yes / No |
| [449] | by SMA?                                    | Yes / No |
| [450] | by social media (if yes, please say which) | Yes / No |

[451] Does your scheme make appropriate provision for consumers who are more vulnerable or disadvantaged? Yes / No

[452] Does your scheme allow complainants who need it to appoint someone else to help them present their complaint? Yes / No

Does your scheme have special provision to deal with issues of:

- |       |             |          |
|-------|-------------|----------|
| [453] | disability? | Yes / No |
| [454] | language?   | Yes / No |
| [455] | literacy?   | Yes / No |
| [456] | numeracy?   | Yes / No |

Does your scheme's approach to accessibility take account of cultural, communication and logistical issues that arise between:

- |       |   |          |
|-------|---|----------|
| [457] | urban and rural areas?                              | Yes / No |
| [458] | different regions within the country?               | Yes / No |
| [459] | different generations of consumers (old and young)? | Yes / No |

[460] For consumers who cannot visit your scheme, are there any regional/local points (provided by your scheme or by other agencies) where complaints can be submitted? If so, give brief details?

[461] Can consumers refer a case to your scheme free-of-charge? Yes / No  
If 'no', how much do they have to pay?

[462] Do consumers have freedom of choice whether to take a dispute directly to court instead of (or without first taking it) to your scheme? Yes / No

[463] Please say which documents cover the points in section (4b), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

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**4c) Review of policies**

[464] In respect of your policies on the three issues listed in the table below:

- how often does your scheme review them; and
- when were they last reviewed?

outreach and awareness-raising (and how they are assessed)
accessibility
defining and dealing with vulnerable consumers

<b>5</b>	<b>FAIRNESS</b>
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*Processes and decisions visibly fair and equitable*

Does your scheme:

- |       |   |          |
|-------|---|----------|
| [501] | allow each side to put forward its information/arguments?   | Yes / No |
| [502] | allow each side to comment on any information on which the ombud will rely?   | Yes / No |
| [503] | actively enquire into the issues that are in dispute?   | Yes / No |
| [504] | give reasons to support any decision?   | Yes / No |
| [505] | have processes to avoid bias and prejudice?   | Yes / No |
| [506] | provide the complainant, at the outset, with information about the process that the case will follow?   | Yes / No |
| [507] | If the case is outside the jurisdiction of your scheme, or if it is inappropriate for the scheme to deal with it for any other reason, does your scheme promptly tells the complainant of that decision and the reasons for it? | Yes / No |
|       | Does your scheme tell the complainant at the outset:  |          |
| [508] | whether the ombud scheme's decision will bind the financial service provider?   | Yes / No |
| [509] | the complainant can withdraw at any stage?  | Yes / No |
| [510] | if applicable, the complainant could go to court (subject to any time limits) instead?  | Yes / No |

[511] Does your scheme have an informal, easy-to-understand and flexible process— so that neither party needs help from a lawyer or advisor? Yes / No

If 'no', please elaborate.

Does your scheme:

[512] handle enquiries from consumers? Yes / No

[513] handle enquiries from financial service providers? Yes / No

[514] prioritize urgent cases? Yes / No

[515] actively help the parties to reach an agreed fair outcome (by mediation, conciliation or other means) where possible and appropriate? Yes / No

[516] actively investigate, to identify and call for whatever information is relevant? Yes / No

[517] obtain expert reports when these are necessary, and allow the parties to comment? Yes / No

[518] issue a formal written decision, with reasons, in cases that are not settled? Yes / No

On what basis does an ombud decide the merits of a case? Is it based on:

[519] what the ombud considers to be fair and reasonable (equitable) in the circumstances of the case? Yes / No

[520] what would happen in court? Yes / No

[521] some other basis (and, if so, what)?

[522] In deciding the merits of a case, can the ombud take into account (where relevant) any rights, rules, codes, standards or guidance under the Consumer Credit Act 2008? Yes / No

Do ombud decisions summarize:

[523] the complaint? Yes / No

[524] what happened (and, if the facts are disputed, any findings of fact)? Yes / No

[525] what factors and/or requirements the ombud has taken into account? Yes / No

[526] whether or not the financial service provider was at fault? Yes / No

[527] if it was at fault, what redress it should provide (and when)? Yes / No

[528] Please say which documents cover the points in section (5), indicating the paragraph, section or page numbers— unless already mentioned in the specific answer.



*Good quality of service and value for money*

**6a) Quality of service**

[601] How does your scheme assess how many staff, with what skills and experience, it needs to operate efficiently and provide quality of service?

[602] How does your scheme assess how much funding it needs to operate efficiently and provide quality of service?

Is your scheme currently:

[603] adequately-staffed to operate efficiently and provide quality of service? Yes / No

[604] adequately-funded to operate efficiently and provide quality of service? Yes / No

[605] efficient? Yes / No

Do those who handle cases in your scheme have:

[606] the necessary knowledge and skills in resolving disputes? Yes / No

[607] a general understanding of law? Yes / No

[608] knowledge of relevant financial services? Yes / No

[609] appropriate training? Yes / No

If you answer 'no' to any of 606 to 609, please elaborate.

[610] Does your scheme have an internal knowledge-management system, setting out its usual approach to particular products and situations, to help provide consistency of outcome in similar cases? Yes / No

[611] Does your scheme have a system to oversee the quality of the work carried out by its staff and the way in which users are treated? Yes / No

[612] Is the quality system supplemented by periodic user surveys, to see what users think of the service they received? Yes / No

[613] If your scheme carries out periodic user surveys, how often are these conducted?

[614] If your scheme carries out periodic user surveys, are the results published? Yes / No

[615] Does your scheme publish service standards? Yes / No

[616] Who handles complaints about service quality?

- [617] How is the process for handling complaints about service quality publicized?
- [618] Is the operation of your scheme reviewed at set periods by an independent party? Yes / No
- [619] Are the results of the review published? Yes / No
- [620] Please provide a link to the report of the most recent review:
- [621] Please say which documents cover the points in section (6a), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**6b) Value for money**

Does your scheme publish:

- [622] Its proposed budgets and business plans (for consultation)? Yes / No
- [623] Its staff numbers? Yes / No
- [624] its annual accounts? Yes / No
- [625] How does your scheme demonstrate it provides value for money by:
- spending no more than is appropriate (economy);
  - spending well by comparing the resources it uses against its outputs (efficiency);
  - spending wisely by comparing the intended results and the actual outcomes (effectiveness);
  - spending fairly by ensuring its services reach all people that they are intended to (equity)?

- [626] Please say which documents cover the points in section (6b), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**7**

**OPENNESS**

*Clear, and open to scrutiny, about its work and the lessons that can be drawn from it*

**7a) Annual report**

- [701] Does your scheme publish a report, at least yearly? Yes / No
- [702] Is approval required from any other person/body before the report can be published? Yes / No

[703]	If so, whose approval is required:	
	Does the report include details of the numbers and types of disputes that—	
[704]	were received?	Yes / No
[705]	were outside the ombud scheme's jurisdiction?	Yes / No
[706]	the ombud scheme declined to deal with (even though in jurisdiction)?	Yes / No
[707]	were discontinued?	Yes / No
[708]	were resolved by the ombud scheme?	Yes / No
[709]	were resolved in favor of the complainant?	Yes / No
[710]	were resolved in favor of the financial service provider?	Yes / No
	Does the report also include—	
[711]	the time taken to resolve different types of cases?	Yes / No
[712]	the rate of compliance with outcomes, if known?	Yes / No
[713]	representative case studies?	Yes / No
[714]	any systemic or significant problems identified in the financial system?	Yes / No
[715]	your scheme's governance arrangements?	Yes / No
[716]	how your scheme preserves the independence of its ombud(s)?	Yes / No
[717]	your scheme's arrangements for control of quality?	Yes / No
[718]	cooperation with other ombud schemes, nationally and internationally?	Yes / No
	Does the report make clear whether your scheme provides information directly to any financial regulator about any systemic or significant problems identified in—	
[719]	the financial system?	Yes / No
[720]	individual financial service providers?	Yes / No
<b>7b)</b>	<b>Other published information</b>	
	Does your scheme publish:	
[721]	casework data more frequently than yearly?	Yes / No
[722]	ombud final decisions (and do these name the financial service provider or not)?	Yes / No
[723]	any proposed significant changes to its scope and/or process (for consultation)?	Yes / No
	Does your scheme provide generic information to assist early resolution of complaints by—	
[724]	publishing details of its approach to common disputes?	Yes / No
[725]	helping to train consumer advice centers?	Yes / No
[726]	helping to train financial service providers' complaint departments?	Yes / No

[727] Please say which documents cover the points in section (7b), indicating the paragraph, section or page numbers—unless already mentioned in the specific answer.

**7c) Case information**

[728] Is the primary record of a case a paper file or an electronic file? *Paper / Electronic*

[729] Does your scheme's case-handling system record all the relevant information about each case? *Yes / No*

[730] Is the case-handling system event-driven, so that prompts appear when actions are due? *Yes / No*

[731] Does the case-handling system produce management data on case numbers, outcomes and time taken? *Yes / No*

[732] Is information collected by your scheme in dealing with complaints treated as public, entirely confidential or confidential with specified exceptions? *Public / entirely confidential / confidential with specified exceptions*

[733] If there are specified exceptions in your scheme's constitutional rules, please say what they are:

[734] If any of these specified exceptions are superseded by general privacy law, please say which:

Can your scheme disclose—

[735] any serious regulatory breach to the relevant financial regulator?

[736] any crime to those who investigate or prosecute crime?

Can your scheme publish—

[737] ombud decisions (even if the parties are anonymized)? *Yes / No*

[738] ombud decisions naming the financial service provider? *Yes / No*

[739] complaint data about named financial service providers? *Yes / No*

**8 LOOKING AHEAD**

*Your views on future changes to the financial ombud system.*

[801] Is the current Covid-19 emergency likely to result in longer-term changes to the way in which your scheme operates? *Yes / No*

If 'Yes', please explain.

[802] What are the benefits/disadvantages of the Ombud Council being created under chapter 14 of the Financial Sector Regulation Act 2017?<sup>339</sup>

[803] Are the powers of the Ombud Council sufficient to bring about any necessary improvements to the financial ombud system?

[804] What improvements does your scheme think are required to the financial ombud system?

[805] In the light of the National Treasury's 2017 consultation policy document *A Known and Trusted Ombud System for All*:<sup>340</sup>

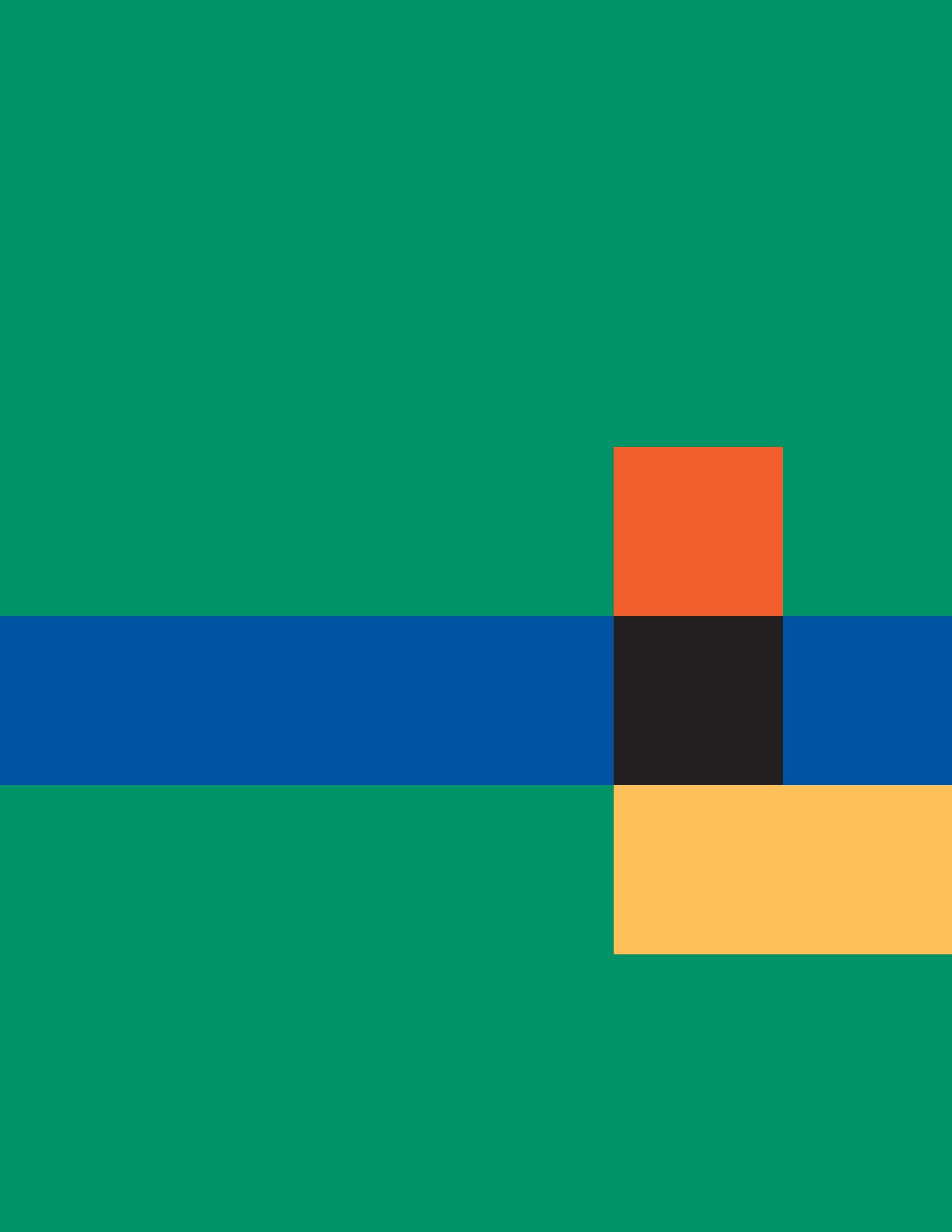
- Please comment on the three options in the consultation policy document.
- Would some other option provide better outcomes for consumers and value for money?
- What structure does your scheme favor for the future financial ombud system, and why?

Please provide the data requested on the pages which follow

9		DATA		
Please provide the following data in respect of your scheme -				
		Financial year ending in		
		2017	2018	2019
[901]	Number of financial service providers covered			
[902]	Date of financial/data year end			
[903]	Annual Budget			
[904]	<ul style="list-style-type: none"> <li>• Total income</li> <li>• Total expenditure</li> </ul>			
[905]	Number of staff			
[906]	<ul style="list-style-type: none"> <li>• Total full-time equivalent (FTE)</li> <li>• Number of ombuds<sup>341</sup></li> </ul>			
[907]	<ul style="list-style-type: none"> <li>• Total casework staff FTE<sup>342</sup></li> </ul>			
[908]	<ul style="list-style-type: none"> <li>• Total other staff FTE<sup>343</sup></li> </ul>			
[909]	Total enquiries <sup>344</sup> received			

[910]	Total complaints received <sup>345</sup>			
[911]	Total complaints referred to a financial service provider (FSP) <sup>346</sup>			
[912]	Total complaints referred to another ombud scheme or official agency.			
	Top five other ombud schemes or official agencies to which complaints were referred (with numbers if possible):			
[913]	• 1			
[914]	• 2			
[915]	• 3			
[916]	• 4			
[917]	• 5			
[918]	Total number of cases <sup>347</sup> opened			
[919]	Total number of cases of closed			
		2017	2018	2019
[920]	Average number of days from receipt of a complaint to the start of consideration as a case.			
	Average number of days from receipt of a complaint to final closure for:			
[921]	• all cases			
[922]	• cases settled <sup>348</sup>			
[923]	• cases resolved by formal decision			
	Percentage of cases settled within the following time periods from receipt of the complaint:			
[924]	• up to 3 months			
[925]	• over 3, up to 6 months			
[926]	• over 6, up to 9 months			
[927]	• over 9, up to 12 months			
[928]	• over 12 months			
	Percentage of cases resolved by formal decision within the following time periods from receipt of the complaint:			
[929]	• up to 3 months			
[930]	• over 3, up to 6 months			
[931]	• over 6, up to 9 months			
[932]	• over 9, up to 12 months			
[933]	• over 12 months			

<p>[934]</p> <p>[935]</p> <p>[936]</p> <p>[937]</p> <p>[938]</p>	<p>Outcome of cases</p> <ul style="list-style-type: none"> <li>• Withdrawn by customer</li> <li>• Better than any redress offered by the FSP before the complaint was referred to your scheme.</li> <li>• No better than any redress offered by the FSP before the complaint was referred to your scheme.</li> <li>• No award made but information provided to complainant</li> <li>• Other (please provide details)</li> </ul>			
<p>[939]</p>	<p>Total amounts agreed or ordered to be paid to complainants (in R)</p>			





## Background

South Africa is undertaking wide ranging reforms of its financial regulation and has recently implemented its twin peaks regulatory structure. The Financial Sector Regulation Act 2017<sup>249</sup> (FSR Act) established the two new agencies, the Prudential Authority<sup>250</sup> (PA) as a juristic person operating with the administration of the South African Reserve Bank<sup>251</sup> (SARB) and the Financial Sector Conduct Authority<sup>252</sup> (FSCA) as successor to the Financial Services Board. The Act was passed on 21 August 2017 and became effective on 1 April 2018. Under the first phase of the reform program the two regulatory agencies will regulate the financial sector under the provisions of existing laws and within the overlay of the FSR Act.<sup>253</sup>

A key component of the Twin Peaks reforms is the implementation of a robust market conduct framework, including effective alternative dispute resolution (ADR) mechanisms for financial customers. In September 2017 National Treasury published a consultation policy document, *A Known and Trusted Ombud System for All* (2017 Consultation Document). This consultation document reviewed the historic development of the financial sector ombuds system in South Africa, explained the reforms to the system resulting from the Financial Sector Regulation Act (Act 9 of 2017) (FSR Act), and set out three possible proposals for further reform of the ombuds system.

The 2017 Consultation Document canvassed the following three alternative Ombud system models:

### Model 1: A hybrid model building on current FSR Act provisions

This model makes use of both industry and statutory ombud schemes but encourages greater consolidation

among the schemes. The Ombud Council oversees both industry ombuds and the statutory ombuds. It establishes a central, single entry point for customers to enter the ombuds system. A consolidated statutory ombud structure could continue to serve as the “back-stop” ombud, hearing complaints that fall outside the jurisdiction of the industry schemes, as well as newly designated financial products and services. The Ombud Council and statutory ombuds report to the Minister of Finance.

### Model 2: A Centralized model, establishing a single statutory ombud scheme

A single statutory ombud scheme is established by law, with jurisdiction over all complaints in the financial sector. As an organization, this office should have different departments with expertise to hear complaints on different financial products and services. It reports to the Minister of Finance with governance oversight by an independent committee or Board. The Chief Ombud created under the FSR Act is likely best placed to take over these functions.

### Model 3: Industry ombuds with strong oversight by the Ombud Council

Under this model, all financial institutions that serve the retail market are obligated to belong to an ombud scheme, either as a direct statutory obligation or as a condition of licensing. Such schemes are established through industry initiatives. No ombud schemes are established through statute. All schemes must be recognized by the Ombud Council, and are subject to oversight by the Council, including minimum standards for resolving disputes.

The 2017 Consultation Document proposed further research be conducted into the current operation of the ombuds system to inform the work of the new

Ombud Council, established by the FSR Act. For this purpose, National Treasury (NT) and the Financial Sector Conduct Authority (FSCA) have engaged the World Bank Group (WBG) to undertake a diagnostic on South Africa's financial sector ombuds system during the first half of 2020.

## WBG Team

The review team is led by Nina Pavlova Mocheva from the WBG. This issues paper was prepared with specialist input from two former senior financial ombuds with international experience – Shane Tregillis (from Australia) and David Thomas (from the United Kingdom).

## Terms of Reference

The terms of reference for the WBG diagnostic are as follows:

- Evaluate the current operations of the financial sector ombuds system including against international good practice and principles.
- Suggest opportunities for any identified weaknesses/gaps to be addressed by the FSR Act provisions.
- Consider the potential of the three proposals for further reform set out in the 2017 Consultation Document address any identified weaknesses/gaps
- If relevant, Identify any other suitable models

## Ombud Schemes That Will Be Covered by Diagnostic

The diagnostic will cover the following schemes:

- Credit Ombud
- Johannesburg Stock Exchange Ombud
- Ombud for Financial Services Providers (FAIS Ombud)

- Ombudsman for Banking Services
- Ombudsman for Long Term Insurance
- Ombudsman for Short Term Insurance
- Pension Funds Adjudicator

The diagnostic will also consider any gaps in the collective coverage of these schemes in relation to financial products and services offered to retail customers and how far they create a coherent system that is accessible to consumers.

## Matters That Will NOT Be Covered by the Diagnostic

The diagnostic will not evaluate financial services providers' internal complaints handling arrangements (other than considering ombud schemes' interactions with these where relevant).

## Approach

The diagnostic will undertake both primary and secondary research and consult extensively with key stakeholders, including by means of a mission in South Africa. The diagnostic will identify existing practices and operations of the financial sector ombuds system through a range of primary research. This will include discussions with and information requests to key stakeholders organized through the relevant authorities in South Africa.

The diagnostic will also include a review of relevant documents for ombud schemes, previous research and relevant material published on the South African financial sector ombuds system. The analysis and formulation of recommendations will take into account existing South African reforms and proposals as described in various documents shared with the WBG or otherwise publicly available.

The diagnostic will draw on international good practices while taking into account the specific context in which Ombuds operate in South Africa and current regulatory reforms. The diagnostic will take into account the wide range of range of

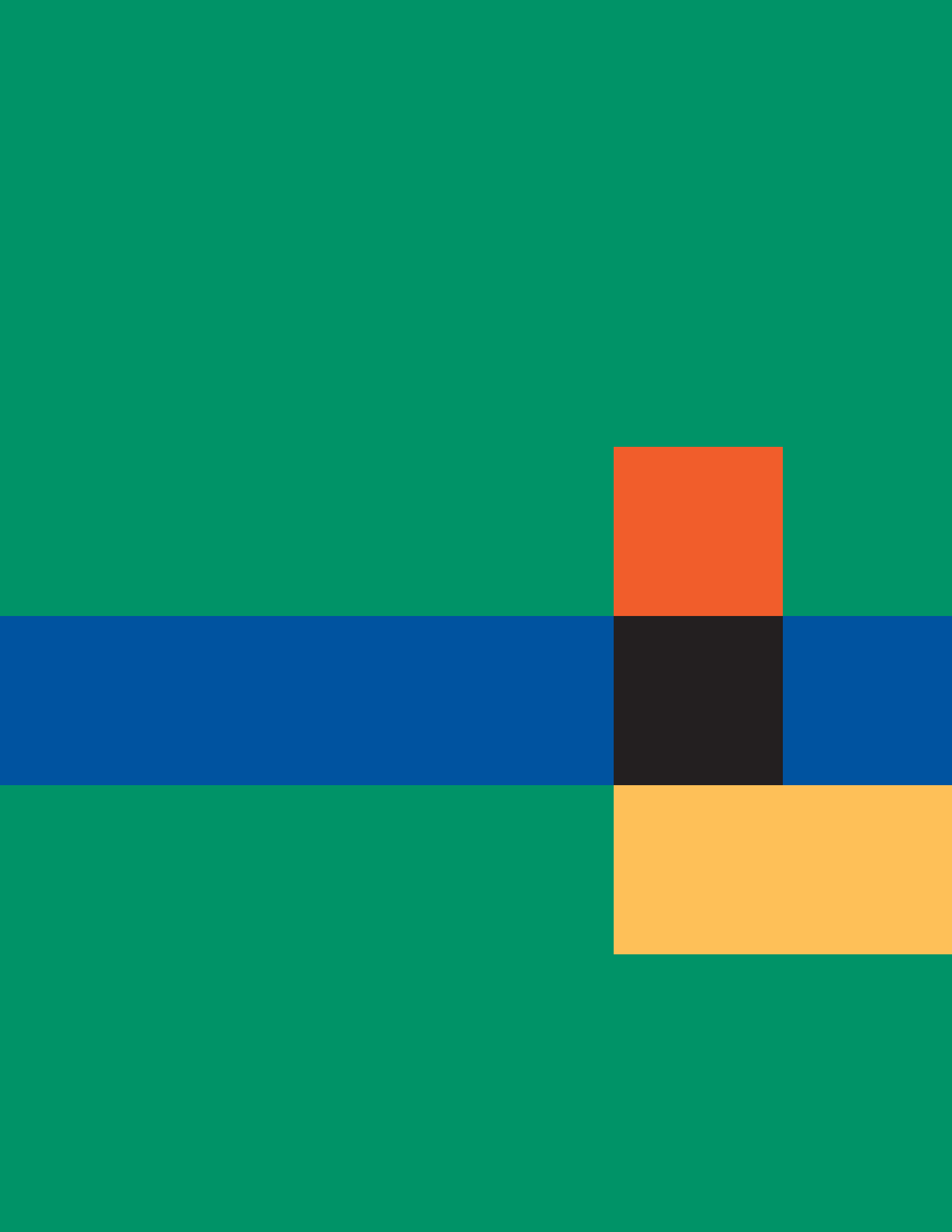
international published guidance on good practice relevant to a financial ombud system to distil the key attributes for an Ombud system.

The WBG diagnostic team will use these key attributes to guide its review of the existing financial ombud system in South Africa, the individual

financial ombud schemes, the statutory Ombud Council and alternative structures—in seeking to ensure that any potential future scheme architecture efficiently delivers good quality outcomes for consumers, and represents good value for money for the country.

## Consultation Questions

Name of Institution	
Submitted By:	Name:
	Email Address:
	Affiliation:
<p>1) <i>To what extent does the current ombud system in South Africa operate consistently with or have any weaknesses or gaps in relation to each of the key good practice attributes for an ombuds system set out below.</i></p> <ul style="list-style-type: none"> <li>• Effectiveness – consistent redress in all appropriate sectors of financial services.</li> <li>• Independence – visibly objective, impartial and unbiased.</li> <li>• Accessibility – well-known, easy to use and free for consumers.</li> <li>• Fairness – processes and decisions visibly fair and equitable.</li> <li>• Efficiency – good quality of service and value for money.</li> <li>• Openness – clear, and open to scrutiny, about its work and the lessons that can be drawn from it.</li> </ul>	
<p>2) <i>Are there any gaps and/or overlaps in the collective coverage of current Ombud schemes in relation to current and potential future financial product and services offered to retail customers?</i></p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><i>If yes, please detail below</i></p>	
<p>3) <i>What improvements in the structural and institutional aspects, such as, jurisdiction and powers, legal structure, governance, funding, resourcing and staffing arrangements of individual and overall ombud framework could improve the current ombud system?</i></p>	
<p>4) <i>What improvements in the complaints resolution processes, outreach and coordination activities of ombud schemes could improve the current ombud system?</i></p>	
<p>5) <i>What are the advantages and disadvantages of the three models of a possible ombud system outlined in the 2017 Consultation document in improving the current ombud system or alternatively, what other options should be considered?</i></p>	
<p>6) <i>Are there any other significant gaps, weaknesses or opportunities that the WBG diagnostic should take into account to ensure the ombud system delivers good quality outcomes for consumers, represents good value for money for the country and remains fit for purpose into the future?</i></p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><i>If yes, please detail below</i></p>	



# LIST OF STAKEHOLDERS THAT RESPONDED TO THE ISSUES PAPER

1	Absa Bank Ltd.
2	Assupol Life
3	Banking Association of South Africa (BASA)
4	BASA-submitted joint response from the following member banks: <ul style="list-style-type: none"> <li>• Absa</li> <li>• Capitec</li> <li>• Citi Bank</li> <li>• Finbond</li> <li>• FNB</li> <li>• GBS Bank</li> <li>• Grobank</li> <li>• Investec</li> <li>• Nedbank</li> <li>• Standard Bank</li> <li>• Ubank</li> </ul>
5	Darrell Beghin, South African Credit and Risk Reporting Association, personal views
6	Black Sash
7	BMW Financial Services
8	Brightrock
9	Clientèle Life Assurance Company Ltd.
10	Constantia Insurance Company Ltd. Constantia Life and Health Assurance Company Ltd. Constantia Life Ltd.
11	Coronation Fund Managers Ltd.
12	Experian South Africa (Pty.) Ltd.
13	FIA (Financial Intermediaries Association of Southern Africa)
14	FirstRand Bank
15	GTC (Pty) Ltd.

16	Hollard Assurance Company Ltd. and Hollard Insurance Company Ltd.
17	Large Non-Bank Lenders Association (LNBLA)
18	Liberty Group
19	Adv. Neville Melville
20	Microfinance Association (MFSA)
21	Momentum Life Ltd.
22	Momentum Metropolitan Holdings
23	National Clothing Retail Federation (NCRF)
24	National Consumer Commission
25	National Credit Regulator (NCR)
26	New National Assurance Co. Ltd.
27	Old Mutual Life Assurance Co.
28	Professional Provident Society Insurance Co. Ltd.
29	Renasa Insurance Co. Ltd.
30	SA Home Loans (Pty.) Ltd.
31	Sanlam Personal Finance
32	Standard Bank of South Africa
33	Telesure Investment Holdings
34	Western National Insurance Co. Ltd.

## BANKING

### Banking Ombud: Terms of Reference

*Complaint* is not defined. *Dispute* is also used for a complaint that has not been resolved by the financial provider.

FSCA Conduct Standard 3 of 2020 (Banks) under the FSR Act

*“Complaint” means an expression of dissatisfaction by a person to a bank or, to the knowledge of the bank, to the bank’s service provider relating to a financial product or financial service provided or offered by that bank which indicates or alleges, regardless of whether such an expression of satisfaction is submitted together with or in relation to a customer query, that*

- *the bank or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the bank or to which it subscribes;*
- *the bank or its service provider’s maladministration or willful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or*
- *the bank or its service provider has treated the person unfairly.*

## CREDIT

### Credit Ombud: Terms of Reference

*Complaint* is not defined. *Dispute* is used for a complaint that has not been resolved by the financial provider.

## NC Act

*Complaint* is not defined. But the act says, “Any person may submit a complaint concerning an alleged contravention of this Act to the National Credit Regulator.”

## ADVICE AND INTERMEDIARY SERVICES

### FAIS Ombud

The FAIS Ombud uses the definition in the FAIS Act.

### FAIS Act

*“Complaint” means, subject to section 26 (1)(a) (iii), a specific complaint relating to a financial service rendered by a financial service provider or representative to the complainant on or after the date of commencement of this Act, and in which complaint it is alleged that the provider or representative*

- *has contravened or failed to comply with a provision of this Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage;*
- *has willfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to the complainant or which is likely to result in such prejudice or damage; or*
- *has treated the complainant unfairly.*

## LONG-TERM INSURANCE

### LTI Ombud: Rules

*Subject to Rule 2.2 ... every complaint which arises from the use by the complainant of the services of a subscribing member and every complaint by a complainant who is or claims to be a policyholder, a successor in title, a beneficiary, a life insured or a premium payer, against a subscribing member concerning or arising from the marketing, conclusion, interpretation, administration, implementation or termination of any long-term insurance contract marketed or effected within the Republic of South Africa.*

### Policyholder Protection Rules (Long-Term Insurance)

*“Complaint” means an expression of dissatisfaction by a person to an insurer or, to the knowledge of the insurer, to the insurer’s service provider relating to a policy or service provided or offered by that insurer which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a policyholder query, that*

- *the insurer or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the insurer or to which it subscribes;*
- *the insurer or its service provider’s maladministration or willful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or*
- *the insurer or its service provider has treated the person unfairly.*

## SHORT-TERM INSURANCE

### STI Ombud: Terms of Reference

*Complaints relating to the provision within the Republic of South Africa of insurance services by an Insurer to a Policy Holder.*

### Policyholder Protection Rules (Short-Term Insurance)

*“Complaint” means an expression of dissatisfaction by a person to an insurer or, to the knowledge of the insurer, to the insurer’s service provider relating to a policy or service provided or offered by that insurer which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a policyholder query, that*

- *the insurer or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the insurer or to which it subscribes;*
- *the insurer or its service provider’s maladministration or willful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or*
- *the insurer or its service provider has treated the person unfairly.*

### JSE OMBUD: JSE Rules

*A complaint in relation to the provision of regulated services, in which the client alleges that he has suffered, or is likely to suffer, financial prejudice as a result of the member*

- *contravening or failing to comply with any instruction given by the client, or any agreement or mandate entered into with the client;*
- *contravening or failing to comply with the rules and the directives;*
- *acting dishonestly, negligently or recklessly; or*
- *treating the client unreasonably or unfairly.*

## PENSION FUNDS

### PFA

The PFA uses the definition in the PF Act.



## PF Act

*“Complaint” means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging*

- that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;*
- that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;*
- that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or*
- that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;*

*but shall not include a complaint which does not relate to a specific complainant.*

## COFI BILL

*An expression of dissatisfaction by a person to a financial institution or, to the knowledge of the financial institution, to the financial institution’s service provider relating to a financial product or financial service provided or offered by that financial institution, which indicates or alleges, regardless of whether the expression of dissatisfaction is submitted together with or in relation to a query by a financial customer, that*

- the financial institution or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the financial institution or to which it subscribes;*
- the financial institution’s or its service provider’s maladministration or willful or negligent action or failure to act has caused the person harm, prejudice, distress or substantial inconvenience; or*
- the financial institution or its service provider has treated the person unfairly.*



# OVERVIEW OF COMPLAINT-HANDLING PROCESSES OF OMBUD SCHEMES

## BANKING OMBUD<sup>354</sup>

The case-processing area handles all new complaints. All complaints received are logged in the Banking Ombud's electronic case-management system.

Where a person has not first approached the bank, they refer the complainant directly to the bank via a direct link from the case system to the bank. The bank has 20 business days to resolve the matter with its customer.

If the matter remains unresolved after this time, or where the person has already approached the bank, they open a formal case after determining

- That the application for assistance has been correctly completed;
- That the complainant has followed the bank's internal complaints procedures;
- That the complainant is not satisfied with the outcome or has not received a response within 20 working days; and
- That the Banking Ombud determines that the complaint is within jurisdiction (in doing so, it may consider representations from both parties).

Once a formal case is opened as within jurisdiction, the complaint is sent to the bank for a formal response. The bank has 15 days in which to respond. Once the bank's response is received, a manager will assess the case, which will then be dealt with in one of two ways:

- If they assess that the case has no reasonable prospects of success, the case is handled by the Assessment Department. Adjudication staff have a target of 20 business days<sup>355</sup> to prepare an assessment report setting out the facts and the

basis of the finding on prospects, which they give both parties.

- Should either party disagree with the conclusion reached in the assessment, or should either party wish to submit new information that it believes might affect the final decision, it may make further representations to the Banking Ombud.
- Upon receipt of the representations from either party, a final recommendation may be issued without further consultation with either party.
- Cases that require further investigation and clarification before a finding can be made are handled by the Investigations Department. They will further investigate the matter.
  - If the investigation team believes a matter might be suitable for mediation, this is put to the parties. If both parties agree, we arrange a mediation. If either party objects, we deal with the matter in the usual way.
  - Where an adjudicator considers the matter has merits, he/she will first inform the bank of this view with a recommendation that the bank settle. If the bank agrees to the finding, the adjudicator will send an assessment report to the complainant with the settlement offer. This report summarizes the facts and findings and, unless marked confidential, includes documents provided by the bank to the ombud scheme.
  - If both parties accept the settlement offer, the matter is closed. If not, the process of negotiation will continue until they resolve the matter.
  - If an adjudicator considers the complaint does not have merit, they send a closing letter setting out the facts and basis of their finding to both parties.

- If the parties do not accept the adjudicator’s view on the merits at any stage, the adjudicator will make a provisional recommendation. Should either party disagree with the conclusion reached in the provisional recommendation, or should either party wish to submit new information that it believes might affect the final decision, it may make further representations to the Banking Ombud.
- Upon receipt of representations from either of the parties, a final recommendation may be issued without further consultation with either party.
- The bank and the complainant must advise the Banking Ombud in writing within 10 working days from receiving the final recommendation from the Banking Ombud whether they accept the terms of the recommendation.
- The rules provide for a hearing to be conducted if both parties agree.

The Banking Ombud scheme escalates matters to a determination or review process only if there is a reasonable prospect of coming to a different finding on the same set of facts and evidence.

Where a matter is not resolved within the investigations team, the ombud can make a formal determination that would be published. This rarely occurs. In 2017, 2018, and 2019, the ombudsman did not make any determinations.

A complainant who seeks an ombud determination is required to set out their reasons in writing and agree to be bound by a determination, other than a right to seek leave to appeal to the Appeal Panel.

The determination of the ombudsman is subject to review by a retired judge, appointed by the board from a panel of three retired judges. In 2017, 2018, and 2019, there were no review appeals.

Under Rule 27, where any matter that falls within the provisions of the NC Act is resolved, the Banking Ombud may record the resolution as an order and, if both parties consent, can lodge the order with a relevant court or the National Consumer Tribunal to be made as a formal consent order.

## CREDIT OMBUD<sup>356</sup>

The Credit Ombud scheme logs all complaints upon receipt into their electronic case-management system. They are assessed to see whether the pre-ombud process with the financial provider or the credit bureau has been followed and whether they fall within the Credit Ombud’s jurisdiction.

Where a complainant has not already tried to resolve the matter directly with their credit provider or credit bureau, they are informed of the process for doing so. There is no formal referral or transfer process.<sup>357</sup>

The system generates a case number when the dispute is logged, and the case is checked by the senior managers. The senior managers contact the consumer by telephone to clarify the dispute and request relevant evidence and documentary proof before a case is allocated to a case manager.

The Credit Ombud investigates credit information and non-bank credit-agreement disputes. These disputes are logged against the relevant member non-bank credit providers; subscribers to the credit bureau; everyone that lists information on the credit bureau; furniture and clothing retailers; microlenders; and vehicle and property finance lenders.

When a dispute is opened, the complainant is contacted within 48 hours to advise on the process, and financial providers have a 10-day period within which to respond to the initial request for information. They are given five days for a first follow-up request and three days for any subsequent information requests, depending on the complexity of the dispute and ability of a provider to respond. For credit-information disputes, the scheme will request the relevant credit reports from all credit bureaus prior to the initial communication to the credit provider.

The Credit Ombud categorizes complaints as either simple intervention complaints or more complex facilitated complaints.

- Simple complaints are those where no information is required, and a simple intervention can resolve the issue. An example would be a lender that has

informed the officer that they have sent instructions to the credit bureau to update the complainant's credit records.

- More complex facilitated complaints involve further investigation and information gathering leading to either an agreed outcome or the matter being resolved on its merits.

Where the case manager cannot contact a consumer during the investigation process, they send the consumer a text message and an e-mail and seek to contact them by telephone. They send a closure letter to the consumer and every other party communicated with during the complaint process within 72 hours of finalizing the complaint with the consumer. The case manager checks that the credit records have been corrected when required by the resolution. As a second quality-control measure, the head of case management ascertains whether a case is ready for closure by considering the case managers' outcome and offering guidance should the need arise.

The Credit Ombud may, where a matter has not been settled, make a recommendation setting out how the matter should be resolved and the reasons for the recommendation.

Neither a complainant nor a member is bound to accept a recommendation made by the Credit Ombud.

But if a member does not accept a recommendation that has been accepted by the complainant, the ombud may then issue a ruling.

A complainant who does not accept a recommendation may institute legal proceedings at his or her own expense or request the ombud, or deputy ombud, to make a ruling. All recommendations are made in writing and authorized by the ombud or deputy ombud.

In a case where a recommendation has not been accepted by all parties concerned, the ombud may personally make a binding written ruling based on the law, any applicable code, or fairness, provided that all the material facts are agreed or the facts have been established on the balance of probabilities.

A ruling is binding on the member but not on the complainant. Under Rule 20.3, the members of the Credit Ombud are bound by the rulings of the ombud, subject to any appeal process that may be approved by the Credit Ombud Council. Rule 20.4 makes clear that consumers are not bound by any ruling or decision of the Credit Ombud and may refer the matter to any other body, court, or regulator.

In 2017, 2018, and 2019, there were no rulings.

If any matter within the provisions of the NC Act is resolved, the Credit Ombud may record the resolution as an order and, if both parties consent, can lodge the order with a relevant court or the National Consumer Tribunal to be made a formal consent order.

Where a matter that may be dealt with by the NCR or National Consumer Tribunal goes to conciliation, mediation, or arbitration and a party does not participate in good faith in that process, the Credit Ombud may issue a certificate in the prescribed form stating the process has failed and refer the parties to the NCR.

## LTI OMBUD<sup>358</sup>

The ombud scheme's staff assesses all requests to the office for assistance when received to check whether they fall within the LTI Ombud scheme's jurisdiction. Once a complaint has been assessed as within jurisdiction, it will be categorized with different pathways for different types of complaints. Details of the complaints are entered into the case-management system. A physical complaint file is created for each case.

The following are the three types of complaint categories:<sup>359</sup>

“Transfers”—This is where the complainant has not yet approached the insurer. They refer these to the insurer to respond directly to the complainant and provide the ombud's office with a copy of their response, and they advise the complainant accordingly. The insurer has 20 working days to resolve the matter with the complainant. If the insurer

settles the matter, the ombud's office contacts the complainant by letter, e-mail, SMS text, or phone call to establish if the complainant is satisfied or wishes to have the matter reviewed.

If it is not settled, and the complainant when contacted requests, the complaint will be reviewed and handled in the same way as a full case. In 2019, some 73 percent<sup>360</sup> of chargeable complaints were transferred. Of these, around 28 percent were settled by the insurer directly with the complainant. After 22 days, the system generates an automatic reminder to the insurer warning that if a response is not received within seven days, the LTI Ombud will treat the transfer as a full case.

“Mini Cases”—These comprise simple complaints within the jurisdiction of the office, but insurers can handle them without the office's involvement. They advise the complainant that if they do not resolve the matter with the insurer, they can revert to the LTI Ombud.

“Full Cases”—These are complaints that have already been seen by insurers and are handled by the office from inception to finalization. The LTI Ombud scheme sends a brochure outlining the complaint process to the consumer and the details of the complaint to the insurer. The insurer has four weeks to respond.

Unless a case is resolved by the first response sent by the insurer, the complaint is allocated, depending on its complexity, to either an assessor or an adjudicator. The assessor/adjudicator calls the complainant, evaluates the response from the insurer, provides this to the complainant for comment, and requests any additional information from the insurer. Once all submissions have been made, and if the matter is still not resolved, the assessor/adjudicator will make a provisional determination. If accepted by both parties, the matter is closed.

If a complainant is dissatisfied with the provisional determination, the case is reallocated to another adjudicator who will then review all the materials. The adjudicator can either

- Make final determination against the complainant; or
- Make a provisional determination against the insurer after discussing it at an adjudicators' meeting.

At any stage of the complaint-handling process, there can be a conciliation meeting with the parties to try to resolve a complaint.

Adjudicators discuss cases where a determination is to be made against the insurer or cases that involve more complex issues at a weekly adjudicators' meeting chaired by the ombud or deputy ombud. The adjudicator will provide all relevant information to the meeting.

In 2017, 2018, and 2019, there were 1,538, 2,006, and 2,069 formal determinations, respectively.

Under Rule 5, material facts are determined on a balance of probabilities with due regard to the onus of proof. Where a finding on a material fact cannot be resolved, the parties are told that a determination cannot be made. The rules provide that if both parties agree, a hearing may be used to hear evidence to determine a dispute of a material and conclusive fact.

Under Rule 6.4, there is an appeal from a determination to an appeal tribunal. An appeal tribunal is appointed with the consent of both parties. In practice, it is a retired judge. In determining whether to give leave to appeal, the ombud considers whether

- The matter appears to be of considerable public or industry interest; or
- The appeal has a reasonable prospect of success.

In 2018, there were 33 applications for appeal; one was granted. The appeal tribunal dismissed the appeal. In 2019, 14 complainants applied for leave to appeal, none of which was granted by the ombud because they did not have a reasonable basis of success.

## STI OMBUD<sup>361</sup>

All complaints lodged with the STI Ombud scheme are first checked to ensure that they are short-term insurance complaints and are not made by a third party. If the complainant has not lodged a prior dispute with the insurer, the STI Ombud sends the complaint to the insurer as a transfer case, and the insurer has 21 days to resolve the dispute or respond.<sup>362</sup> In other cases, they send the complaint to the insurer for a response within 14 days.

If the insurer has resolved the complaint with the complainant within the 21-day or 14-day period, it needs to inform the STI Ombud in writing, setting out the basis on which it has resolved the matter. The case is then closed.

If the case remains unresolved, the insurer is required to provide a comprehensive answer to the complaint, addressing all issues in the complaint.

Under its revamped complaint-handling process, the STI Ombud scheme handles simpler matters not requiring further information under its fast-track process. Those matters requiring further information gathering and assessment are handled under the standard complaints process.

A recommendation will ordinarily complete the fast-track complaint-handling process after review of the information in the complainant's founding complaint and the insurer's answer. In the event either the insurer or complainant is unhappy with the recommendation and shows good cause, such as relevant new information being provided, the complaint will then follow the standard complaints process.

Standard complaints are normally resolved by the issuing of a recommendation following the submission of the following sets of information or documentation by the parties:

- The complainant's founding complaint
- The insurer's answer
- The complainant's reply to the insurer's answer

- Where necessary or appropriate, the insurer's further response

A recommendation will not be made where there is a genuine dispute of fact.

Where either party is unhappy with the recommendation, they can request in writing that the matter be escalated to the next stage of the resolution process. This leads to further review of the case, with further collection and exchange of information, leading to a formal ruling, where the decision is to dismiss the complaint (in favor of the insurer), and a provisional ruling where the decision is to support the complaint (in favor of the insured and against the insurer), both of which are provided to both parties.

Where the insurer does not agree with or abide by a provisional ruling, a formal ruling will be issued. In 2017, the total number of formal rulings was not recorded unless they were made against insurers, of which there was none.

Formal rulings against insurers are published in the annual reports. In 2018, the total number of formal rulings was not recorded, and none was issued against insurers. In 2019, a total of 35 formal rulings were made, and one formal ruling was made against an insurer, as published in the 2019 annual report. As formal rulings against insurers are published, a provisional ruling is first issued to give an insurer an opportunity to abide/accept it before a formal ruling is made.

Under Rule 7.3, the ombud may not make a ruling where a material fact cannot be established or cannot be resolved on a clear balance of probabilities. In these circumstances, the ombud tells the complainant that they cannot assist and that alternative recourse may be sought through the courts.

Under Rule 8 of the STI Ombud's terms of reference, any party affected by any formal ruling or finding by the ombud may seek leave to appeal against the ruling or finding of the ombud, either in part or in whole. The ombud shall grant leave to appeal only when the ombud is of the opinion

- That there is a reasonable prospect that the appeal, either in whole or in part, will succeed; and
- That the matter is one of complexity or difficulty; or
- That the ruling or finding in question involves issues or considerations that are of substantial public or industry interest or importance; or
- That the ruling or decision involves principles of law where the law may be considered to be uncertain or unsettled; or
- That the matter in dispute involves the jurisdiction of the ombudsman to entertain the dispute; or
- That the issues are of such a nature that the judgment or order sought will not be of academic relevance only and will have a practical effect or result.

If leave is not granted by the ombud, the party seeking leave to appeal can apply to the chair of the appeal body for a review. The chair of the board, in consultation with the vice chair, appoints the appeal body from persons nominated by the board. There has not been an appeal since STI Ombud instituted the process in 2013.

## JSE OMBUD<sup>363</sup>

Section 11 of the JSE Equities Market rules sets out how members are to handle complaints, the process for unresolved complaints (Rule 11.60), the reporting of a dispute (Rule 11.80), and the processes for consideration by an ombud.

Members have four weeks to resolve a complaint. If they cannot do so in this time period, the member must give the complainant an explanation and indicate when they will respond.

If the complainant remains dissatisfied with the member's response, they have four weeks to refer the matter to the director of JSE's Market Regulation Division (MRD). If an unresolved complaint is referred to the MRD subsequent to this period, and such is through no fault of the complainant, the matter will be considered by the MRD.

If a complainant contacts the MRD before contacting the financial provider, it refers them to the member and tells them they can escalate to the MRD if they remain dissatisfied.

The MRD will attempt to facilitate the resolution of the client complaint prior to its referral to the JSE Ombud in terms of Rule 11.60 of the Equities Rules.

If unsuccessful, the director of the MRD will refer the unresolved complaint to the company secretary of the JSE. The company secretary facilitates the appointment of the JSE Ombud. The person appointed as ombud must be a retired judge of the High Court of South Africa or a senior counsel.

Rule 11.100 sets out the processes for the JSE Ombud's handling of the complaint, including the following:

- Within three weeks of the dispute having been referred to the ombud for consideration, the claimant must set out the subject matter of the claim in a written statement, including all the material facts, and furnish this statement, along with all relevant documentation upon which the claim is based, to the ombud.
- The ombud may require the claimant to expand upon his/her statement of claim or provide further evidence or particulars as the ombud deems necessary within such reasonable time as is specified by the ombud.
- The financial provider must be provided with a copy of the written statement of claim by the ombud. The provider must furnish the ombud with its written response to the statement of claim within three weeks of having received it. In addition, the provider must attach all other evidence relating to the dispute.
- The ombud may require the provider to expand upon its response or provide further evidence or particulars as the ombud deems necessary within such reasonable time as specified by the ombud and may require the claimant to provide a written reply to the provider's response within such reasonable time as the ombud may specify.



- The JSE Ombud will consider the merits of the dispute referred to them and make a decision within three weeks.

At the request of any party to the dispute, the ombud must provide reasons in writing for his/her decision. (Rule 11.100.11). The proceedings are conducted without legal representation, unless the ombud decides otherwise.

Under Rule 11.100.10, the identity of the parties, the nature of the evidence, and the details of the ombud’s deliberations and finding, and all other information pertaining to the proceedings, will be kept confidential by all parties, unless disclosure by the JSE is required by law or otherwise agreed by the JSE, the ombud, and both parties to the dispute.

Any direction as to a change in behavior by a JSE member that is deemed necessary and has caused the dispute in question will be made by the JSE director of market regulation as the regulator of JSE members.

There were no referrals to a JSE Ombud in 2017 or 2018. There was one referral to the JSE ombud in 2019, following the inability of the MRD to facilitate the resolution of the matter between the complainant and the JSE member. The complainant’s claim was unsuccessful.

## FAIS OMBUD<sup>364</sup>

The FAIS Ombud investigates and resolves complaints in terms of the FAIS Act, the FSOS Act, the Rules on Proceedings of the Office of the Ombud for Financial Services Providers (Rules on Proceedings), the General Code of Conduct for Authorised Financial Services Providers and Representatives (the Code), and the office’s internal Complaints Procedure Manual.<sup>365</sup>

Once a complaint is received by the FAIS Ombud Office, a Client Care Centre Representative (CCC Rep) registers the complaint in the case-management system. The CCC Rep then conducts a preliminary assessment so as to evaluate whether the complaint received falls within the mandate of the FAIS Ombud.

This assessment includes checking the parties to the complaint, whether the complaint involves a financial institution, financial product, and financial service as defined in the relevant legislation. It is also at this stage that the jurisdiction of the FAIS Ombud in terms of the FSOS Act is established, where a specific complaint is not covered by any of the industry ombud schemes.

Where a complaint is found to fall outside the FAIS Ombud’s jurisdiction in terms of both the FAIS and FSOS Acts, the CCC Rep considers to which forum the complaint needs to be referred—for instance, any of the industry ombud schemes. Then the CCC Rep, in a written communication signed off by the CCC manager, informs the complainant what the mandate of the FAIS Ombud is and explains why the complaint is being referred to another forum. The written communication is also sent to the relevant ombud scheme or forum. This stage constitutes a disposal of the complaint by the FAIS Ombud, and a customer survey form is sent to the complainant to obtain feedback on their experience of the service received in the FAIS Ombud’s office. A survey is sent at all stages when a complaint is disposed of and is reported on in the office’s annual report.

Once the jurisdiction of the FAIS Ombud is established on a preliminary basis as set out above, the complainant must satisfy the FAIS Ombud of having endeavored to resolve the complaint with the FSP and must produce the final written response (if any) from the provider and the complainant’s reasons for disagreeing with the final response. This is a requirement in accordance with Rule 5(d) of the Rules on Proceedings, which seeks to establish whether there has been any attempt to settle the issue between the parties.

The actual complaint-handling process for complaints that fall within its jurisdiction has the following four main stages:

- Case management—initial stage
- Case management—investigation
- Adjudication
- Reconsideration

## Case Management: Initial Stage

Once the FAIS Ombud's jurisdiction is established and the case is determined to be justiciable, a case manager completes an activity journal in which an in-depth assessment of the merits of the case is undertaken. This includes the case manager determining whether the complaint relates to

- An alleged contravention/noncompliance with the FAIS and FSOS Acts and any applicable subordinate legislation by an authorized or unauthorized FSP; or
- Any willful or negligent conduct by the FSP leading to a client experiencing a financial loss or prejudice or to a client being treated unfairly.

Where a complaint has no legal or factual basis, the case manager can summarily dismiss it in accordance with Rule 7 of the Rules on Proceedings, where, among other reasons

- It appears to have no reasonable prospects of success;
- The provider has made a fair and reasonable offer that is still open;
- The matter has previously been considered by the ombud;
- The essential subject matter of the complaint has been decided in court proceedings;
- The subject matter of the complaint is pending in court proceedings;
- The complaint or relief sought is of the nature that the ombud can be of no assistance to the complainant;
- The complainant does not cooperate; or
- The complaint is being pursued in a frivolous, vexatious, or abusive manner.

Upon approval by the line manager, a letter of dismissal is sent to the complainant detailing the reasons for the decision. A customer survey form is sent to the complainant. Either party to a complaint

can approach the Financial Services Tribunal with an application for the matter to be reconsidered.

Where a case manager has assessed the complaint and is satisfied that the matter may proceed, it must be established whether there has been compliance with Rule 5(d) of the Rules on Proceedings. Where the complainant has not approached the financial provider prior to submitting a complaint, the FAIS Ombud facilitates this process in accordance with Rule 6(b) of the Rules on Proceedings by directing the complaint to the financial provider, providing the required six-week period to resolve the matter with the complainant. In the event that the matter remains unresolved after the six-week period, the financial provider must provide the FAIS Ombud with a response to the allegations raised in the complaint. The Rule 6(b) letter, together with a copy of the complaint, is sent by fax, e-mail, or post.

If, within six weeks, the case manager receives confirmation that the financial provider has resolved the matter with the complainant, written confirmation of the resolution from the complainant is required.

After assessment and approval is provided by the line manager, the resolution of the complaint is then confirmed in writing with both parties, and a customer survey form is again sent to them. If there is a monetary value to the resolution, a request of proof of payment may be sought from either party.

Where Rule 5(d) has been complied with, a case manager may proceed with the complaint, which may include contacting either of the parties to gather sufficient detail to be able to send the complaint to the FSP, so they are able to respond fully to the complaint (Rule 6[c]).

Once the case manager has gathered all relevant information and assessed it, the case manager drafts a letter in accordance with Rule 6(c) of the Rules on Proceedings informing the FSP that a complaint has been brought against it and giving the financial provider an additional period of two weeks to either resolve the matter by agreement or to respond to the complaint and the concerns highlighted in the Rule

6(c) letter. The Rule 6(c) letter, together with a copy of the complaint, is sent by fax, e-mail, or post.

Upon receipt of the respondent's response and upon further consideration, a decision can be made at this point that the matter falls to be dismissed or that it would be better dealt with by an alternative forum (that is, an ombud scheme), or the complaint can be dismissed or referred to the correct forum with the reasons provided for the dismissal or referral. Where a matter is to be dismissed, a letter of dismissal is sent to the complainant detailing the reasons for the decision, after approval has been received from the line manager. A customer survey form is sent also to the complainant.

Either party can approach the Financial Services Tribunal for the matter to be reconsidered. Where a matter is to be referred to an alternative forum, a letter is sent to the complainant, the financial provider, as well as to the relevant ombud scheme or other forum, signed by the line manager. A customer survey form is sent to the complainant.

Where the parties have reached an agreement that resolves the matter to the satisfaction of both parties, correspondence, upon approval of the line manager, is sent to both the complainant and the financial provider confirming that the matter has been settled in a non-monetary manner. A customer survey form is sent to the complainant.

### Case Management: Investigation

Where a complaint has not been resolved after the initial resolution period has expired and it appears there is merit to the complaint, a case manager will further investigate the complaint.

A Section 27(4) notice is issued at this stage, recording that the office is officially investigating the complaint and also including a request for all relevant information and documentation considered relevant to the complaint by the case manager. This may include the following:

- The financial provider's complete file of papers
- Answers to a list of questions posed by the case manager

- Specific documents
- A comprehensive response to the complaint
- Any other documentation

Upon receipt of the response to the Section 27(4) notice, the case manager considers the entire case and all the supporting documentation before deciding on the complaint. The case manager may call for additional information and documents from both parties. At this stage, a decision can be made to either dismiss or refer the complaint, and the process of dismissal or referral or settlement must be followed as set out above, and a customer survey form will be sent to the complainant.

Alternatively, the case manager may recommend a settlement either formally or informally and discuss with both parties. An informal recommendation made in this way can be confirmed by e-mail. Where the parties have reached an agreement that resolves the matter to the satisfaction of both parties, correspondence approved by the line manager is sent to both the complainant and the financial provider confirming that the matter has been settled or resolved in a monetary or non-monetary manner. A customer survey form is sent to the complainant.

The FAIS Ombud will strive at all times, from the initial investigation stage up to and including the completion of the investigation phase, to resolve the matter informally to the satisfaction of both parties.

### Adjudication

Where a formal recommendation or determination is required, this is generally issued to both parties by the ombud under section 27(5)(c) of the FAIS Act. Where both parties accept a recommendation, the recommendation has the effect of a final determination.

A party who does not accept the recommendation must submit their reasons for refusing to accept the recommendation within the stipulated time. Only if the matter remains unresolved after all attempts to settle it will the ombud issue a formal written determination in accordance with section 28 of the FAIS Act.

The ombud or deputy ombud may issue a determination without first sending a recommendation (or provisional decision) to the parties. A copy of the determination is sent to the FSP, complainant, and FSCA. In 2017, 2018, and 2019, there were 48, 49, and 13 formal determinations made, respectively.

Where a determination is not appealed within a period of one month, a copy of the determination is lodged with the clerk or registrar of the appropriate court. Upon such lodging, the determination is deemed a civil judgment that can be executed upon.

### Reconsideration

Under Rule 12, the parties have one month to seek leave from the ombud to apply to the Financial Services Tribunal for reconsideration of the decision. To support such an application for leave, an applicant will need to provide written reasons. The ombud will then consider the reasons and either grant or deny the application for leave to seek reconsideration. In the event an application for leave to seek reconsideration is denied by the ombud, the applicant may approach the tribunal to apply for a reconsideration of the decision of the ombud to refuse leave.

The tests applied in deciding whether to grant or refuse an application for leave to apply for reconsideration under section 28(5)(b) of the FAIS Act are whether there is a likelihood that the tribunal will reach a different conclusion on the matter, and whether the matter is complex.

### PFA<sup>366</sup>

Once a complaint is received by the PFA, staff enters the details into the case-management system and then reviews it to assess whether it falls within the PFA's jurisdiction. Where the information is insufficient to determine this, further information will be requested, and the complainant will be given 30 days to respond. If no response is received within the 30 days, the complaint will be assessed as out of jurisdiction and a closure letter will be sent to the complainant.

If the case is within jurisdiction, the case is allocated to a case manager within the team responsible for the relevant administrator or fund. A case officer sends an acknowledgment to the complainant within 48 hours. The case officer sends a letter to all identifiable parties with supporting documents about the complaint and requiring a response by each party within 30 days. Where no response is received, the case officer will send a follow-up letter giving the relevant parties a further 14 days to respond.

The responses are assessed by the case manager to determine whether

- All relevant parties have been served;<sup>367</sup>
- Further information is required;
- The complaint is outside the PFA's jurisdiction;
- The complaint can be settled;
- A conciliation is required; or
- It requires an adjudication.

If, from the responses, the complaint is assessed as being outside jurisdiction, a formal outside-jurisdiction letter is sent, and the case is closed on the case-management system.

If, from the response, it is clear that the complaint has been settled by the parties, a settlement letter is sent to the relevant parties, and the case is closed.

A case manager or the parties may request that a case should go for conciliation. If this happens, the services of an external conciliator will be engaged. There are no PFA representatives involved in the conciliation process, in order to maintain independence should the PFA be required subsequently to adjudicate on the complaint.

None of the parties involved is allowed to be legally represented during a conciliation. At the conclusion of the conciliation hearing, the conciliators draft a report and complete a certificate of outcome showing the result of the hearing. (They usually do this the same day the conciliation takes place.)

The certificate of outcome is signed by the relevant parties on the day.

The adjudication unit reviews and resolves complaints that cannot be settled. There are three adjudication-management teams responsible for investigating the complaints and drafting determinations. The relevant adjudicator team may require additional time to draft a determination and finalize the complaint where they are required to

- Investigate and research further information;
- Join other parties to the complaint (those parties joined are given 30 days to respond to the notice and a further 14 days if there is no response); and
- Request additional information from the complainant. (The complainant has 15 days to respond to such a request.)

Respondents have 14 days to respond to the complaint, and, when responses are received from other parties, the complainant has seven days in which to respond to them.

Based on the information collected in this process, a complaint may be settled by agreement or closed as out of jurisdiction. If this does not occur, a determination is drafted for the adjudicator to review, settle, and sign as a final determination. A determination is sent to the parties within two days of being signed by the adjudicator or deputy adjudicator. In 2017, 2018, and 2019, 4,405, 5,319, and 4,991 final determinations were issued, respectively.

A copy of the determination is lodged with the High Court.

In terms of section 230(1)(a) of the FSR Act, a person aggrieved by a determination may apply to the Financial Services Tribunal for a reconsideration of the determination. The tribunal may either set aside the determination and then remit the matter to the adjudicator for further consideration or dismiss the application for reconsideration.

In 2017–18 and 2018–19, there were 38 and 19 appeals, respectively.



# IMPLEMENTATION OF THE PROPOSED NEW OMBUD SYSTEM

The proposed National Financial Ombud (NFO) is a non-statutory nongovernmental body. It does not require any legislation to set it up.

The NFO gains its powers through the recognition of its rules by the statutory Ombud Council—so as to become the single ombud for financial services and credit (other than retirement funds).

This builds on the existing model, under which non-statutory ombud schemes are approved, but adds some features in order to facilitate recognition of a single financial ombud scheme.

Legislation will be required to add those features to the recognition regime, so that recognition of the NFO and its rules by the Ombud Council has the following additional consequences:

- The NFO’s jurisdiction is automatic; it does not require a financial provider to apply for membership.
- The NFO is not prevented from dealing with matters that would be covered by the jurisdiction of a statutory ombud.
- Final decisions by the NFO (if accepted by the complainant) bind the financial provider and are enforceable in the same way as a court judgment.

Legislation will also be required in respect of the two statutory ombuds:

- Once the NFO has been recognized and is operational, the FAIS Ombud can be wound up.
- The PFA is to be reformed as detailed in the recommendations.

In outline:

- **Policy decisions**

The South African authorities finalize and communicate their policy decisions in the light of this report.

- **Establish provisional NFO board**

The electoral college (with public- and private-sector members) selects the members of the provisional NFO board.

- **Establish the NFO as a corporate entity**

The provisional NFO board establishes the NFO as a not-for-profit company without members, at which point the provisional NFO board becomes the NFO board.

- **Develop the NFO**

The NFO board develops the NFO’s organizational design, rules, and processes, as well as a transition plan for the NFO to take over from the industry ombuds and the FAIS Ombud.

- **Prepare legislation**

Meanwhile, the South African authorities prepare legislation to do the following:

- Stage 1:
  - Amend the Ombud Council’s recognition powers and the consequences of recognition
  - Extend the PFA’s jurisdiction to cover advice/intermediation relating to pension funds
- Stage 2:
  - Reform the Ombud Council
  - Reform the governance of the PFA and rename it the “Retirement Funds Ombud” (RFO)

- Stage 3:
  - Wind up the FAIS Ombud once the NFO has taken over its staff and work
- **Ombud Council grants recognition to the NFO**

Once stage 1 of the legislation has been implemented, the NFO applies to the Ombud Council, which grants formal recognition to the NFO.
- **The NFO takes over from the industry ombuds and FAIS Ombud**

In accordance with the previously prepared transition plan, the NFO takes over the staff and work of the industry ombuds and FAIS Ombud.

- **Ombud Council provides ongoing oversight**

The Ombud Council provides ongoing oversight of the NFO and PFO in order to ensure that they continue to perform their respective functions effectively.

The NFO will need to liaise closely with the industry ombud schemes, the FAIS ombud scheme, and the South African authorities in effecting a smooth transition to the new system. While the NFO is being established, it is anticipated that its staffing, systems, and resources will be drawn from the current schemes—initially including secondment of staff and dual/parallel appointments.

Further detail is included in figure G.

## Figure G. Outline Transition Flowchart, Showing Where Legislation Is Required

<p><b>[1] Announce policy decisions</b></p> <p>In the light of</p> <ul style="list-style-type: none"> <li>• The recommendations in this report, and</li> <li>• The outcome of such consultations as they think appropriate;</li> </ul> <p>The South African authorities decide and announce</p> <ul style="list-style-type: none"> <li>• The future shape of the financial ombud system,</li> <li>• The outline of any legislation intended to facilitate this, and</li> <li>• An immediate increase in the compensation limit of the FAIS Ombud.</li> </ul>
<p><b>[2A] Create the electoral college, which selects NFO board</b></p> <p>Each of the following bodies nominates one member of the electoral college:</p> <ul style="list-style-type: none"> <li>• The FSCA</li> <li>• The NCR</li> <li>• The governing body of the Banking Ombud</li> <li>• The governing body of the Credit Ombud</li> <li>• The governing body of the LTI Ombud</li> <li>• The governing body of the STI Ombud</li> <li>• The Ombud Council</li> </ul> <p>The electoral college (not the listed bodies) selects the proposed members of the NFO board.</p>
<p>No legislation required</p>



**[2B] Choose members of proposed NFO board**

The electoral college (by consensus) chooses the members of the NFO board—initially in a provisional capacity, as the NFO does not yet exist. The composition of the provisional board will need to meet the independence and other requirements set out in the recommendations.

No legislation required

**[2C] Create the NFO as a corporate body**

The provisional board of the NFO establishes the NFO as a corporate body (probably as a not-for-profit company without members) and becomes the first NFO board.

No legislation required

**[2D] Identify NFO senior management**

The NFO board identifies those who will form the senior management of the NFO. Insofar as they are already employed in the ombud system, they can hold their existing and new roles in parallel.

No legislation required

**[2E] Start work on NFO organization and rules**

The NFO board and senior management start work on the following while ensuring they comply with the intended statutory recognition criteria announced by the authorities:

- The organizational design of the NFO, including the following:
  - Personnel
  - Premises
  - Information technology
  - Systems
  - Policies
  - A transition plan
- The rules of the NFO, including those covering the following:
  - Its jurisdiction
  - Its powers
  - Its processes (including appeals)
  - The consequences of a final decision
  - Accessibility
  - Funding

No legislation required

**[3A] Amendment to Ombud Council recognition power<sup>368</sup>**

Give the Ombud Council power to grant an enhanced form of recognition—so that

- The recognized ombud scheme's jurisdiction is automatic; it does not require a financial provider to apply for membership;
- The recognized ombud scheme is not prevented from dealing with matters that would be covered by the jurisdiction of a statutory ombud;
- Final decisions by the recognized ombud scheme (if accepted by the complainant) bind the financial provider; and
- Binding final decisions by the recognized ombud scheme are enforceable in the same way as a court judgment.

**Legislation required**

- To create this enhanced form of recognition by the Ombud Council and its consequences
- To add, so far as necessary, to the existing criteria that the Ombud Council must take into account when granting recognition

**[3B] Extend PFA jurisdiction<sup>369</sup>**

Give the PFA jurisdiction over advice/intermediation relating to retirement funds (before the NFO takes over the work of the FAIS Ombud).

**Legislation required**

To give the PFA jurisdiction over advice/intermediation relating to retirement funds

**[4A] Finalize NFO organization and rules**

The NFO board and senior management finalize

- The organizational design of the NFO; and
- Its rules

While ensuring that they comply with the statutory criteria.

No legislation required

**[4B] Recognition of the NFO**

The Ombud Council grants enhanced recognition to the NFO—with the consequence that

- The NFO's jurisdiction is automatic; it does not require a financial provider to apply for membership;
- The NFO is not prevented from dealing with matters that would be covered by the jurisdiction of the FAIS Ombud; and
- Final decisions by the NFO (if accepted by the complainant) bind the financial provider and are enforceable in the same way as a court judgment.

No legislation required additional to that mentioned at [3A] above

**[4C] Begin consolidation**

The NFO entity progressively

- Takes on the staff of the industry ombud schemes and the FAIS Ombud scheme;
- Completes, under the existing rules of those schemes, any old cases that were begun before the commencement date of the NFO rules; and
- Handles, under the NFO's new rules, any new cases that are begun from the commencement date of the NFO's rules.

No legislation required

**[4D] Wind up industry ombud schemes**

Wind up the industry ombud schemes progressively, once the NFO has taken on

- Their staff; and
- Their existing cases.

No legislation required

**[5A] Wind up FAIS Ombud scheme**

Wind up the FAIS Ombud scheme, once the NFO has taken on

- The FAIS Ombud scheme's staff; and
- Their existing cases.

**Legislation required**

To wind up the FAIS Ombud scheme

**[5B] Implement the changes to transform the PFA into the RFO<sup>370</sup>**

Complete the changes recommended by this report, including the following:

- Changing the name
- Giving the RFO its own independent governing body with power to
  - Appoint future ombuds;
  - Approve the budget; and
  - Approve processes and procedures
- Enhancing the independence and security of tenure of the ombuds
- On jurisdiction:
  - Widening the definition of eligible complainants
  - Amending the limitation period
- Providing that review by the Financial Services Tribunal is available only where
  - The case raises general or systemic implications for the pension-fund sector or a significant part of it; and
  - There is prima facie evidence that the RFO ombud misunderstood the law, misunderstood the scope of the RFO's jurisdiction, or did not follow a fair process.

**Legislation required**

- To change the name
- To reform the governance
- To amend the jurisdiction
- To set the basis of the availability of review by the tribunal

### **[5C] Reform the Ombud Council<sup>371</sup>**

Complete the changes recommended by this report, including the following:

- Enhancing the independence of its members
- In respect of the chief executive:
  - Changing the title from Chief Ombud;
  - Providing for appointment by the rest of the Ombud Council; and
  - Enhancing their independence and security of tenure
- Changing into a reserve power the current obligation to operate access centers
- Scaling back its intrusive and coercive powers
- Requiring it to publish an annual report

#### **Legislation required**

- To enhance the independence of its members and chief executive
- To give the other members power to appoint the chief executive
- To change the chief executive's title from Chief Ombud
- To amend its powers and require it to publish an annual report

### **[5D] General changes<sup>372</sup>**

Implement the following general changes recommended by this report:

- Introduce a consistent definition of “complaint,” which includes oral complaints
- Introduce consistent requirements on how financial providers should
  - Resolve complaints fairly;
  - Give a clear written decision within a specified maximum time; and
  - Give complainants information about the ombud system
- Introduce explicit adverse consequences for financial providers that fail to
  - Join relevant ombud schemes;
  - Cooperate with the ombud schemes; and
  - Comply with their decisions
- Make it clear that a financial provider is liable for the acts/omissions of
  - Its agents; and
  - Any predecessor provider it took over (or whose customer relationships it acquired)

#### **Legislation required**

- To introduce (or enable and require regulators to introduce) the following:
  - A consistent definition of “complaint,” which includes oral complaints
  - Consistent requirements on how financial providers work in relation to complaints
  - Explicit adverse consequences for providers that fail to work with the ombud system
- To make it clear that a financial provider is liable for the acts/omissions of its agents and any predecessor provider it took over (or whose customer relationships it acquired)

**[6] Reformed system in place**

The NFO and RFO are operating under the oversight of the Ombud Council.

No further legislation required



## Endnotes



# ENDNOTES

1. [www.obssa.co.za](http://www.obssa.co.za)
2. [www.treasury.gov.za/public%20comments/2020%2010%2008%20CoFI%20Bill%20\(version%20published%20for%20comment\)%20\(slightly%20updated\).pdf](http://www.treasury.gov.za/public%20comments/2020%2010%2008%20CoFI%20Bill%20(version%20published%20for%20comment)%20(slightly%20updated).pdf)
3. [www.creditombud.org.za](http://www.creditombud.org.za)
4. [www.gov.za/documents/financial-advisory-and-intermediary-services-act](http://www.gov.za/documents/financial-advisory-and-intermediary-services-act)
5. <https://faisombud.co.za>
6. [www.gov.za/sites/default/files/gcis\\_document/201409/36121a.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/36121a.pdf)
7. [www.gov.za/documents/financial-services-board-act-6-mar-2015-1042](http://www.gov.za/documents/financial-services-board-act-6-mar-2015-1042)
8. [www.fsca.co.za](http://www.fsca.co.za)
9. [www.gov.za/sites/default/files/gcis\\_document/201409/a37-04.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/a37-04.pdf)
10. [www.treasury.gov.za/legislation/acts/2017/Act%209%20of%202017%20FinanSectorRegulation.pdf](http://www.treasury.gov.za/legislation/acts/2017/Act%209%20of%202017%20FinanSectorRegulation.pdf)
11. [www.networkfso.org](http://www.networkfso.org)
12. <https://web.jse.co.za>
13. [www.ombud.co.za](http://www.ombud.co.za)
14. [www.gov.za/documents/national-credit-act](http://www.gov.za/documents/national-credit-act)
15. <https://ncr.org.za>
16. [www.oecd.org](http://www.oecd.org)
17. [www.resbank.co.za/PrudentialAuthority](http://www.resbank.co.za/PrudentialAuthority)
18. [www.gov.za/sites/default/files/gcis\\_document/201409/a3-000.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/a3-000.pdf)
19. [www.pfa.org.za](http://www.pfa.org.za)
20. [www.gov.za/sites/default/files/gcis\\_document/201505/act-24-1956\\_1.pdf](http://www.gov.za/sites/default/files/gcis_document/201505/act-24-1956_1.pdf)  
The COFI Bill proposes to rename it the “Retirement Funds Act.”
21. [www.treasury.gov.za/legislation/PFMA/act.pdf](http://www.treasury.gov.za/legislation/PFMA/act.pdf)
22. [www.resbank.co.za](http://www.resbank.co.za)
23. [www.osti.co.za](http://www.osti.co.za)
24. [www.treasury.gov.za/public%20comments/2020%2010%2008%20CoFI%20Bill%20\(version%20published%20for%20comment\)%20\(slightly%20updated\).pdf](http://www.treasury.gov.za/public%20comments/2020%2010%2008%20CoFI%20Bill%20(version%20published%20for%20comment)%20(slightly%20updated).pdf)
25. [www.gov.za/documents/financial-advisory-and-intermediary-services-act](http://www.gov.za/documents/financial-advisory-and-intermediary-services-act)
26. [www.gov.za/sites/default/files/gcis\\_document/201409/36121a.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/36121a.pdf)

27. [www.gov.za/sites/default/files/gcis\\_document/201505/act-25-1956\\_1.pdf](http://www.gov.za/sites/default/files/gcis_document/201505/act-25-1956_1.pdf)
28. [www.gov.za/documents/financial-services-board-act-6-mar-2015-1042](http://www.gov.za/documents/financial-services-board-act-6-mar-2015-1042)
29. [www.gov.za/sites/default/files/gcis\\_document/201409/a37-04.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/a37-04.pdf)
30. [www.treasury.gov.za/legislation/acts/2017/Act%20of%202017%20FinanSectorRegulation.pdf](http://www.treasury.gov.za/legislation/acts/2017/Act%20of%202017%20FinanSectorRegulation.pdf)
31. [www.gov.za/documents/national-credit-act](http://www.gov.za/documents/national-credit-act)
32. [www.gov.za/sites/default/files/gcis\\_document/201409/a3-000.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/a3-000.pdf)
33. [www.gov.za/sites/default/files/gcis\\_document/201505/act-24-1956\\_1.pdf](http://www.gov.za/sites/default/files/gcis_document/201505/act-24-1956_1.pdf)  
The COFI Bill proposes to rename it the “Retirement Funds Act.”
34. [www.treasury.gov.za/legislation/PFMA/act.pdf](http://www.treasury.gov.za/legislation/PFMA/act.pdf)
35. [www.gov.za/sites/default/files/gcis\\_document/201505/act-68-1969.pdf](http://www.gov.za/sites/default/files/gcis_document/201505/act-68-1969.pdf)
36. The comments in this report are based on the September 2020 draft ([www.treasury.gov.za/public%20comments/2020%2010%2008%20CoFI%20Bill%20\(version%20published%20for%20comment\)%20\(slightly%20updated\).pdf](http://www.treasury.gov.za/public%20comments/2020%2010%2008%20CoFI%20Bill%20(version%20published%20for%20comment)%20(slightly%20updated).pdf)). It is currently expected that the bill will be put before the National Assembly in 2021.
37. A *direction* means a requirement, issued by an ombud, that an FSP must put things right by doing, or not doing, something (specified by the ombud) in relation to a particular complainant.
38. By “the whole of the financial sector (including credit)” we mean the following:
  - Any financial services that are currently authorized, licensed, regulated, or registered under any existing financial-sector legislation
  - Any credit services that are currently authorized, licensed, regulated, or registered under the NC Act
  - Any future extension of these (whether under the COFI Bill or other legislation)
39. This name reflects the COFI Bill proposal to rename the Pensions Funds Act of 1956 (Act 24 of 56) as the “Retirement Funds Act.” If that does not happen, the reformed PFA would become the Pension Funds Ombud.
40. National Treasury says the date has been postponed from April 1, 2021, to April 1, 2022.
41. [www.oecd.org/regreform/sectors/48892010.pdf](http://www.oecd.org/regreform/sectors/48892010.pdf)
42. [www.oecd.org](http://www.oecd.org)
43. Group of 20 Finance Ministers and Central Bank Governors.
44. <https://openknowledge.worldbank.org/bitstream/handle/10986/28996/122011-PUBLIC-GoodPractices-WebFinal.pdf>
45. ADR = alternative dispute resolution.
46. [www.gov.za/sites/default/files/gcis\\_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf](http://www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf)
47. In this report, *redress* means compensation (payable by the financial provider) or other remedies awarded by a financial ombud scheme in favor of a complainant.
48. In this report, *enquiry* means a contact with a financial ombud scheme that requests information.
49. In this report, *consumer* means someone who buys a financial service mainly for personal or household use, rather than for use in their trade, business, or profession. It also includes small businesses, if the financial ombud scheme covers complaints from them.



50. In this report, a *complaint* means an oral/written expression of dissatisfaction made to a financial provider related to its services or its complaint-handling process, where there has been some loss or material inconvenience to the complainant and a response or resolution is explicitly or implicitly expected.
51. In this report, “actively facilitating an agreed fair outcome” means the financial ombud service actively reviewing the circumstances (as an independent third party) and helping the complainant and the financial provider to agree on a fair outcome (sometimes called mediation or conciliation).
52. In this report, *case* means an unresolved complaint by a consumer against a financial provider that has been referred to a financial ombud scheme.
53. In this report, *financial ombud* means the person (or people) in a financial ombud scheme, whatever their job title, with power to make final decisions on complaints—sometimes called an ombudsman, adjudicator, arbiter, or mediator.
54. [www.gov.za/sites/default/files/gcis\\_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf](http://www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf)
55. <https://openknowledge.worldbank.org/handle/10986/28996>
56. [www.oecd.org/regreform/sectors/48892010.pdf](http://www.oecd.org/regreform/sectors/48892010.pdf)
57. [www.oecd.org/finance/financial-education/G20EffectiveApproachesFCP.pdf](http://www.oecd.org/finance/financial-education/G20EffectiveApproachesFCP.pdf)
58. <http://documents1.worldbank.org/curated/en/169791468233091885/pdf/699160v10ESW0P0en0Vol10Fundamentals.pdf>
59. International Network of Financial Services Ombudsman Schemes ([www.networkfso.org](http://www.networkfso.org)).
60. [www.networkfso.org/introduction.html](http://www.networkfso.org/introduction.html)
61. [www.networkfso.org/how-to-guides.html](http://www.networkfso.org/how-to-guides.html)
62. European Union
63. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998H0257>
64. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>
65. [www.ombudassociation.org](http://www.ombudassociation.org)
66. [www.ombudassociation.org/docs/BIOAGovernanceGuideOct09.pdf](http://www.ombudassociation.org/docs/BIOAGovernanceGuideOct09.pdf)
67. [www.ombudassociation.org/docs/BIOAGoodComplaintHandling.pdf](http://www.ombudassociation.org/docs/BIOAGoodComplaintHandling.pdf)
68. [https://treasury.gov.au/sites/default/files/2019-03/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf)
69. <https://treasury.gov.au/publication/key-practices-for-industry-based-customer-dispute-resolution>
70. In this report, *complainant* means someone who makes a complaint to a financial provider or refers a complaint to a financial ombud scheme.
71. Economist Intelligence Unit, *Industry Report, Financial Services, South Africa, 3rd Quarter 2019*, 6.
72. Economist Intelligence Unit, *Industry Report, Financial Services, South Africa, 3rd Quarter 2019*.
73. [https://nationalgovernment.co.za/entity\\_annual/1875/2019-national-credit-regulator-\(ncr\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/1875/2019-national-credit-regulator-(ncr)-annual-report.pdf)
74. [www.ncr.org.za/documents/CCMR/CCMR%202019Q4.pdf](http://www.ncr.org.za/documents/CCMR/CCMR%202019Q4.pdf)

75. Micro Finance South Africa (<https://www.mfsa.net/>) represents more than 1,100 microfinance credit providers registered with the NCR and the majority of significant service providers in the sector. The service providers offer loan administration, payment systems, credit life, legal services, and credit bureaus.
76. NCR, *Consumer Credit Market Report, Third Quarter, September 2019* ([www.ncr.org.za/documents/CCMR/CCMR%202019Q3.pdf](http://www.ncr.org.za/documents/CCMR/CCMR%202019Q3.pdf)).
77. Credit purchases form a large part of the sales by members of the National Clothing Retail Federation of South Africa ([www.ncrfsa.org](http://www.ncrfsa.org)).
78. Section 13B, Pension Funds Act of 1956 (Act 24 of 56) as amended.
79. FSCA, *Annual Report 2018–19*.
80. PA, “An Overview of the Experience of Life Insurers in South Africa for 2018.”
81. Marzanne Kirsten, “Short-Term Insurance Industry Feedback” (PA, November 19, 2018).
82. FSCA, *Annual Review 2018–19*.
83. Registrar of Friendly Society, *Annual Report 2017*.
84. Registrar of Friendly Society, *Annual Report 2017*.
85. FSCA, *Annual Report 2019–20*, 89.
86. FSCA, *Annual Report 2018–19*, 31.
87. Under section 2.1 of the Code of Conduct for Administrative FSPs in the FAIS Act, *bulking* means the aggregation by an administrative FSP of the following:
  - (a) Clients’ funds when buying or investing in financial products on behalf of clients, and the subsequent allocation of such financial products to each client separately in the records of the FSP
  - (b) The financial products belonging to clients when selling such financial products on their behalf, and the subsequent allocation of the proceeds of such sale to each client separately in the records of the FSP
88. [www.resbank.co.za/PrudentialAuthority](http://www.resbank.co.za/PrudentialAuthority)
89. [www.fsca.co.za](http://www.fsca.co.za)
90. Sections 26, 27, 76, and 77 of the FSR Act require the financial-sector regulators (defined to include the NCR and FSCA) to cooperate and collaborate when performing their functions in terms of financial-sector laws and the NC Act and to enter into one or more memorandums of understanding to give effect to such cooperation and collaboration.
91. National Treasury, Explanatory Policy Paper Accompanying the COFI Bill, 7.
92. An ADR agent is defined by the NC Act as a person providing services to assist in the resolution of consumer credit disputes through conciliation, mediation, or arbitration.
93. [www.ncr.org.za](http://www.ncr.org.za)
94. Department of Trade and Industry (South Africa), *Making Credit Markets Work: A Policy Framework for Consumer Credit* ([ncr.org.za/documents/pages/background\\_documents/Credit%20Law%20Review.pdf](http://ncr.org.za/documents/pages/background_documents/Credit%20Law%20Review.pdf)).
95. NC Act, part D, National and Provincial Cooperation.

96. US dollar equivalents of amounts in South African rand are based on an approximate exchange rate of \$1 = R 15 in December 2020.
97. [www.ncr.org.za/ncr-departments/complaints](http://www.ncr.org.za/ncr-departments/complaints)
98. NCR, *Annual Report 2018–19*, 28.
99. NC Act, section 13.
100. NC Act, section 26.
101. NC Act, section 27.
102. National Consumer Tribunal, *About National Consumer Tribunal: What We Do*. In 2018–19, the National Consumer Tribunal received 24,884 cases, of which 99.3 percent were debt-rearrangement applications. National Consumer Tribunal, *Annual Report 2018–19*, 12.
103. National Treasury, Explanatory Policy Paper Accompanying the COFI Bill.
104. National Treasury, Explanatory Policy Paper Accompanying the COFI Bill, 22.
105. National Treasury, Explanatory Policy Paper Accompanying the COFI Bill. Materials for public workshop on COFI Bill, February 22, 2019.
106. Sections 2 and 3 of the FSR Act define financial products and services..
107. For example, in Australia, claims handling by insurance companies was not included as a regulated activity until recent reforms to the Australian Corporations Law.
108. Part 2 of the COFI Bill sets out the application of the act to prudentially regulated financial groups and financial conglomerates.
109. COFI Bill, section 3.
110. The test in the COFI Bill as currently drafted is as a positive obligation on the applicant to demonstrate to the authority that it meets the fit-and-proper and other requirements.
111. COFI Bill, chapter 3.
112. COFI Bill, section 1.
113. COFI Bill, section 1.
114. COFI Bill, section 72(1)(c)(d).
115. COFI Bill, section 72(2)(c)(d).
116. COFI Bill, section 75(b)(c)(d).
117. COFI Bill, section 72(2)(c)(d).
118. [www.pfa.org.za](http://www.pfa.org.za)
119. But the COFI Bill proposes to remove these exclusions and to extend the PFA's jurisdiction to public-sector pension funds.
120. FSCA, Notice 443 of 2020, FSB Act, Levies on Financial Institutions.
121. <https://faisombud.co.za>
122. FSCA, Notice 443 of 2020, FSB Act, Levies on Financial Institutions.
123. [www.obssa.co.za](http://www.obssa.co.za)
124. [www.creditombud.org.za](http://www.creditombud.org.za)

125. The Credit Ombud says its membership includes
- About 70 percent to 80 percent of the non-bank credit providers;
  - All the large clothing and furniture retailers;
  - All of the members of the Large Non-Bank Lenders Association;
  - Twelve vehicle and housing finance bodies;
  - The 8 largest (of 33) credit bureaus registered with the NCR;
  - Certain subscribers to the credit bureaus; and
  - Telecommunications companies that contract with credit bureaus.
126. [www.ombud.co.za](http://www.ombud.co.za)
127. The LTI Ombud says its members cover 95.4 percent of the market by asset size, or 92.5 percent by premium income.
128. [www.osti.co.za](http://www.osti.co.za)
129. The STI Ombud says only seven short-term insurers that sell to the public are not members.
130. Lloyd's is an association of underwriters and funders ("names") incorporated under the UK Lloyd's Act of 1871 and based in London.
131. <https://web.jse.co.za>
132. The Banking, Credit, LTI, and STI Ombud schemes were approved on September 29, 2006. The JSE Ombud was approved on February 21, 2007.
133. Where the credit provider is a financial institution as defined in the FSOS Act, the ombud with jurisdiction can deal with the credit complaint. Where the credit provider is not a financial institution under the FSOS Act, the credit complaint may be dealt with by the NCR, an ADR agent, or relevant consumer court.
134. Fuller details in chapter 10.
135. Granted recognition as a recognized scheme under section 11 of the FSR Act.
136. NC Act approval as an ADR agent and an ombud with jurisdiction in terms of the NC Act for the resolution of disputes arising within the credit industry.
137. Main jurisdiction.
138. Backup jurisdiction.
139. The JSE is licensed to operate under the Financial Markets Act 19 of 2012 (FM Act).
140. Some complaints will be opened in one year but not closed until the next year. The figures reflect different financial years for each scheme and how they deal with timing issues in their complaint statistics.
141. In accordance with the requirements of the Pension Fund Act.
142. All JSE members are subject to the JSE complaint and dispute rules. Member numbers in each market are as follows (including some that are members of more than one market): equities, 50; equities derivative, 63; interest rate (bonds) and currency derivatives, 78; and commodities derivatives, 49.
143. This is the number of cases received in the year that went on to be considered. It includes cases that were referred to insurers under the transfer process but were not considered and processed until the next year.

144. Does not include recurring income disability benefits, annuities, and so forth.
145. Not possible to provide; calculations of benefits left to retirement fund to compute in terms of its rules.
146. The total amount of compensation does not include the value of awards made by the PFA or the value of awards made by the LTI Ombud relating to recurring income disability benefits, annuities, and so on.
147. [www.gov.za/sites/default/files/gcis\\_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf](http://www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf)
148. Prescription Act (Act 68 of 1969) ([www.gov.za/sites/default/files/gcis\\_document/201505/act-68-1969.pdf](http://www.gov.za/sites/default/files/gcis_document/201505/act-68-1969.pdf)).
149. [www.gov.za/sites/default/files/gcis\\_document/201409/a37-04.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/a37-04.pdf)
150. The Financial Sector Regulations of 2018 contain provisions about the advertising and recruitment process for the commissioner and deputy commissioners of the FSCA, but there do not appear to be any equivalent regulations concerning the appointment of the Ombud Council and Chief Ombud.
151. The FSR Act says *disqualified person* means a person who
- (a) Is engaged in the business of a financial institution or has a direct material financial interest in a financial institution, except as a financial customer;
  - (b) Is a member of the cabinet, a member of the executive council of a province, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature, or a member of a municipal council;
  - (c) Is an office bearer of, or is in a remunerated leadership position in, a political party;
  - (d) Has at any time been removed from an office or position of trust;
  - (e) Is, or has been subject to, debarment in terms of a financial-sector law;
  - (f) Is, or has at any time been sanctioned for, contravening a law relating to the regulation or supervision of financial institutions, or the provision of financial products or financial services or a corresponding law of a foreign jurisdiction;
  - (g) Is, or has at any time been, convicted of
    - (i) Theft, fraud, forgery, uttering of a forged document, perjury, or an offense involving dishonesty, whether in the republic or elsewhere, or
    - (ii) An offense in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), parts 1 to 4, or section 17, 20, or 21 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offense in terms of the law of a foreign country;
  - (h) Is, or has been, convicted of any other offense committed after the constitution came into effect, where the penalty imposed for the offense is or was imprisonment without the option of a fine;
  - (i) Is subject to a provisional sequestration order or is an unrehabilitated insolvent;
  - (j) Is disqualified from acting as a member of a governing body or a juristic person in terms of applicable legislation; or
  - (k) Is declared by the High Court to be of unsound mind or mentally disordered, or is detained in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002).

152. The FSR Act says, “Statutory ombud scheme means a scheme declared by a specific financial sector law to be a statutory ombud scheme,” which includes the Pension Funds Adjudicator and the FAIS Ombud.
153. Because of the large amount of relevant material on these issues in the context of South Africa, the assessment of effectiveness in this report is divided into effectiveness of scope (chapter 8) and effectiveness of interaction and powers (chapter 9).
154. One of the written responses was a collective response from 11 banks submitted through the BASA.
155. Any gaps created by differing definitions of what constitutes a complaint are considered in chapter 9.
156. Under section 1(3)(b) of the FAIS Act, it is not an intermediary service where a bank
  - Acts merely as a conduit between a client and another product supplier; or
  - Renders a service that is regulated by a law under which the bank is authorized as a financial institution.
157. [https://nationalgovernment.co.za/entity\\_annual/1875/2019-national-credit-regulator-\(ncr\)-annual-report.pdf](https://nationalgovernment.co.za/entity_annual/1875/2019-national-credit-regulator-(ncr)-annual-report.pdf)
158. Under section 1(3)(b) of the FAIS Act, it is not an intermediary service where an insurer renders a service that is regulated by a law under which the insurer is authorized as a financial institution.
159. Under section 1(3)(b) of the FAIS Act, it is not an intermediary service where an insurer renders a service that is regulated by a law under which the insurer is authorized as a financial institution.
160. The COFI Bill proposes to give the PFA jurisdiction.
161. Under section 1(3)(b) of the FAIS Act, it is not an intermediary service where a provider renders a service that is regulated by a law under which the provider is authorized as a financial institution.
162. But not for debit cards, as no credit is involved.
163. The COFI Bill proposes to give the PFA jurisdiction.
164. Taking the middle of the range for the Banking Ombud and extrapolating the Credit Ombud and STI Ombud figures for a full year.
165. The Credit Ombud does cover someone who has been refused credit and wants to complain about a lender’s failure to provide reasons or about adverse credit-bureau information.
166. [www.afca.org.au/media/1111/download](http://www.afca.org.au/media/1111/download)
167. [www.handbook.fca.org.uk/handbook/DISP/2/8.html](http://www.handbook.fca.org.uk/handbook/DISP/2/8.html)
168. Unlike the rest of financial services, where regulators police the sector and ombud schemes resolve cases on their individual merits. Mediation is easier because providers will admit fault to an ombud where they would fear to admit fault to a regulator, and they will make concessions in individual cases without fearing that it will be turned into a standard practice. And ombud decisions are demonstrably unaffected by prudential regulatory implications.
169. The terms of reference for this report exclude evaluating complaint handling by financial providers, apart from relevant interactions with the ombud system.
170. [www.gov.za/sites/default/files/gcis\\_document/201505/act-24-1956\\_1.pdf](http://www.gov.za/sites/default/files/gcis_document/201505/act-24-1956_1.pdf)  
The COFI Bill proposes to rename it the “Retirement Funds Act.”
171. [www.fsca.co.za/Notices/FSCA%20Conduct%20Standard%203%20of%202020%20\(BANKS\)-Banks.zip](http://www.fsca.co.za/Notices/FSCA%20Conduct%20Standard%203%20of%202020%20(BANKS)-Banks.zip)

172. See appendix E or the various complaint definitions.
173. International good practice suggests a minimum term of five years, with an existing ombud being told whether their term is to be renewed at least one year before the end of their current term.
174. Under the FSR Act, the recognition role passes to the Ombud Council. The criteria in section 196 of the FSR Act include whether the governing rules of an industry ombud scheme make adequate provision for monitoring and oversight of the operation of the scheme, including in respect of the terms and conditions of the engagement of the ombud, including remuneration and other benefits, and any action to terminate that engagement.
175. The Banking, Credit, LTI, and STI Ombud schemes.
176. <https://saubuntu.co.za>
177. Some of the amendments are not in force until April 1, 2022.
178. Section 21(2) of the FAIS Act, as amended by the FSR Act.
179. Section 22(1)(a) of the FAIS Act, as amended by the FSR Act.
180. Section 26 of the FAIS Act as amended by section 1A. The annotated version of the FAIS Act in the legislation section of the FSCA website says: “**Proposed amendment:** S. 26 to be repealed by s. 290 of Act 9/2017 w.e.f. a date to be determined by the Minister by notice in the Gazette.” The FSCA says that the form of the replacement provision has not yet been finalized.
181. Section 20(4).
182. From April 1, 2022. Until March 31, 2022, the commissioner of the FSCA is the accounting authority. Section 23(1) of the FAIS Act, as amended by the FSR Act.
183. Though, until April 30, 2021, the commissioner of the FSCA is the accounting authority and is advised by statutory and voluntary governance committees.
184. Some of the amendments to the FAIS Act under the FSR Act are not in force until April 1, 2022.
185. Some of the amendments to the PF Act under the FSR Act are not in force until April 1, 2022.
186. Section 30C(1) of the PF Act, as amended. The PFA says that, in practice, the recruitment process is conducted by the FSCA, with the minister signing off the appointment.
187. The FSCA says no such regulations have been made.
188. Section 30R(1) of the PF Act, as amended by the FSR Act.
189. Section 30S(1) of the PF Act, as amended by the FSR Act.
190. From April 1, 2022. Until March 31, 2022 the commissioner of the FSCA is the accounting authority. Section 30T(1) of the PF Act, as amended by the FSR Act.
191. Though, until April 30, 2021, the commissioner of the FSCA is the accounting authority and is advised by statutory and voluntary governance committees.
192. Though, until April 1, 2022, the commissioner of the FSCA is the accounting authority and is advised by statutory and voluntary governance committees. Section 23(1) of the FAIS Act, as amended by the FSR Act.
193. Though, until April 1, 2022, the commissioner of the FSCA is the accounting authority and is advised by statutory and voluntary governance committees. Section 30T of the PF Act, as amended by the FSR Act.

194. Yes, but the company informs us that in practice it is done by word of mouth.
195. For example, some nominated specifically to represent consumers and some nominated specifically to represent the financial industry.
196. Yes, but the requirement for a special majority gives the industry members (if they act together) a veto.
197. Yes but requires two-thirds majority.
198. Yes, but the requirement for a special majority gives the industry members (if they act together) a veto.
199. Appointed by the JSE on a case-by-case basis.
200. The adjudicator can employ staff and assign duties to them, but their pay must be approved by the minister.
201. Section 183 of the FSR Act requires an independent inquiry, whose report must be submitted to the National Assembly.
202. Approved by the Finance Minister from April 1, 2022. Until then, approval is by the commissioner of the FSCA. Section 22 of the FAIS Act, as amended by the FSR Act.
203. Approved by the Finance Minister from April 1, 2022. Until then, approval is by the commissioner of the FSCA. Section 30R(1) of the PF Act, as amended by the FSR Act.
204. Smaller banks pay a levy.
205. Larger banks pay fees based on the number of cases.
206. <http://documents1.worldbank.org/curated/en/732111536246467778/pdf/129778-WP-South-Africa-Retail-Banking-Diagnostic-Report.pdf>
207. As reported by the ombud schemes.
208. As per StatsSA census ([www.statssa.gov.za/publications/P0318/P03182018.pdf](http://www.statssa.gov.za/publications/P0318/P03182018.pdf)).
209. See chapter 1, section 1.2, for a fuller description of the role of a financial ombud system.
210. Section 30D of the PF Act and section 20 of the FAIS Act.
211. Relevant provisions requiring permission for legal representation include the Banking Ombud Rule 24.4, the Credit Ombud constitution clause 43.3.2, the JSE Equities Rule 11.100.9, and section 27(5) (a) of the FAIS Act.
212. Section 30K of the PF Act says that no party shall be entitled to legal representation at proceedings before the adjudicator.
213. For example:
  - Under section 27(5)(b) of the FAIS Act, the ombud must, in the first instance, explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties.
  - Under Rule 1.2(c) of the Banking Ombud terms of reference, the ombud should explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to both parties
214. This is dealt with further in chapter 11 (Accessibility).
215. A *premature complaint* is one where a complainant goes straight to the ombud scheme, before raising their complaint with the financial provider. See chapter 8 on referral of premature complaints.



216. The overriding principle is that of a fair hearing and absence of bias. The requirements of procedural fairness depend on the nature of the matters in issue and what is required to enable the parties to have a reasonable opportunity to present their cases in the relevant circumstances. Any requirements need to take into account the role of the ombud as an alternative to the formal court process and in providing an informal, timely, and cost-efficient means to resolve disputes.
217. JSE Equities Rule 11.100.16.
218. Under section 30L of the PF Act, the adjudicator is required to keep a permanent record of the proceedings relating to the adjudication of a complaint and the evidence given, and any member of the public may obtain a readable copy of the record on payment of a fee determined by the adjudicator. This is also discussed further in chapter 14 (Openness).
219. Office of the Ombud for Financial Services Providers (FAIS Ombud), *Manual for Access to Information*, in compliance with section 14 of the Promotion of Access to Information Act of 2000.
220. See chapter 1 (Role of the Financial Ombud System).
221. The Banking Ombud reports its figures based on the following categories: complaint fully upheld (17.75 percent); only proportion of complaint upheld (5.12 percent), complaint not upheld (72.01 percent).
222. This figure does not include the outcomes from complaints resolved by providers during the transfer process. Including transfer cases, the figure is 41 percent (LTI Ombud, *Annual Report 2019*, 15).
223. The FAIS Ombud in its annual report does not report on a complaint-uphold rate. Rather, it reports consumer satisfaction levels based on the customer survey forms it sends out for every closed complaint.
224. The PFA reports that, where there was a formal adjudicator decision, 88 percent were in favor of complainants (*Annual Report*, 3).
225. Section 43.3 of the constitution of the Credit Ombud requires members of the Credit Ombud to abide by the rulings of the ombud, subject to any appeal process that may be approved by the Credit Ombud Council—but no appeal process has been established by the council.
226. See chapter 4, section 4.3.
227. Under section 218 of the FSR Act, a decision subject to appeal to the Financial Services Tribunal includes a decision of a statutory ombud in terms of a financial-sector law in relation to a specific complaint by a person.
228. Under section 234(1) of the FSR Act, in proceedings on an application for reconsideration of a decision, the tribunal may set the decision aside and remit the matter to the decision maker for further consideration.
229. The Banking Ombud scheme's Rule 7.4 provides that, where a complainant does not agree with a recommendation, they can either seek redress in the courts or a request the ombud to make a final determination. Under Rule 7.5, one of the preconditions for the ombud making a ruling is that the complainant agrees to be bound by the ombud's decision, subject to the right of review by the review panel.
230. The rules of LTI Ombud and STI Ombud schemes make clear that an ombud decision is binding only on the member but not the complainant. This means the complainant preserves their right to seek redress in the courts.
231. In the LTI Ombud, the ombud appoints the appeal body with the consent of the parties. Only if agreement is not reached does the appointment go to the council.

232. Under the Banking Ombud scheme rules, this is captured under the provision for a test case in Rule 14. The ombud may, on the request of a bank or on his/her own initiative, refer a matter that may have important consequences for the banking industry in general or that may involve an important or novel point of law or a contentious banking practice or policy to the appeal body as a test case, in order to obtain a ruling.
233. A key reason in the case of the Banking Ombud is that the ombud rarely makes a formal ruling. We have been informed by the Banking Ombud that a ruling by the ombud is seen as an internal appeal mechanism from a recommendation subject to similar leave to review grounds as the appeals panel.
234. Credit complaints to the National Credit Regulator are subject to review by the National Credit Tribunal.
235. FSR Act, section 30D(2)(a).
236. [www.gov.za/sites/default/files/gcis\\_document/201409/a3-000.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/a3-000.pdf)
237. For example:
- Australian Financial Complaints Authority Rule C.2.2(f) ([www.afca.org.au/about-afca/rules-and-guidelines](http://www.afca.org.au/about-afca/rules-and-guidelines))
  - UK Financial Ombudsman Service Rule DISP 3.4.2 ([www.handbook.fca.org.uk/handbook/DISP/3/?view=chapter](http://www.handbook.fca.org.uk/handbook/DISP/3/?view=chapter))
238. As noted, the exception is the JSE Ombud.
239. Discussed further in chapter 13 (Efficiency).
240. Unless specifically referred to, the analysis in this chapter does not cover the JSE Ombud. That is because most complaints are resolved by the JSE's Market Regulation Division, and the JSE Ombud has handled only one case in the last three years.
241. See chapter 1, section 1.2, for a summary of the financial ombud process.
242. LTI Ombud, *Annual Report 2019*, 32.
243. While the PFA previously did not have referral process, it has recently commenced doing so.
244. The complainant has three weeks to provide the JSE Ombud with written details of their complaint. The other party then has three weeks to provide a written response to the statement of claim.
245. See chapter 9, section 9.4 (Referrals by Ombud Schemes to Providers), for a description of this process and the number of complaints involved for each ombud scheme.
246. For example, JSE Equities Rules, Rule 11.110.
247. FSCA, Notice 443 of 2020, FSB Act, Levies on Financial Institutions.
248. PFA, *Annual Report 2019–20*, 19.
249. A review of the openness of the ombud schemes is in chapter 14.
250. Reduced from 25 in November 2019.
251. 5,801, if transfer cases are included.
252. The Credit Ombud's annual review reports the average cost as R 3,250 per dispute.
253. This is calculated by dividing the total budget by the number of closed cases (full cases and reviews). It differs from the figure of R 4,086 on page 3 of the LTI Ombud's *Annual Review 2019*. That figure is calculated on the basis of 5,801 closed cases (which includes transferred cases, charged at 50 percent).

254. 157, if transfer cases are included.
255. 90.76 percent, if transfer cases are included.
256. PFA, *Annual Report 2018–19*. Of those case that were settled, 71 percent did so within six months. Of cases resolved by formal decision, 19.94 percent did so in six months.
257. Some of the schemes told us they had 100 percent compliance, though they did not report this.
258. All of the schemes say they can make such reports, but only some report publicly whether they do.
259. Under section 10(1) of the FSOS Act, one of the criteria for recognition was that their process enabled them to report to financial regulators matters that may be of interest to them.
260. [https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/iodsa\\_King\\_IV\\_Report\\_-\\_WebVersion.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/iodsa_King_IV_Report_-_WebVersion.pdf)
261. Such as new and emerging issues and data on numbers and types of cases received and resolved.
262. Section 177.
263. Sections 194 to 197.
264. Section 201.
265. Sections 198 to 200.
266. Section 202.
267. Section 205.
268. Section 206.
269. Section 208.
270. Section 214.
271. Section 211(1).
272. Section 209.
273. This problem is explained in chapter 8 (Effectiveness of Scope).
274. The Ombud Council’s section 211(1) power to designate one or more schemes does not apply where the activity is already covered by a statutory or industry scheme.
275. *Financial customer* means a person to, or for, whom a financial product, a financial instrument, a financial service, or a service provided by a market infrastructure is offered or provided, in whatever capacity, and includes (a) a successor in title of the person and (b) the beneficiary of the product, instrument, or service.
276. Such as an administrative financial penalty or, in a severe case, revocation of the provider’s authorization or license.
277. See chapter 8 for a more detailed assessment.
278. See chapter 9 for a more detailed assessment.
279. See chapter 10 for a more detailed assessment.
280. See chapter 11 for a more detailed assessment.
281. See chapter 12 for a more detailed assessment.
282. See chapter 13 for a more detailed assessment.

283. See chapter 14 for a more detailed assessment.
284. Such as new and emerging issues and data on numbers and types of cases received and resolved.
285. See chapter 15 for a more detailed assessment.
286. For example, before the Australian financial ombud system was consolidated, there were common dispute benchmarks and scheme approval criteria set by the financial regulator, along with a number of attempts at establishing a common entry point, including at one stage a single call center operated by the regulator. These arrangements did not result in consistent practices among the various schemes. Both consumer organizations and the regulator considered these had been largely unsuccessful and that the better response was to promote scheme rationalization. See the submissions by the Joint Consumer Groups and by the Australian Securities and Investments Commission (the financial regulator) to the Review of the Financial System External Dispute Resolution Framework, October 2016 (<https://treasury.gov.au/consultation/dispute-resolution-and-complaints-framework-issues-paper>).
287. <https://publicappointmentscommissioner.independent.gov.uk>
288. [www.legislation.gov.uk/ukpga/2000/8/schedule/17](http://www.legislation.gov.uk/ukpga/2000/8/schedule/17), paragraph 3(2)
289. [www.legislation.gov.uk/ukpga/2000/8/schedule/17](http://www.legislation.gov.uk/ukpga/2000/8/schedule/17), paragraph 4(2)
290. This is a corporate form already used by the Consumer Goods and Services Ombud.
291. For example, when the consolidated Financial Ombudsman Service was created in the United Kingdom, the existing Banking Ombudsman, Building Societies Ombudsman, Insurance Ombudsman, and Personal Investment Authority Ombudsman were all appointed also as ombuds in the new Financial Ombudsman Service and continued to fulfill both roles simultaneously while the transition from the old schemes to the new one was completed.
292. For example, when the consolidated Financial Ombudsman Service was created in the United Kingdom, the existing Banking Ombudsman, Building Societies Ombudsman, Insurance Ombudsman, and Personal Investment Authority Ombudsman were all appointed also as ombuds in the new Financial Ombudsman Service and continued to fulfill both roles simultaneously while the transition from the old schemes to the new one was completed.
293. A customer borrows from a lender. A guarantor is someone who gives the lender a guarantee to repay the loan if the customer fails to pay. A surety is someone who gives the lender a charge over an asset against which the lender can claim if the customer fails to pay. Neither a guarantor nor a surety is a customer of the lender.
294. All JSE members are subject to the JSE complaint and dispute rules. Member numbers in each market are as follows (including some that are members of more than one market): equities, 50; equities derivative, 63; interest rate (bonds) and currency derivatives, 78; commodities derivatives, 49.
295. Reduced from 25 in November 2019.
296. Number of people, whatever their job title, with power to make final decisions on cases—sometimes called an ombudsman, adjudicator, arbiter, or mediator.
297. Professionals, including the adjudicator and deputy adjudicator.
298. Number of staff members (other than ombuds) involved in answering enquiries, handling complaints, and/or reviewing cases.
299. Including the executive assistant to the deputy adjudicator.

300. Number of staff members not involved in casework, such as IT, human resources, finance, media, and other support functions.
301. Enquiry = a request for information or assistance that does not meet the definition of complaint under the scheme's rules.
302. If the Banking Ombud establishes that a matter is for another ombud/agency, it responds to the complainant, forwards the matter to the other ombud/agency, and requests that they correspond directly with the complainant. Complaints received that do not fall within jurisdiction are not opened as formal cases and are not counted in the numbers of complaints received/opened.
303. Complaint = a specific complaint (expression of dissatisfaction) against a named FSP (whether or not in jurisdiction).
304. The total for the JSE Market Regulation Department was 88 complaints received and 84 closed. Only one complaint was referred to the JSE Ombud.
305. Complaints that are referred to FSPs because the complainant has not first complained to the FSP.
306. The FAIS Ombud says that its process does involve sending complaints to the FSP where the FSP has not had a chance to review it, but it does not keep statistics on these numbers. It does not record this because Rule 6(b) of its Rules of Proceedings allows it to fulfill this role on the complainant's behalf. Under the FAIS Ombud rules, a referral means a complaint that does not fall within the FAIS Ombud's jurisdiction but is sent to the FSP—for example, a cancellation request, withdrawal request, or any service sent to the ombud instead of the FSP.
307. CGSO = Consumer Goods and Services Ombud.
308. GEPP = Government Employees Pension Fund.
309. MIO = Motor Industry Ombud.
310. CMS = Council of Medical Schemes.
311. Case = a complaint that falls within the ombud scheme's jurisdiction/scope and the scheme attempts to resolve.
312. This is the number of cases received in the year that went on to be considered. It includes cases referred to insurers under the transfer process but were not considered and processed until the next year.
313. Opened by the JSE Market Regulation Department.
314. Closed by the JSE Market Regulation Department. Only one complaint was referred to the JSE Ombud.
315. Seventy-eight days (the period for submission requirements by the complainant and the provider) + 12 days (for the ombud to reach a decision) = 90 days.
316. Settled = resolved by an outcome agreed by both parties facilitated by the ombud scheme (through mediation, conciliation, or other means).
317. All formal cases opened fall within the time frames above, whether the bank settled it after the Banking Ombud opened a formal case or whether a finding was made.
318. An example of how the different bases of data classification by different schemes prevent accurate comparisons.
319. FAIS Ombud stats are not currently maintained as detailed in questions 934–938.
320. [www.gov.za/sites/default/files/gcis\\_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf](http://www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf)

321. [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good\\_Practices\\_for\\_Financial\\_CP.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good_Practices_for_Financial_CP.pdf)
322. [www.oecd.org/regreform/sectors/48892010.pdf](http://www.oecd.org/regreform/sectors/48892010.pdf)
323. [www.oecd.org/finance/financial-education/G20EffectiveApproachesFCP.pdf](http://www.oecd.org/finance/financial-education/G20EffectiveApproachesFCP.pdf)
324. [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial\\_Ombud\\_Vol1\\_Fundamentals.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombud_Vol1_Fundamentals.pdf)
325. International Network of Financial Services Ombudsman Schemes ([www.networkfso.org](http://www.networkfso.org)).
326. [www.networkfso.org/introduction.html](http://www.networkfso.org/introduction.html)
327. [www.networkfso.org/how-to-guides.html](http://www.networkfso.org/how-to-guides.html)
328. European Union.
329. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998H0257>
330. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>
331. [www.ombudassociation.org](http://www.ombudassociation.org)
332. [www.ombudassociation.org/docs/BIOAGovernanceGuideOct09.pdf](http://www.ombudassociation.org/docs/BIOAGovernanceGuideOct09.pdf)
333. [www.ombudassociation.org/docs/BIOAGoodComplaintHandling.pdf](http://www.ombudassociation.org/docs/BIOAGoodComplaintHandling.pdf)
334. [https://treasury.gov.au/sites/default/files/2019-03/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf)
335. <https://treasury.gov.au/publication/key-practices-for-industry-based-customer-dispute-resolution>
336. The proposed Conduct of Financial Institutions Bill (COFI Bill) defines a complaint as “*an expression of dissatisfaction about a financial product or service where the financial service provider has: not complied with an agreement, a law, a rule or a code of conduct; engaged in maladministration or some wilful or negligent action or failure resulting in harm, prejudice, distress or substantial inconvenience; or treated the person unfairly.*”
337. [www.gov.za/sites/default/files/gcis\\_speech/201812/Conduct%20of%20Financial%20Institutions%20Bill\\_0.pdf](http://www.gov.za/sites/default/files/gcis_speech/201812/Conduct%20of%20Financial%20Institutions%20Bill_0.pdf)
338. For this purpose, someone “associated with the financial industry” means anyone who
- Works in a financial service provider, or has done so in the previous three years;
  - Works in an association of FSPs or has done so in the previous three years; or
  - Has (or has a close family member with) a beneficial interest of more than 5 percent in an FSP.
339. [www.gov.za/documents/financial-sector-regulation-act-9-2017-english-sepedi-22-aug-2017-0000](http://www.gov.za/documents/financial-sector-regulation-act-9-2017-english-sepedi-22-aug-2017-0000)
340. [www.gov.za/sites/default/files/gcis\\_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf](http://www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf)
341. Number of people, whatever their job title, with power to make final decisions on cases—sometimes called an ombudsman, adjudicator, arbiter, or mediator.
342. Number of staff members (other than ombuds) involved in answering enquiries, handling complaints, and/or reviewing cases.
343. Number of staff members not involved in casework, such as IT, human resources, finance, media, and other support functions.

344. Enquiry = a request for information or assistance that does not meet the definition of complaint under the scheme's rules.
345. Complaint = a specific complaint (expression of dissatisfaction) against a named FSP (whether or not in jurisdiction).
346. Complaints that are referred to FSPs because the complainant has not first complained to the FSP.
347. Case = a complaint that falls within your scheme's jurisdiction/scope and that your scheme attempts to resolve.
348. Settled = resolved by an outcome agreed by both parties facilitated by your scheme (through mediation, conciliation, or other means).
349. [www.gov.za/documents/financial-sector-regulation-act-9-2017-english-sepedi-22-aug-2017-0000](http://www.gov.za/documents/financial-sector-regulation-act-9-2017-english-sepedi-22-aug-2017-0000)
350. [www.resbank.co.za/PrudentialAuthority](http://www.resbank.co.za/PrudentialAuthority)
351. [www.resbank.co.za](http://www.resbank.co.za)
352. [www.fsca.co.za](http://www.fsca.co.za)
353. National Treasury, Explanatory Policy Paper Accompanying the COFI Bill, 7.
354. Banking Ombud, *Annual Report 2019*; Brochure on Stages of the Complaints Resolution Procedure; Terms of Reference, Part 2, Operational Procedures.
355. It is set as a target requirement for the adjudication staff. However, this is not always possible, as caseloads fluctuate.
356. Credit Ombud, Terms of Reference; "Process Flow-CI Matters" (diagram), "Process Flow-NBC Matters" (diagram), and "Complaints Resolution Procedure" (diagram) in *Process Flow: Internal Directives on Processes and Procedures* (July 12, 2020).
357. The Credit Ombud retains statistics on the referrals made. A "general enquiry" number is generated for the referral.
358. LTI Ombud, Rules; Procedures Manual; "Process Flow Map" (diagram); *Complaints about Long Term Insurance* (brochure); Internal Document on Quality Control Procedures.
359. LTI Ombud, *Annual Report 2019*, 10.
360. LTI Ombud, *Annual Report 2019*, 10.
361. STI Ombud, Terms of Reference; "Complaint-Handling Process" (diagram); Process Manual; Training Manual; Workflow (Homeowners); Workflow (Motor); *Complaints Process* (brochure).
362. The STI transfer process commenced at the time of its soft merger with the LTI Ombud.
363. JSE Equities Market Rules, Section 11, Complaints and Disputes.
364. FAIS Ombud, *Complaints Procedure Manual*, Version 5, October 2016; Rules on Proceedings of the Office of the Ombud for Financial Services Providers; FAIS Act; "How to Complain, Complaints Handling Process" (graphic).
365. FAIS Ombud, *Complaints Procedure Manual*, Version 5, October 2016.
366. PFA, Case Management Workflow Document, August 2019; PF Act; Complaints Procedure Brochure, Procedures for Lodging a Complaint.
367. Section 30G(d) of the PF Act allows the PFA to join a party at any stage before finalizing a case.

368. In respect of the Ombud Council:

- This change [3A] is needed soon, so the Ombud Council is ready to recognize the NFO.
- Other changes [5C] could be made a little later if incorporating them soon would delay this change.

369. In respect of the PFA:

- This change [3B] is needed soon, before the work of the FAIS Ombud is taken over by the NFO.
- Other changes [5B] could be made a little later if incorporating them soon would delay this change.

370. Could be done at an earlier stage if the legislative timetable allows.

371. Could be done at an earlier stage if the legislative timetable allows.

372. Could be done at an earlier stage if the legislative timetable allows.









