

OMBUDSMAN FOR BANKING SERVICES

The Need for the Governing Rules of the Ombudsman for Banking Services

The Ombudsman for Banking Services scheme (the OBS) has been in existence for more than 20 years, serving the South African banking public. The office was created in its current form in 2000.

The mandate of the OBS is to provide individuals and small business bank customers with a fair, quick and effective dispute resolution process, free of charge. It provides an informal, easily accessible alternative to other remedies, such as court proceedings.

The OBS office promotes and protects individual rights due to the fact that expert legal advice is accessible free of charge. In addition, where the facts of the matter demand it, independent investigations are undertaken by qualified lawyers to determine the legal liability. They are able to thoroughly assess the facts and also consider the issue of fairness in all circumstances.

The complaints handling and adjudication services rendered by the OBS encourages more efficient and fair banking practices and administration. Through investigations and findings they have on numerous occasions over the years caused the banks to change contract wording, implement new procedures, do more to alert customers to risks and overall change banking practices for the better.

This influence over banking practice and policies is continuing on a daily basis and they are very aware of the responsibility that this brings. The OBS strives to ensure fair outcomes for consumers in all matters, but also for the member banks.

The availability of the OBS ensures that banking customers have access to a cost-effective dispute resolution mechanism, should they wish to make use of this service. The added benefit is that they are not bound by a negative assessment of their case by the adjudication team. Consumers retain all their rights to proceed further with litigation or other action, should they wish to do so.

The scheme bridges the gap between the banks and the public, especially in matters where there is a breakdown in the communication between the two parties. Their trained call centre operators field thousands of calls per year, many times providing a sympathetic ear, and the fact that they are able to recommend a way forward to upset and irate customers, ensures more trust and promotes cooperation instead of litigation.

In accordance with the governing rules, the OBS has a major advantage because it can resolve consumer complaints not only on the basis of a strict interpretation of the facts and the law but also on the basis of fairness. Many outcomes of complaints are based on fairness and in the course of these interactions on complaints with members of the scheme, the OBS promotes the fair treatment of all banking customers. In addition to the normal assessment of fairness in each case, the OBS has adopted a policy to identify vulnerable consumers and to ensure that their specific circumstances and vulnerability is brought to the banks attention. For example, some complainants falling victim to a fraudulent scam are older than 85. The OBS ensures that these and other factors are highlighted and, in many instances, it has a favourable influence on the outcome of the case.

Complaints are resolved through a variety of instruments such as negotiation, mediation, conciliation, investigation and where necessary the issuing a recommendation/decision. The governing rules also provides guidelines to all parties involved on the sequence of events once a complaint is lodged with the OBS. This provides certainty and clarity in respect of process

and procedure as well as estimated timelines. In addition to resolving complaints, and unlike the formal court system of dispute resolution, the OBS also deal with general enquiries from the public and have processes and procedures in place to ensure the speedy resolution of such enquiries. They are able to assist consumers in all official languages if required.

Another important aspect of their mandate as stipulated in the governing rules, include raising awareness about the existence of the office, their services and banking matters which affect banking customers and other consumers. They have organized their communication services and they have in-house resources to ensure that they serve all the communities, provide information and assistance when required and as a result it creates and builds trust in the financial system. They aim to raise awareness on community radio stations about the office, but also to issue warnings to consumers about risks and scams to look out for. The OBS staff do these interviews in the various local vernacular.

In addition to the positive influence and impact of the OBS listed above, the OBS also supports financial sector outcomes by detecting trends with the detailed statistics that they are able to extract from their complaints.

The types of complaints, amounts involved, the age, geographical location, the bank and other relevant information allows them very detailed insight into a portion of the SA banking industry. It also allows the OBS to identify any problems at an early point, which matters can then be taken up with the bank to take preventative action. Where necessary it will be reported to the regulators with whom they regularly share all their statistics. They will work closely with the regulators and all stakeholders in respect of systemic issues and risks.

The intended Operation of the Governing Rules

The OBS has jurisdiction over all Banks in South Africa registered with the Banking Association. There are currently 36 registered banks with the Banking Association. The governing rules comprises the Memorandum of Incorporation (“MOI”) as well as the Terms of Reference (“ToR”). The OBS is a registered section 21 (non-profit) company with members. The MOI provides for the appointment of a board of directors comprising of four independent directors that are not associated with the banking industry, three directors that represent the banks and an independent chairperson. The composition of the Board assists in assuring that the scheme is and remains independent. The Board is responsible for appointing the Ombudsman and delegating authority to act to the Ombudsman.

The Ombudsman is responsible for the day-to-day running of the scheme and the office, with all the matters incidental thereto, such as the appointment of staff, determining processes and overseeing complaints handling.

The Ombudsman acts completely independently and objectively in resolving disputes and is not influenced by anybody in making his or her decisions. Neither the member banks nor the board members have any influence over the decision making of the Ombudsman in dealing with complaints. The Ombudsman enjoys security of tenure and can only be dismissed on the ground of incompetence, gross misconduct, or inability to effectively carry out his or her duties, further ensuring no undue influence in the outcome of complaints.

The Ombudsman may not be dismissed for being unpopular with the banks or with consumer groupings. The independence of the OBS and the Ombudsman is further assured by the fact that the Ombudsman and employees of the OBS are:

- a) entirely responsible for the handling and determination of complaints;

- b) accountable only to the Board; and
- c) adequately resourced to carry out their respective functions.

The governing rules determines that the OBS may consider a dispute brought by or on behalf of a customer or prospective customer of a bank who is:

- a) a private individual; or
- b) a small business, including a sole proprietor or trader, a juristic person, partnership or trust, that had a turnover in the last financial year of less than R10 million; or
- c) an executor or beneficiary of a trust or estate in respect of which a banking service has been provided; or
- d) the nominated beneficiary of the financial product which is the subject of the relevant complaint; or
- e) a person for whose benefit a contract on insurance was taken out or was intended to be taken out; or
- f) the true owner or the person entitled to the immediate possession of a cheque or the funds that it
- g) represents, collected by the bank for someone else's account; or
- h) the provider of a suretyship or security for a mortgage or loan; or
- i) a person whose information is the subject of a dispute relating to confidentiality; or
- j) a person entitled to complain to the OBS under the provisions of FAIS, FSOS, NCA or other legislation; and who
- k) in respect of matters not falling within NCA, or other legislation that specifically empowers the OBS to act, as a recognised ombud, has suffered some significant monetary loss, distress or inconvenience as a result of the bank's conduct; and who
- l) has or should have received the banking service that is the subject of the dispute or advice given by the bank's own staff, either in relation to the bank's own products or to the products of other institutions; and
- m) has tried unsuccessfully to resolve the dispute through approaches to the bank's management or its internal complaints handling section or the complaint has been repudiated, or there has been an undue delay by the bank in resolving the complaint.

The ToR stipulates that the OBS may deal with complaints relating to all banking related products and services, which includes, but is not limited to fraud, mal-administration and service-related matters on the following financial products and/or Services:

- Deposits, Credit agreements it the National Credit Act, Investments, Current accounts,
- Savings accounts,
- Credit Card,
- Mortgage Finance,
- Vehicle Finance,
- Estates and Trusts,
- Personal loans,
- Business Loans,
- Student loans,
- Digital Wallets,
- Foreign exchange.

The OBS may not consider a matter that falls within the jurisdiction of a statutory Ombud as defined by their enabling legislation, or is based on the same event and / or facts as any matter which is, was, or becomes, the subject of any proceedings in any court, tribunal, regulator or other independent dispute resolving body, unless the proceeding were instituted by the bank and the OBS has considered it appropriate to intervene and is not prohibited under any law from doing so; is under consideration by a legal practitioner, whether or not with a view of

instituting legal proceedings, unless the OBS determines that the involvement of the legal practitioner is appropriate in the circumstances or the complaint would more appropriately be dealt with by a court of law.

The OBS strives to provide as many access points and also to make it as easy as possible to lodge a complaint. They do not require complaints to be in writing, but in practice most complaints are completed on-line or consumers print and complete our complaint forms. Complaints are received via their website, fax and email, post or telephonically. They also receive application forms from walk-in complainants and other Ombuds offices.

When a matter is opened for investigation by their office, the principle of an inquisitorial approach is adopted in relation to the provision of information by both the bank and the complainant. This means that the adjudicator will specify the information and documentation he/she requires in order to be able to consider the complaint. The adjudicator will pose specific questions and give guidance as to what documents are required, based on their experience and the type of matter involved. If necessary, further clarification or information will be obtained from the complainant and the bank. Once all the facts and relevant documentation is received, the adjudicator then attends to an Assessment of the matter. An Assessment Report contains a summary of the facts and law (if applicable) together with our assessment of whether or not the complaint is well founded or the bank's actions and/or explanation and/or offer of settlement in response to the complaint is reasonable. It is not a full investigation of the complaint; it is an assessment of the facts and information presented at that stage. The Assessment may be in favour of the complainant, in favour of the bank or it may suggest a resolution that benefits both parties. The Assessment could also be used to indicate to the complainant that there is no reasonable prospect of a finding being made in his/her favour. The Assessment would then provide the complainant with the opportunity to present new, substantial and relevant evidence or submissions which could potentially change the initial Assessment.

If new substantial evidence or submissions are raised by either party after an Assessment was done a, provisional recommendation (a preliminary recommendation) can be used to give both parties an opportunity to comment on the new issues raised. A provisional recommendation may be a more detailed document than the initial Assessment. It is used in more complex matters that require more argument and detailed explanations.

If the matter is not settled after providing the parties with an Assessment and/or a Provisional recommendation and no further investigation is required, it may proceed to a final recommendation. It must be noted that if the Assessment was for the purpose of indicating no reasonable prospect and the complainant has not provided any new, substantial and relevant evidence or submissions, the complainant can be informed of this fact and the file can be closed.

The matter in that instance would not proceed further in the process. The complainant is then able to proceed to litigation or any alternative means of dispute resolution. If the final recommendation is not accepted by one of the parties the Ombudsman personally may make a binding written determination based on the law or the Code, provided that the criteria as contained in their Terms of Reference for a Determination are met.

Only a Determination of the Ombudsman can be taken on Review. The process for a Review is as follows: The Board shall select a panel of at least three retired high court judges and then the Chairperson of the Board shall allocate a single member of the panel to conduct a review. Essentially if a complainant or bank is unhappy with a Determination done by the Ombud, they can apply for a review, provided the criteria as detailed in their TOR are met, always bearing

in mind that the banks are bound by the Determinations of the Ombud and the complainant is not bound. The complainant is always at liberty to take his complaint to another forum.

It is important to note therefore that a matter does not automatically go to a Determination or a Review on the request of a complainant or bank. The process will need to be followed, which starts with an Assessment Report to the parties.

Expected impact of the governing rules

The existence of the OBS based on the current governing rules ensures that thousands of complainants are assisted through their expert services. In addition, they serve the community at large through their call centre and “info” inbox where they respond to thousands of consumers.

Through the implementation of innovative measures in automation the office keeps improving on its result year on year. They were the first Ombuds office to operate completely paperless and they have a ground-breaking case management system whereby the major banks have real-time direct access to their statistics and case details of the complaints in their office. They share the statistics widely with the banking industry and regulators. They are able to respond to media queries in respect of trends based on the case statistics.

The office has also shown tremendous growth and innovation over the past couple of years. For example:

They have a streamlined referral process to submit new complaints on behalf of consumers directly to the correct dispute department of each bank. It is standard procedure for the Ombudsman Offices to advise consumers to first refer the complains to the financial services provider before a complaint can be lodged. Their office is no different. Before they can open a formal file, the complaint must be brought to the bank’s attention. Customers find this process daunting, difficult and/or intimidating. The office however facilitates and tracks this process on behalf of the complainants through their ground-breaking case management system, ensuring efficiency, accountability and ultimately increased customer service by the financial service providers. In 2019 the office opened a total of 4709 referrals which has increased to 10 338 referrals in 2021.

This is an increase of 117% over two years.

The OBS also opened 7% more cases in 2021 than in 2020 and a staggering 28% more than in 2019.

They are expecting to open approximately 9000 formal cases in 2022 if the growth trend of the past few years continues, supporting the need for the services offered by the office.

In 2021 the office received claims totalling more than R295 million and recovered a total amount of R20 million on behalf of complainants and found in favour of complainants in 27% of cases. This amount has remained at 27% for the past 3 years. Previously, in 2019, the scheme recovered R21 million and R17 million in 2020.

The OBS has always understood the importance of raising awareness of the existence and role of the office, as well as the role it has to play to educate consumers about banking matters in general.

They use various strategies and platforms to raise awareness and educate the public about our free dispute resolution service for all complaints relating to banks and banking products

and services. They also educate the South African Banking public about the various trends such as the various scams targeting banking customers.

To illustrate the effectiveness of their media campaigns, the following results were achieved in 2021 under historically unprecedented and difficult pandemic times:

- a) They amassed an AVE (Advertising value equivalent) of R28 777 579 with an estimated circulation/listenership/viewership standing at an impressive 469 180 654 people reached. This was a major jump from the 303 335 698 people reached in 2020.
- b) In 2021 their social media presence intensified, and they published a total of 287 posts. Their Facebook impressions grew by 121.5% from 2020, and
- c) They also recorded an increase of 56.1% on the impressions recorded on our Twitter page.