

SCHEDULE 1: CRITERIA

(A) INTRODUCTION

The core role of an Ombudsman is to investigate and resolve, determine or make recommendations with regard to complaints against those whom the Ombudsman is empowered to investigate by the exercise of powers and in accordance with procedures described in these criteria.

The term Ombudsman should only be used if six key criteria are met. Those criteria are independence of the Ombudsman from those whom the Ombudsman has the power to investigate, accessibility, fairness, public accountability, effectiveness and efficiency.

For the purposes of determining ANZOA membership, ANZOA will take into account whether an applicant constitutes a 'competing Ombudsman' to an existing Ombudsman (who is also an existing Member of ANZOA).

The decision as to whether the applicant is a 'competing Ombudsman' or an 'overlapping Ombudsman' will be based on a consideration of all the information provided by the applicant, any information otherwise available to ANZOA and in all of the circumstances. This factor will be considered in determining whether an applicant should be accepted by ANZOA. Any such decision will solely be made by the ANZOA Executive.

Ombudsmen maintain offices staffed by appropriately qualified staff to assist in the discharge of their functions, under delegation.

Detailed criteria which should, in the longer term, be achieved by all recognised Ombudsman and their offices are all set out in part B. While the criteria are based largely on the Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes³, they also incorporate criteria considered important by the Association, such as the office being not-for-profit.

Given the considerable range of Ombudsman offices in the public and private sectors and the variations in their constitution, jurisdiction, powers and accountability, the detailed criteria need to be interpreted with sufficient flexibility to encompass those variations.

Independence, for example, may be achieved in several ways. Hence, in the private sector the body which appoints the Ombudsman and to whom the Ombudsman reports, can be regarded as independent, provided that those of its members who are representatives of organisations subject to the Ombudsman's jurisdiction, constitute a minority of the membership.

Initially recognition of existing offices will be dependent on whether, broadly speaking, they meet the key criteria; it will not be withheld if, in some respects, the detailed

³ *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, Department of Industry Science & Technology, 1997

criteria are not met. However, over time it is expected that the constitution of all offices would be developed to the extent necessary to meet the detailed criteria. For example, in the longer term the power by those subject to investigation to veto the proposed appointment or reappointment of an Ombudsman should, where it exists, be removed. In due course, it is expected that in the private sector all, or virtually all, companies in an industry with one or more Ombudsman/men should participate in that external dispute resolution arrangement even though in the short term, especially when an Ombudsman scheme is first established, a lesser number of companies may participate.

The decision as to whether an Ombudsman or their office is recognised as meeting the key criteria will be made by the Executive Committee. The Executive Committee will also consider according to the rules which Ombudsmen or their offices meet the detailed criteria in full and which do not. In respect of the latter, the Executive Committee will in due course review its initial recognition, when requested to do so, having regard to the extent to which progress has been achieved towards meeting the detailed criteria in full.

(B) DETAILED CRITERIA

1. ACCESSIBILITY

Principle:

The office makes itself readily by promoting knowledge of its existence, being easy to use, not-for-profit, and having no cost barriers.

Purpose:

To promote access to the scheme on an equitable basis.

Key Practices:

Awareness/Promotion

- The office⁴ seeks to ensure that all customers/constituents of scheme members are aware of its existence.
- The scheme promotes its existence in the media or by other means.
- The scheme produces readily available material in simple terms explaining:
 - how to access the scheme
 - how the scheme works
 - the major areas with which the scheme deals, and
 - any restrictions on the scheme's powers.
- The scheme requires scheme members to inform their customers/constituents about it.
- The scheme ensures that information about its existence, procedures and scope is available to customers/constituents through scheme members:
 - when a scheme member responds to a customer/constituent's complaint, and

⁴ 'Office' refers to a person or organisation providing external dispute resolution services. The type of office which is set up will differ according to the size and nature of the industry in which it operates.

- when customers/constituents are not satisfied in whole or in part with the outcome of the internal complaints mechanism of a scheme member, when the scheme member refuses to deal with a complaint, or when the time period within which the internal complaints mechanism⁵ is expected to produce an outcome has expired, whichever first occurs.
- The scheme promotes its existence in such a way as to be sensitive to disadvantaged complainants and those with special needs.

Access

- The scheme seeks to ensure nation-wide access to it.⁶
- The scheme provides appropriate facilities and assistance for disadvantaged complainants and those with special needs.
- Complainants can make initial contact with the scheme orally or in writing but the complaint must ultimately be reduced to writing.⁷
- The terms of reference of the scheme are expressed clearly.

Cost

- Complainants not pay any application or other fee or charge before a complaint is dealt with by the scheme, or at any stage in the process.

Staff Assistance

- The scheme's staff have the ability to handle complaints and are provided with adequate training in complaints handling.
- The scheme's staff explain to complainants in simple terms:
 - how the scheme works
 - the major areas it deals with
 - any restrictions on its powers, and
 - the timelines applicable to each of the processes in the scheme.
- The scheme's staff assist complainants to subsequently reduce a complaint to writing, where complainants need assistance to do so.

Use

- The scheme's processes are simple for complainants to understand and easy to use.
- The scheme provides for a complainant's case to be presented orally or in writing at the determination stage, at the discretion of the Ombudsman.
- The scheme provides for complainants to be supported by another person at any stage in the scheme's processes.

Non-adversarial Approach

- The scheme uses appropriate techniques including conciliation, mediation and negotiation in attempting to settle complaints.⁸

⁵ An 'internal complaints mechanism' refers to the system set up within an organisation to handle complaints by its customers/constituents.

⁶ Maximising access to the scheme could include measures such as providing toll free telephone access.

⁷ In most cases the staff of a scheme will help a complainant reduce a complaint to writing where the complainant requires assistance to do so.

⁸ While the focus of the scheme is mainly on alternative dispute resolution, it also has the function of arbitrating disputes which cannot be resolved by alternative means. The alternative dispute resolution techniques listed here are used before arbitration is considered. Initially, customers are encouraged to discuss

- The scheme provides for informal proceedings, which discourage a legalistic, adversarial approach at all stages in the scheme's processes.

Legal Representation

- The scheme discourages the use of legal representatives before the Ombudsman except in special circumstances.
- The scheme provides the opportunity for both parties to be legally represented where one party is so allowed.
- The scheme provides for the scheme member to pay the legal costs of complainants where the scheme member is the first party to request to be legally represented and the Ombudsman agrees to that request.

2. INDEPENDENCE

Principle:

The decision-making process and administration of the scheme are independent from scheme members.

Purpose:

To ensure that the processes and decisions of the scheme are objective and unbiased and are seen to be objective and unbiased.

Key Practices:

The Ombudsman

- The Ombudsman is responsible for the determination of complaints.
- The Ombudsman is appointed to the scheme for a fixed term, of sufficient duration so as not to undermine independence.
- The method of appointment should be a matter of public knowledge.
- The appointment must not be subject to premature termination, other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated, although the nature of the grounds may vary from scheme to scheme. Those subject to investigation by the Ombudsman should not be entitled to exercise the power to terminate the Ombudsman's appointment, but this does not exclude their minority representation on the body, which is authorised to terminate.
- The remuneration of the Ombudsman should not be subject to suspension, or reduction, by those subject to investigation, but this does not exclude their minority representation on the body authorised to determine it.
- The Ombudsman is not selected directly by scheme members, and is not answerable to scheme members for determinations.⁹

their complaint with the scheme member and use any internal complaints mechanism that is available. Schemes are then encouraged to attempt to settle complaints before they get to the Ombudsman. The scheme does not have to use all of the listed alternative dispute resolution techniques nor in this particular order, but the ones cited in this key practice are recognised techniques.

⁹ Where the scheme consists, for example, of a panel of individuals, only the chair, or the individual who controls the decision-making process, is required to be independent of industry or consumer interests and be appointed by the

- The independence of the Ombudsman is not compromised by any current or previous employment or similar relationship, or other actual or perceived conflict between the role of Ombudsman and any other role or activity. For example:
 - a. the Ombudsman must have no current employment or similar relationship with a scheme member or relevant consumer representative organisation
 - b. the Ombudsman must have no other avoidable relationship¹⁰, outside the role of Ombudsman, with a scheme member or relevant consumer representative organisation

Where the Ombudsman has a previous employment or other similar relationship with a scheme member or relevant consumer representative organisation then, as a general rule, the Ombudsman will be precluded from membership of ANZOA for a period of three years from the time that the employment or similar relationship or other actual or perceived conflict of interest ended ('the exclusion period'). A shorter or longer exclusion period may be warranted in some circumstances, having regard to:

- a. the nature, including seniority, of the previous employment or similar relationship or other actual or perceived conflict of interest
- b. the time that has passed since the employment or similar relationship or other actual or perceived conflict of interest ended
- c. any other relevant matter.

Staff

- The scheme's staff are not selected directly by scheme members, and are not answerable to scheme members for the operation of the scheme.

Overseeing Entity

- There is a separate entity set up formally to oversee the independence of the scheme's operation.¹¹ The entity has a balance of consumer, industry and, where relevant, other key stakeholder interests.
- Representatives of consumer interests on the overseeing entity are:
 - a. capable of reflecting the viewpoints and concerns of consumers and
 - b. persons in whom consumers and consumer organisations have confidence.
- As a minimum the functions of the overseeing entity¹² comprise:
 - a. appointing or dismissing the Ombudsman
 - b. recommending or approving the scheme's budget
 - c. receiving complaints about the operation of the scheme¹³

entity which oversees the independence of a scheme's operation. Where the scheme decision-maker consists of more than one individual, the chair ensures the independence of the decision-making. This allows for the relevant industry to be represented on the decision-making entity, as long as a balance between consumers and industry is maintained.

¹⁰ An example of an unavoidable relationship may include where the *Ombudsman* is a consumer of an essential service provided by a scheme member.

¹¹ An example of an entity which formally oversees the independence of a scheme could be a council or other body usually consisting of an independent chair, consumer member or members, industry member or members and, where relevant, other stakeholder members or members. Other types of overseeing entities are not precluded as long as they allow for the relevant independence or a balance of competing interests.

¹² Suitable consumer representatives can be ascertained by a number of methods, including the relevant consumer organisation providing a nominee, advertising for representatives, or the relevant consumer affairs agency or Minister responsible for consumer affairs nominating a representative. Suitable industry and other stakeholder representatives can be sought from the relevant industry association or stakeholder respectively.

- d. recommending and being consulted about any changes to the scheme's terms of reference
- e. receiving regular reports about the operation of the scheme, and
- f. receiving information about, and taking appropriate action in relation to, systemic industry problems referred to it by the scheme.

Funding

- The scheme has sufficient funding to enable its caseload and other relevant functions necessary to fulfil its terms of reference to be handled in accordance with these criteria.

Terms of Reference

- Changes to the terms of reference are made in consultation with relevant stakeholders, including scheme members, industry and consumer organisations and government.

3. FAIRNESS

Principle:

The scheme produces decisions that are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

Purpose:

To ensure that the decisions of the scheme are fair and are seen to be fair.

Key Practices:

Determinations

- The Ombudsman bases determinations¹⁴ on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.

Procedural Fairness

- The scheme's staff advise complainants of their right to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or with the Ombudsman's determination.
- Both parties can put their case to the Ombudsman.
- Both parties are told the arguments, and sufficient information to know the case, of the other party.
- Both parties have the opportunity to rebut the arguments of, and information provided by, the other party.
- Both parties are told of the reasons for any determination.
- Complainants are advised of the reasons why a complaint is outside jurisdiction or is otherwise excluded.

¹³ The receipt of complaints about the scheme's operation (by the entity which oversees the independence of a scheme's operation) does not extend to receiving appeals against the determinations of the Ombudsman.

¹⁴ The term 'determinations' is used to refer to the final decision made by the Ombudsman when determining a complaint. The term 'decisions' is used to refer to the decisions made by the scheme's staff.

Provision of Information to the Ombudsman

- The Ombudsman encourages, but cannot compel, complainants to provide information relevant to a complaint.
- The Ombudsman can demand that scheme members provide all information which, in the Ombudsman's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is owed¹⁵, or unless it contains information which the scheme member is prohibited by law from disclosing.

Confidentiality

- Where a scheme member provides information that identifies a third party, the information may be provided to the other party with deletions, where appropriate, at the discretion of the Ombudsman.
- The scheme ensures that information provided to it for the purposes of resolving complaints is kept confidential, unless disclosure is required by law or for any other purpose specified in these criteria.
- Parties to a complaint agree not to disclose information gained during the course of any mediation, conciliation or negotiation to any third party, unless required by law to disclose such information.

4. ACCOUNTABILITY

Principle:

The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic problems.¹⁶

Purpose:

To ensure public confidence in the scheme and allow assessment and improvement of its performance and that of scheme members.

Key Practices:

Determinations

- The scheme regularly provides written reports of determinations¹⁷ to scheme members and any interested bodies for the purposes of:
 - a. educating scheme members and consumers, and
 - b. demonstrating consistency and fairness in decision-making.

¹⁵ Where a duty of confidentiality or privacy is owed to a third party in relation to information sought by the Ombudsman, the scheme members can seek the permission of the third party to release that information to the Ombudsman in full or with deletions as appropriate.

¹⁶ Systematic problems can refer to issues or trends arising either out of many complaints about one scheme member or out of many complaints (which are essentially similar) about more than one scheme member.

¹⁷ Written reports of determinations can consist of a concise summary of an Ombudsman's determination and reasons for so determining. They do not necessarily need to include all the evidence, arguments and reasoning of each complaint. It is not envisaged that written reports would be provided of all determinations made by the Ombudsman. The determinations that are reported should be left to the Ombudsman's discretion. It is not envisaged that written reports would necessarily be provided of other decisions (apart from determinations) made by the scheme.

- Written reports of determinations do not name the parties involved.

Reporting

- The scheme publishes a detailed and informative annual report containing specific statistical and other data about the performance of the scheme, including:
 - a. information about how the scheme works
 - b. the number and types of complaints it receives and their outcome
 - c. the time taken to resolve complaints
 - d. any systemic problems arising from complaints
 - e. examples of representative case studies
 - f. information about how the scheme ensures equitable access
 - g. a list of scheme members supporting the scheme, together with any changes to the list during the year
 - h. where the scheme's terms of reference permit, the names of those scheme members which do not meet their obligations as members of the scheme,¹⁸ and
 - i. information about new developments or key areas in which policy or education initiatives are required.
- The annual report is distributed to relevant stakeholders and otherwise made available upon request.
- The Ombudsman should be entitled in that report, or elsewhere, to publish anonymised reports of investigations.

5. EFFICIENCY

Principle:

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Purpose:

To give complainants and scheme members confidence in the scheme and to ensure the scheme provides value for its funding.

Key Practices:

Appropriate Process or Forum

- The scheme deals only with complaints which are within its terms of reference and have not been dealt with, or are not being dealt with, by another dispute resolution forum¹⁹ and:

¹⁸ The scheme should state in its terms of reference whether it will disclose the names of schemes members which do not meet their obligations under the scheme. Examples of where a scheme member does not meet its obligations under the scheme will include where it does not provide information as and when requested, or where it does not comply with a determination made under the scheme.

¹⁹ Complaints that have been made to one scheme, but are found to be more appropriately dealt with by another scheme, can be dealt with by the latter scheme. It is where a complaint has been substantially considered by one scheme that a complainant is discouraged from forum-shopping.

- a. which have been considered, and not resolved to the complainant's satisfaction, by a scheme member's internal complaints resolution mechanism, or
 - b. where a scheme member has refused, or failed within a reasonable time, to deal with a complaint under its internal complaints resolution mechanism.
- The scheme has mechanisms and procedures for referring relevant complaints to other, more appropriate, fora.
- The scheme has mechanisms and procedures for referring systemic problems, that become apparent from complaints, to relevant scheme members.
- The scheme excludes vexatious and frivolous complaints, at the discretion of the Ombudsman.

Tracking of Complaints

- The scheme has reasonable time limits set for each of its processes that facilitate speedy resolution without compromising quality decision-making.
- The scheme has mechanisms to ensure that the time limits are complied with as far as possible.
- The scheme has a system for tracking the progress of complaints.
- The scheme's staff keep the parties informed about the progress of their complaint.

Monitoring

- The scheme sets objective targets against which it can assess its performance.
- The scheme keeps systematic records of all complaints and enquiries, their progress and their outcome.
- The scheme conducts regular reviews of its performance.
- The scheme's staff seek periodic feedback from the parties about the parties' perceptions of the performance of the scheme.
- The scheme reports regularly to the overseeing entity on the results of its monitoring and review.

6. EFFECTIVENESS

Principle:

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Purpose:

To promote confidence in the scheme and ensure that the scheme fulfills its role.

Key Practices:

Coverage

- The scope of the scheme and the powers of the Ombudsman are clear.
- The scope of the scheme (including the Ombudsman's powers) is sufficient to deal with:
 - a. the vast majority of relevant complaints and the whole of each such complaint, and
 - b. customer complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in

the relevant industry.²⁰

- The Ombudsman has the power to make monetary awards of sufficient size and other awards (but not punitive damages) as appropriate.

Systemic Problems

- The scheme has mechanisms for referring systemic problems to the overseeing entity (where referral to the scheme member or members under key practice 5.3 does not result in the systemic problem being adequately addressed) for appropriate action.

Scheme Performance

- The scheme has procedures in place for:
 - a. receiving complaints about the scheme, and
 - b. referring complaints about the scheme to the overseeing entity for appropriate action.
- The scheme responds to any recommendations of the overseeing entity in a timely and appropriate manner.

Internal Complaints Mechanisms

- The scheme requires scheme members to set up internal complaints mechanisms.²¹
- The scheme has the capacity to advise scheme members about their internal complaints mechanisms.

Compliance

- The scheme has mechanisms to encourage scheme members to abide by the rules of the scheme.²²
- The determinations of the Ombudsman are binding on the scheme member if complainants accept the determination.

Independent Review

- The operation of the scheme is reviewed within three years of its establishment, and regularly thereafter, by an independent party commissioned by the overseeing entity.
- The review, undertaken in consultation with relevant stakeholders, includes:
 - a. the scheme's progress towards meeting these criteria
 - b. whether the scope of the scheme is appropriate
 - c. scheme member and complainant satisfaction with the scheme
 - d. assessing whether the dispute resolution processes used by the scheme are just and reasonable
 - e. the degree of equitable access to the scheme, and
 - f. the effectiveness of the terms of reference.
- The results of the review are made available to relevant stakeholders.

²⁰ Because the loss arising from the determination of a complaint may vary, the criteria do not specify a monetary limit above which complaints are excluded from the scheme.

²¹ The Standards Australia Standard on Complaints Handling AS 4269-1995 and Guide to the Prevention, Handling and Resolution of Disputes (AS 4608 - 1999) can assist scheme members to set up appropriate internal complaints mechanisms.

²² Mechanisms for encouraging scheme members to abide by the rules of the scheme could include contractual obligations which a scheme member enters into when joining the scheme or naming in annual reports or otherwise those scheme members which do not abide by the rules of the scheme.

INFO Network: Effective approaches to fundamental principles

September 2014

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

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

More information at www.networkfso.org

1 Introduction

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

Purpose

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

Fundamental principles

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

Effective approaches

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

Terminology

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

Fundamental principle

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

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

Effective approaches

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

Constitution

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

Resolving cases

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

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

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

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

Appointment and terms

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

Staff and resources

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

Governance body

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

Fundamental principle

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

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

Effective approaches

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

Basics

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

Jurisdiction

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

Processes

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

Powers

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

Status of decisions

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

Confidentiality

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

Publication

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

4 Accessibility

Fundamental principle

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

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

Effective approaches

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

Financial businesses

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

Financial ombudsman scheme website

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

Other sources of information

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

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

Communication

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

Free for complainants

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

Access to court

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

5 Effectiveness

Fundamental principle

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

- 5.1 There should be:
- a clear definition of what constitutes a complaint; and
 - clear obligations on financial businesses to deal with complaints fairly and promptly.
- 5.2 Financial ombudsman schemes should:
- have a flexible and informal process (where parties do not need professional advisers);
 - have skilled decision-makers; and
 - be properly resourced.

Effective approaches

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

Obligations for financial businesses

- 5.3 What constitutes a complaint is clear, and documented. For example:
- can it be any oral/written expression of dissatisfaction; or
 - does it have to be a formal complaint in writing?
- 5.4 Financial businesses within the financial ombudsman scheme's jurisdiction are required to:
- have an accessible, effective and fair internal complaints process, which is published;
 - issue a written response to a complaint, with reasons, within a specified time;
 - tell complainants that, if they are still dissatisfied, they can go to the ombudsman scheme;
 - have a single person with overall responsibility for the handling of complaints;
 - respond promptly to communications from the ombudsman scheme;
 - provide information and documents requested by the ombudsman scheme; and
 - comply promptly with the ombudsman scheme's decisions.

Informal and flexible process

- 5.5 The financial ombudsman scheme has an informal and flexible process, so that neither party needs a lawyer or advisor (though parties are not prohibited from using a lawyer/adviser if they want to).
- 5.6 The financial ombudsman scheme:
- handles enquiries, to resolve some problems before they turn into full-blown disputes;
 - takes an active role in deciding what evidence is required and calling for it;
 - obtains expert reports when these are necessary;
 - uses informal mediation to reach a fair settlement, where this is possible and appropriate; and
 - issues a formal decision in cases that are not settled.

Information, advice and training

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

Knowledge and skills

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

Financial ombudsman resources

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

6 Fairness

Fundamental principle

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

6.1 The financial ombudsman scheme should:

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

Effective approaches

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

Disputes not handled

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

At the outset

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

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

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

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

and secures the complainant's specific agreement to proceed.

Due process

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

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

Prompt and impartial

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

Accepting a settlement or decision

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

7 Transparency and accountability

Fundamental principle

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

7.1 Financial ombudsman schemes should:

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

Effective approaches

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

Consultation

7.2 The financial ombudsman scheme consults publicly about:

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

Report

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

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

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

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

7.5 The report also includes:

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

- 7.6 The report should make clear whether the financial ombudsman scheme provides information directly to any financial regulator about any systemic or significant problems identified in:
- the financial system; and/or
 - individual financial businesses.
- 7.7 The report is made publicly available:
- on the financial ombudsman scheme's own website;
 - in print; and
 - in any other way appropriate in the relevant country.

Finance

- 7.8 The financial ombudsman scheme:
- publishes its annual accounts; and
 - has appropriate internal controls to demonstrate financial probity.

Service quality

- 7.9 The financial ombudsman scheme has a robust mechanism for:
- reviewing the quality of the service it provides; and
 - handling complaints about service quality.
-

APPENDIX F

SUGGESTED CONTENT FOR A BOARD CHARTER

A charter of duties to assist the directors to ensure FSCL meets its purpose and adheres to its principles could include the following:

- setting performance standards, sufficient to allow external parties to readily determine if FSCL is providing an effective complaints resolution service, against which the performance of FSCL will be measured. The performance standards may include:
 - Total time to close cases
 - Cost per case
 - Complainant satisfaction
 - Participant satisfaction
 - Awareness in the community and accessibility
 - Reporting - compliance reporting complete, accurate and on time.
- giving any assistance it considers necessary to the CEO concerning the performance of the CEO's duties
- considering possible amendments to the Terms of Reference on its own motion and receiving and considering all recommendations for amendments from the CEO and participants and others??
- investigating complaints about the operation of FSCL
- monitoring FSCL's operations on a continuing basis and reviewing its operation and performance at least annually
- taking actions to improve the performance of FSCL where reports suggest that is necessary
- receiving information about, and taking appropriate action in relation to, systemic industry problems referred to it by the CEO
- ensuring participants provide an effective in-house complaints handling process
- receiving at its annual meeting and, if considered appropriate, approving the annual

report of the CEO for the Board's previous Financial Year

- reporting annually on all breaches of the ToR by participants
- monitoring compliance with the ToR by participants using a variety of means (including, for example, mystery shopper surveys)
- considering the annual business plan proposed by the CEO
- undertaking an annual review of the strategic plan
- publishing, with the CEO, an annual report in relation to the preceding Financial Year containing:
 - (a) information about how the FSCL ensures that it meets its purposes; and
 - (b) a list of numbers of participants in different categories of business
 - (c) a report on participant compliance with the ToR including a list of breaches of the ToR (including names of the participant(s) involved and binding decisions made (if any)), provided that the Board has the discretion to not publish details of insignificant or technical breaches if to do so would, in the Board's opinion, unfairly disadvantage or harm the participant
 - (d) a report against adopted performance standards
 - (e) a report on performance in relation to the grounds for withdrawal of approval of FSCL by the Minister
 - (f) the findings of annual reviews
 - (g) a summary of the findings of the independent review (if relevant for that year)
 - (h) a financial report containing sufficient information to allow participants and other stakeholders to understand how the funding is being used.

This list is derived from the duties prescribed for directors of the Electricity and Gas Complaint Commissioner Scheme

APPENDIX G

NAMING BY OMBUDSMAN SCHEMES

SCHEME NAME	MEMBERS NAMED IN ANNUAL REPORT?	MEMBER NAMED IN CASE STUDIES?
NZ INSURANCE AND SAVINGS OMBUDSMAN	NO	NO
NZ BANKING OMBUDSMAN	YES	NO
NZ TELECOMMUNICATIONS DISPUTE RESOLUTION	NO	NO
UK FINANCIAL OMBUDSMAN SERVICE WWW.OMBUDSMAN-COMPLAINTS-DATA.ORG.UK/	NOT IN ANNUAL REPORT BUT IN A SEPARATE ONLINE LISTING OF COMPLAINTS DATA	NO
UK OMBUDSMAN SERVICES – ENERGY	NO	NO
UK THE PROPERTY OMBUDSMAN	NO	NO
CANADA GENERAL INSURANCE OMBUDSMAN	NO	NO
CANADA OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS	YES	NO
AUSTRALIA ENERGY & WATER OMBUDSMAN VICTORIA	YES	NO
AUSTRALIA ENERGY & WATER OMBUDSMAN NSW	YES	NO EXCEPT IN SPECIAL CIRCUMSTANCES

AUSTRALIA ENERGY INDUSTRY OMBUDSMAN SOUTH AUSTRALIA	YES	NO
AUSTRALIA ENERGY & WATER OMBUDSMAN QUEENSLAND	YES	NO
AUSTRALIA FINANCIAL OMBUDSMAN SERVICE	YES (ONLINE)	NO
AUSTRALIA TELECOMMUNICATIONS INDUSTRY OMBUDSMAN	YES	NO
AUSTRALIA PRIVATE HEALTH INSURANCE OMBUDSMAN	YES	NO
AUSTRALIA CREDIT OMBUDSMAN SERVICE LIMITED	YES	NO
SOUTH AFRICA OMBUDSMAN FOR BANKING SERVICES	YES	NO
SOUTH AFRICA OMBUDSMAN FOR LONG TERM INSURANCE	NO	NO
SOUTH AFRICA OMBUDSMAN FOR SHORT TERM INSURANCE	NO	NO
SOUTH AFRICA FINANCIAL ADVISORY AND INTERMEDIARY SERVICES OMBUDSMAN	YES	YES

APPENDIX H

LEGAL STRUCTURE OF INDUSTRY OMBUDSMAN SCHEMES

Insurance & Savings Ombudsman (ISO) (NEW ZEALAND):

The **ISO** FSCL is an incorporated society and was set up in accordance with the **ISO** [Rules](#), which establish the **ISO** Commission and the **ISO** Board. The Rules provide for the appointment of an **ISO** and set out how the **ISO** FSCL is to be funded.

The Insurance & Savings Ombudsman FSCL Incorporated is governed by the **ISO** Board that has 8 participants, made up of 2 representatives nominated by each of the industry bodies representing fire and general insurance, health insurance, life insurance and savings.

The **ISO** Board's primary function is to amend the [Rules](#) and the [Terms of Reference](#).

The primary functions of the **ISO** Commission are to appoint an **ISO**, to monitor the operation of the **ISO** FSCL and to approve the annual budget. It is the **ISO** Commission's responsibility to levy the Participant companies to fund the service provided by the **ISO**.

The **ISO** Commission has an independent Chairperson, 2 industry representatives appointed by the **ISO** Board and 2 consumer representatives appointed by the Minister of Consumer Affairs.

Financial Services Complaints Limited (NEW ZEALAND):

FSCL is an independent not-for-profit External Dispute Resolution (EDR) FSCL approved by the Minister for Consumer Affairs under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. It has been set up specifically to deal with disputes arising out of financial products and services.

FSCL is a company limited by guarantee, governed by a [board](#) that includes two industry representatives, and two consumer representatives and an independent Chair. The Chair holds all 100 of the company shares.

The Board appoints a CEO who has the power to exercise all powers and discretions conferred on FSCL by the Terms of Reference and to carry out all responsibilities attributed to FSCL under the Terms of Reference. The Chief Executive Officer's duties include:

- (i) making jurisdictional decisions;
- (ii) resolving complaints by making recommendations and determinations; and
- (iii) the chairing of and participation in FSCL Panel processes.

Banking Ombudsman (NEW ZEALAND):

The Banking Ombudsman FSCL was set up in 1992. The FSCL is a free and independent process which helps people sort out unresolved problems with their [banking service providers](#).

The Banking Ombudsman FSCL is a company, Banking Ombudsman FSCL Ltd. Its governing body is a [Board](#) on which banks and consumer groups are represented without either having a majority. The Chair of the Board is independent of banks and consumer groups.

The main function of the Board is to ensure the independence of the Banking Ombudsman and to make sure that the Banking Ombudsman FSCL is well run and effective.

Energy and Water Ombudsman (Victoria):

EWOV was set up as a company limited by guarantee, legally separate from, and independent of, the energy and water companies and government.

In accordance with the EWOV Limited [Constitution](#) and the EWOV [Charter](#), EWOV Ltd. established EWOV as an independent dispute resolution FSCL — and appointed an Ombudsman to be responsible for the day-to-day operation of that FSCL.

The EWOV Limited Board has four industry directors — two electricity, one gas and one water — elected by FSCL participants; four consumer directors nominated by the Essential Services Commission and then approved by the Board and an independent Chairperson.

The Board is responsible for the business affairs and property of the company — including corporate governance, the setting of budgets, risk management, strategic planning and ensuring the Ombudsman's independence. The equal representation of industry and consumers engenders a sense of commitment and ownership of results.

The roles of the Board and the Ombudsman are complementary, with the Ombudsman attending Board meetings.

Energy & Water Ombudsman (New South Wales):

The Energy & Water Ombudsman NSW (EWON) is the government approved dispute

resolution FSCL for New South Wales [electricity](#) and [gas](#) customers, and some [water](#) customers.

EWON was [founded in 1998](#) as an industry-based Ombudsman FSCL, to independently resolve complaints about participants of the FSCL.

The Energy and Water Ombudsman (NSW) Limited is a not-for-profit company limited by guarantee. As an industry-based FSCL, EWON is funded by its [participants](#).

According to the Constitution, the EWON Board is responsible for corporate governance and funding, and is made up of 10 industry participants including the Chair and Deputy Chair.

The EWON Council is responsible for policy and strategy.

The EWON Council ensures the organisation's independence through its composition of consumer and industry representatives. It consists of an independent Chair and 10 participants – 5 from Participants of the FSCL and 5 from consumer interests.

Telecommunications Industry Ombudsman (Australia):

The Telecommunications Industry Ombudsman ("TIO") FSCL has been established by means of a company limited by guarantee, the **Telecommunications Industry Ombudsman Limited**. The Memorandum and Articles of Association of the company establish:

- a Board of 9 Directors, composed primarily of directors appointed by the participants and vested with traditional corporate governance responsibilities;
- a Council, composed of an equal representation of 5 participant representatives and of 5 user and public interest group representatives, chaired by an independent Chairman, and with responsibility for:
 - complaint-handling and policy issues;
 - maintaining the independence of the TIO; and
 - acting as an intermediary between the TIO and the Board; and
- a Telecommunications Industry Ombudsman vested with authority under this TIO Constitution to
 - receive, investigate and facilitate the resolution of complaints; and
 - exercise such other powers and functions as may be conferred by statute.

The Financial Ombudsman Service (Australia):

The Financial Ombudsman Service Ltd is a company limited by guarantee, and is governed by an independent board of 4 consumer representatives and 4 financial services industry

representatives. The Board also seeks expertise and advice from Specialist Advisory Committees drawn from Financial Ombudsman Service participant organisations and consumer organisations. The role of the Board is to monitor the performance of the Financial Ombudsman Service, provide direction to the Ombudsman on policy matters, set the budget and review from time to time, the Terms of Reference including the jurisdictional limits of the Ombudsman. The Board does not get involved in the detail of cases which come before the Ombudsman as that would prejudice the independence of the Ombudsman. The decisions of the Ombudsman are independent of any interference from the Board.

The Financial Ombudsman Service Constitution outlines the purpose and objectives of the Financial Ombudsman Service Limited, including how dispute resolution rules and processes are developed, agreed and implemented.

Ombudsman for Banking Services (South Africa):

The Ombudsman for Banking Services is a non-profit company. The governing structure of the OBS consists of a Board of Directors, comprised four independent, non-bankers, three representatives of the banks and an independent chairperson. The function of the Board is to ensure that the OBS is financially sound, to take decisions on how the OBS is to be financed and to consider the annual budget. The Board ensures the independence of the OBS, through the appointment of the OBS or acting OBS, the dismissal of the OBS, the approval of changes to the Terms of Reference, considering the Annual Report and to making recommendations to the Banking Association South Africa on changes to the Code of Banking Practice.

Ombudsman for Banking Services and Investments (Canada):

A non-profit corporation and independent organization, OBSI is overseen by a [Board of Directors](#). A majority of the directors are independent, and have not been part of industry or government for at least five years. A minority of the directors are appointed by industry bodies. The directors also comprise the voting participation of the organization.

Beyond the composition of the Board, further important safeguards of OBSI's independence are in place. In addition to having at least a two-thirds majority on the board, the Independent Directors control the hiring and firing of the Ombudsman, the budget process, the [Terms of Reference](#) and the nomination of Independent Directors.

The Independent Directors search for new independent board participants, balancing diversity, geography and a variety of backgrounds and skills. Collectively, the directors have experience in business, law, consumer affairs, economics, community organizations, dispute

resolution and public service.

The Board of Directors meets at least quarterly, and in addition has an annual strategic planning session. The Independent Directors also conduct performance reviews with the Chair every two years.

Rules prohibit the Board or individual directors from being involved with individual complaints. The final decision concerning complaints rests with the Ombudsman. There is no appeal to the Board, nor can the Board influence the decisions of the Ombudsman. However, on behalf of the Board the Chair does consider complaints from OBSI clients who believe that their case has not been handled fairly.

General Insurance OmbudService (Canada):

The General Insurance OmbudService (GIO) is an independent not-for-profit corporation, created in 2002, with the sole purpose of helping Canadian consumers resolve disputes or concerns with their home, automobile or business insurers.

The GIO is governed by a seven-participant Board of Directors, committed to the ideals of fairness and integrity. Five of the Directors are individuals from outside the insurance industry who bring experience from a wide range of backgrounds. The regionally diverse Board also has two insurance industry appointed directors who provide an industry perspective.

OmbudService for Life & Health Insurance (Canada):

The OmbudService for Life & Health Insurance (OLHI) is a national independent complaint resolution and information service for consumers of Canadian life and health insurance products and services, including life, disability, employee health benefits, travel, and insurance investment products such as annuities and segregated funds.

It was incorporated in 2002 as a federal not-for-profit corporation pursuant to the Canada Corporations Act. Its By-Laws set out the provisions governing the affairs of the Corporation.

OLHI's operations are overseen by its Board of Directors, the majority of whom have no ties with the life and health insurance industry. Currently the Board is comprised of eight directors, six of whom are independent from the life and health insurance industry ("Independent Directors") and two of whom are appointed by industry ("Industry Directors").

Financial Ombudsman Service (UK):

The "body corporate" that administers the ombudsman FSCL as the "FSCL operator" (under

s225 of the *Financial Services and Markets Act*) takes the form of a company "limited by guarantee and not having a share capital". This company is called the Financial Ombudsman Service Limited. The powers and functions of the FSCL operator are set out in company's legal constitution:

The FSCL operator has a [board](#) consisting of nine directors – including the chairman. They are appointed by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000. The chairman of the board is appointed by the FSA with the approval of the HM Treasury.

These directors (or board participants) are "non-executive" – they are not involved in considering individual complaints. Their job as "public interest" directors is to take a strategic overview and ensure that the ombudsman service is properly resourced and able to carry out its work effectively and independently.

The directors appoint the [ombudsmen](#) and publish a [report](#) annually – as well as publishing the [minutes of their board meetings](#). The directors also form a number of [sub-committees](#) of the full board.

Ombudsman Services – communications, energy, property (UK):

Ombudsman Services provides independent dispute resolution for the communications, energy, property and copyright licensing sectors.

Ombudsman Service Limited is a not-for-profit private company limited by guarantee. It investigates complaints with a view to reaching a speedy resolution. It is entirely independent, meaning that it does not take sides and makes decisions based on the facts.

There is no indication of qualifications for the non-Executive Directors of the Board.

The Property Ombudsman (UK):

The Property Ombudsman FSCL is designed to reach a resolution of unresolved disputes in full and final settlement. It provides actual and potential buyers, sellers, landlords, leaseholders, lessees and tenants of property with free and independent redress of complaints relating to acts or omissions of Participants in connection with the sale and/or purchase and/or letting and/or management of property in the United Kingdom.

2. The TPO FSCL is set up as a company limited by guarantee, The Property Ombudsman Limited, and has three parts to its structure:

- a. TPO Council, consisting of an independent Chair, 5 non-industry participants and 2 industry participants, whose role is:
 - To ensure the Ombudsman's independence and resourcing.
 - View the [Statement of Terms of Appointment of the Ombudsman](#)
 - To act as an advisory body to the Ombudsman.
 - To refer matters of consideration to the TPO Board.
 -
- b. The Office of the Ombudsman
- c. TPO Board, consisting of a Chair, Vice-Chair, and 9 participants elected by participant agencies and one representative of two industry associations, and whose role is:
 - To manage the business of the Company.
 - To raise sufficient funds from Participants to administer the FSCL.
 - To represent the Participant Agencies.