



**NFO**

National Financial  
Ombud Scheme  
South Africa

**NATIONAL FINANCIAL OMBUD SCHEME SOUTH AFRICA NPC (“NFO”)**

**RULES**

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## 1 PREAMBLE

- 1.1 The National Financial Ombud Scheme (NFO) is an external complaint resolution ombud scheme established to resolve Complaints by Complainants about Participants. The NFO, which is operated by an independent non-profit company without members, has been recognised as an industry ombud scheme by the Ombud Council in terms of chapter 14 of the FSR Act.
- 1.2 These Rules form part of a contract between the NFO, the Participants and Complainants. The Rules are legally binding on the Participants and may be enforced by the Board.
- 1.3 These Rules, together with the Memorandum of Incorporation of the NFO, comprise the governing rules of the NFO as contemplated in the FSR Act, and are required to be approved by the Ombud Council in accordance with that Act.
- 1.4 The NFO is free of charge for Complainants.
- 1.5 A Complainant is not obliged to use the NFO to pursue a Complaint against a Participant and instead may institute legal proceedings or use any other relevant and available dispute resolution forum.
- 1.6 A Complainant who submits a Complaint to the NFO may withdraw the Complaint at any time.
- 1.7 These Rules apply to Complaints received by the NFO from the Date of Commencement of the NFO.
- 1.8 From the Date of Commencement of the NFO, all existing Complaints with Predecessor Schemes must be resolved by the NFO in accordance with the rules of the relevant Predecessor Scheme, provided that the right of appeal and appeal procedures in clause 10 of these Rules will apply in relation to any Ruling made in accordance with the rules of the predecessor scheme on such existing Complaints, instead of any appeal provisions provided for in the predecessor Scheme's rules.
- 1.9 Members of the Predecessor Schemes as at 29 February 2024 are deemed to be Participants of the NFO from the Date of Commencement of the NFO.

## 2 DEFINITIONS

In these Rules, unless the context otherwise requires, the following expressions have the following meaning:

*"Appeal Tribunal"* means the tribunal appointed from time to time in terms of Rule 10.

*"Applicable Monetary Limits"* – means the limits for different categories of Complaints as set out in Schedule A.

*"Board"* means the independent Board of the NFO operating in terms of its Memorandum of Incorporation.

*"Complainant"* - subject to any applicable provisions in a financial sector law, means a person who submits a Complaint, and who has a direct interest in the agreement, Financial Product or Financial Service to which the Complaint relates, or a person duly authorised, in a manner and form acceptable to the NFO, to submit a Complaint on behalf of a person referred to in paragraphs (a) to (g), and includes a—

- (a) financial customer or the financial customer's successor in title;
- (b) beneficiary or the beneficiary's successor in title;

- (c) person whose life is insured under an insurance policy;
- (d) person who pays any contribution or money in respect of a Financial Product or Financial Service;
- (e) person whose information has been provided to a registered credit bureau;
- (f) person claiming to be a person referred to in (a) to (e);
- (g) potential financial customer and a person referred to in paragraphs (a) to (c) of the definition of “group” as defined in Schedule 2 of the Insurance Act, whose dissatisfaction relates to the relevant application, approach, solicitation or advertising referred to in the definition of “Potential Financial Customer”;

but in the case of a complaint relating to a Financial Product contemplated in paragraph (b) of the definition of Financial Product, excludes a person who is claiming for damages against another person’s policy, commonly referred to as a third-party claimant;

*“Complaint”* – subject to any applicable provisions in a financial sector law, means an expression of dissatisfaction, made orally or in writing to the NFO by a person, including a juristic person subject to the limitation in Schedule A, relating to a Financial Product or Financial Service provided or offered by a Participant, indicating or alleging that—

(a) the Participant 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 Participant or to which it subscribes, or that a dispute of fact or law has arisen in relation to such agreement, law, rule or code of conduct or its application or interpretation;

(b) the Participant or its service provider’s maladministration or wilful or negligent action or failure to act, has caused or is likely to cause the person harm, prejudice, distress or substantial inconvenience; or

(c) the Participant or its service provider has treated the person unfairly;

and includes any Complaint that the Ombud Council designates the NFO to deal with and resolve in accordance with section 211 of the FSR Act.

*“Date of Commencement of the NFO”* means 1 March 2024.

*“Days”* means business days, being any day other than a Saturday, Sunday or an official South African public holiday.

*“FAIS Ombud”* means the Ombud for Financial Services Providers established by the Financial Advisory and Intermediary Services Act, 2002.

*“Financial customer”* means a person to, or for, whom a Financial Product or a Financial Service is offered or provided, in whatever capacity, and includes a successor in title of the person and the beneficiary of the product or service;

*“Financial Product”* means the following financial products as contemplated in

section 2 of the FSR Act:

- (a) a long-term policy as defined in section 1 (1) of the Long-term Insurance Act 52 of 1998 or a life insurance policy as defined in section 1 of the Insurance Act 18 of 2017;
- (b) a short-term policy as defined in section 1 (1) of the Short-term Insurance Act 53 of 1998 or a non-life insurance policy as defined in section 1 of the Insurance Act 18 of 2017;
- (c) a deposit as defined in section 1 (1) of the Banks Act 94 of 1990;
- (d) the provision of credit provided in terms of a credit agreement regulated in terms of the National Credit Act 34 of 2005.

*“Financial Service”* means:

- (a) The financial service contemplated in section 3(1)(a) of the FSR Act in relation to Financial Products, but excluding the activity contemplated in section 3(1)(a)(ii) of the FSR Act;
- (b) Where the applicable Financial Product is the provision of credit as contemplated in paragraph (d) of the definition of Financial Product -
  - (i) the provision or removal of information listed on a credit bureau registered by the NCR<sup>1</sup>;
  - (ii) the collection of debts by the credit provider or by a third party on the credit provider’s behalf<sup>2</sup>;
- (c) The provision of a related or ancillary benefit, product or service provided or made available by a Participant or an associate of a Participant, together with or in connection with a Financial Product or a Financial Service referred to in (a).

*“FSR Act”* means the Financial Sector Regulation Act, 9 of 2017.

*“FSCA”* means the Financial Sector Conduct Authority.

*“Head Ombud”* means a person appointed to the position by the Board in accordance with the NFO’s Memorandum of Incorporation.

*“Independent Assessor”* means an independent person appointed by the Board to evaluate and make recommendations in respect of service complaints about the NFO.

*“Independent Review”* means a review of the effectiveness of the NFO’s operations by an independent expert who is commissioned by the Board.

*“NCR”* means the National Credit Regulator.

*“NFO”* means the National Financial Ombud Scheme South Africa.

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<sup>1</sup> This refers to the provision of credit information by another person to a credit bureau and not to the services of the credit bureau itself.

<sup>2</sup> A Complaint relating to the conduct of a person performing a debt collection service on behalf of a Participant who is a credit provider, will qualify as a Complaint against the Participant. The debt collector will be regarded as the Participant’s service provider for purposes of the definition of Complaint. The NFO may provide details of such a Complaint to the Council For Debt Collectors as contemplated in Rule 13.5.1

*"Ombud"* means a person under whatever title, appointed by the Board to perform the function of mediating or resolving Complaints and with the power to make Rulings thereon in accordance with these Rules.

*"Ombud Council"* means the Council operating in terms of chapter 14 of the FSR Act.

*"Ombud Council Rules"* means rules made by the Ombud Council in accordance with section 201 of the FSR Act.

*"Participant"* means a person that subscribes to the NFO's rules by complying with the NFO's subscription procedures and that provides one or more Financial Products and Financial Services in South Africa.

*"POPI Act"* means the Protection of Personal Information Act 4 of 2013.

*"Potential Financial Customer"* means a person who has—

- (a) applied to, or otherwise approached, a Participant or a related party or representative of the Participant to become a Financial Customer;
- (b) been solicited by a Participant to become a Financial Customer; or
- (c) received advertising in relation to any Financial Product or Financial Service offered by the Participant;

*"PFA"* means the Pension Funds Adjudicator established by the Pension Funds Act 24 of 1956.

*"Predecessor Schemes"* means the Ombudsman for Banking Services, the Credit Ombud, the Ombudsman for Long-term Insurance and the Ombudsman for Short-Term Insurance, recognised by the Ombud Council as industry schemes prior to the Date of Commencement of the NFO.

*"Rules"* means these rules, as amended from time to time by the Board and approved by the Ombud Council in terms of section 214 of the FSR Act.

*"Ruling"* means a final decision made by an Ombud about a Complaint in accordance with Rule 9.3 and where the context requires it, a final decision by a Predecessor Scheme made in accordance with the rules of the Predecessor Scheme.

### 3 PRINCIPAL POWERS AND DUTIES

3.1 The NFO's principal powers and duties are:

- 3.1.1. To resolve Complaints, without charge to Complainants, in a way that is accessible, effective, efficient, fair (both procedurally and substantially), impartial, independent and timely; and by applying principles of equity where appropriate.
- 3.1.2 To promote and publicise the NFO to Financial Customers, including through outreach activities.
- 3.1.3 To ensure that the NFO has the appropriate expertise and resources to fulfil its duties and responsibilities.
- 3.1.4 To be as transparent as possible, subject to Rule 13.
- 3.1.5 To account for its activities by publishing an Annual Report, Rulings and information about Complaints.

- 3.1.6 To promote continuous improvement of its service, including by the Board commissioning regular Independent Reviews of the NFO.
- 3.1.7 To ensure that the NFO complies with all applicable legislation and regulatory requirements.

#### 4 JURISDICTION OF THE NFO

4.1 The NFO must receive and consider Complaints made by Complainants subject to Applicable Monetary Limits and subject to the exclusions from jurisdiction in Rule 4.2.

##### **4.2 Exclusions from Jurisdiction**

- 4.2.1 Any Complaint which falls under the jurisdiction of the PFA or the FAIS Ombud is excluded from the jurisdiction of the NFO, unless the PFA or the FAIS Ombud has declined to deal with the Complaint and agreed that the NFO should deal with the Complaint, and the Complainant agrees to the NFO handling the Complaint.
- 4.2.2 The NFO may dismiss a Complaint at any stage upon becoming aware that prior to lodging the Complaint to the NFO:
  - a) The Complaint has been the subject of legal proceedings instituted and not withdrawn by the Complainant against the Participant;
  - b) The subject matter of the Complaint has been part of mediation, conciliation or arbitration in which an outcome was reached, unless in the opinion of an Ombud the Participant concerned did not act in good faith in securing resolution of the Complaint;
  - c) The Complaint has been determined by the NFO or a Predecessor Scheme, unless new evidence which is likely to affect the outcome of a previous Ruling has since become available;
  - d) The Complaint has been the subject of legal proceedings, whether finalised or not, which were instituted by the Participant, unless an Ombud considers it appropriate to accept the Complaint;
  - e) Three or more years have elapsed from the date the Complainant became aware or should reasonably have been aware that there was cause to complain, unless the failure to complain within the three-year period was due to circumstances for which, in the opinion of an Ombud, the Complainant could not be blamed.
- 4.2.3 The NFO must refer any Complaint relating to a Financial Product or Financial Service provided by a person that is not a Participant of the NFO, or not licensed or authorised in terms of a relevant financial sector law where in the opinion of the NFO the person is required to be so licensed, including any relevant supporting information, to the FSCA or NCR, to enable them to consider appropriate action and must advise the Complainant of the referral.

##### **4.3 Jurisdictional Disputes**

- 4.3.1 The NFO must at the earliest reasonable opportunity after receipt of a Complaint decide whether or not a Complaint (or if relevant, part of a Complaint) is within its jurisdiction in terms of its Rules.
- 4.3.2 A party may within 30 days after being notified of the decision referred to in Rule 4.3.1, object to the decision.
- 4.3.3 If a party so objects and an Ombud considers that the objection may

have merit, the Ombud must give the parties to the Complaint a reasonable opportunity to make submissions about the jurisdictional issue, and then make a Ruling in respect thereof.

## 5 SUBMITTING A COMPLAINT TO THE SCHEME

- 5.1 A party may submit a Complaint orally or in writing to the NFO either by using the NFO's online complaint form, submitting the Complaint by email, facsimile or post or contacting the NFO by telephone or other electronic means or in person.
- 5.2 By submitting a Complaint, the Complainant is deemed to have agreed to the Rules. The NFO must take reasonable and appropriate steps to make Complainants and Participants aware of these Rules and to aid their understanding of key processes and timeframes provided for in the Rules or in supporting procedures adopted by the NFO in accordance with Rule 7.9.
- 5.3 A Complaint can be submitted to the NFO in any of the official languages of South Africa.

## 6 TIME-BARRING AND PRESCRIPTION

- 6.1 As provided for in section 216 of the FSR Act, the receipt of a Complaint by the NFO suspends any applicable time-barring provisions, whether in terms of an agreement or any law, or the running of prescription in terms of the Prescription Act, 1969, for the period from the receipt of the Complaint until the Complaint has either been withdrawn by the Complainant or finalised by the NFO. Thereafter prescription and time-barring are no longer suspended.
- 6.2 For purposes of Rule 6.1 a Complaint is received on the date of receipt by the NFO through one of the submission methods referred to in Rule 5.1.

## 7 PROCEDURE FOR COMPLAINT HANDLING

- 7.1 The NFO decides on the method and process to be used to deal with a Complaint. This may include one or more of the following:
  - (a) Deciding not to consider a Complaint because it is outside the NFO's jurisdiction, in accordance with Rule 4.2
  - (a) Dismissing a Complaint in accordance with Rule 9.2.
  - (a) Conciliation
  - (a) Mediation
  - (a) Recommendation in accordance with Rule 9.1
  - (a) Ruling in accordance with Rule 9.3.
- 7.2 At any time while a Complaint is under consideration by the NFO, it may be resolved by agreement between the Complainant and the Participant, which agreement may be facilitated through conciliation or mediation by the NFO.
- 7.3 Where the NFO receives a Complaint that is within its jurisdiction, the NFO must:
  - 7.3.1 Establish whether the Complainant has exhausted the internal complaints handling processes of the Participant and, if not, advise the Complainant that it must do so and refer the Complaint ("premature Complaint") to the Participant for this purpose; unless the NFO is of the opinion that there is good cause for the NFO to deal with the Complaint despite the Participant's internal processes not having been exhausted;
  - 7.3.2 Where the NFO is satisfied that the Participant's internal complaint processes have been exhausted, or where the NFO nevertheless decides to deal with the Complaint, provide the Participant with the necessary details of the Complaint.
- 7.4 On receipt of Complaint information in accordance with Rule 7.3, the Participant



must, when requested:

- 7.4.1 In the case of a premature complaint referred to in Rule 7.3.1, inform the NFO of the outcome of the Complaint; or
- 7.4.2 In the case of a Complaint referred to in Rule 7.3.2, provide the NFO with a written response to the Complaint, together with any relevant information held by the Participant, within a timeframe stipulated by the NFO, which timeframe must take reasonable account of the urgency of the matter.
- 7.5 Subject to the Rules, the NFO may consider any information and, following an inquisitorial approach, make such enquiries as it thinks are fair and reasonable in the circumstances provided that:
  - 7.5.1 The NFO is not obliged to consider any information that, in its opinion, has not been obtained or relied upon by a party in good faith; and
  - 7.5.2 An Ombud may decide to consider new information provided to the NFO by a party to the Complaint that has not previously been provided to the other party. If the Ombud decides to consider such new information, the information must be provided, where appropriate, to the other party for its response within a reasonable period.
- 7.6 The NFO may obtain expert advice including from a legal expert, industry expert, medical practitioner or any other expert appointed by the NFO. When this happens, the NFO may, after consultation and in agreement with the Participant, require the Participant to pay or contribute to the cost, provided that the fees of the expert do not deviate significantly from the usual market rate for such advice.
- 7.7 The Participant and the Complainant must be given a reasonable opportunity to make submissions to the NFO, including oral submissions where the NFO considers this appropriate, prior to the Scheme making a Recommendation or Ruling in relation to the Complaint.
- 7.8 The NFO may take whatever steps it considers reasonable when a party to a Complaint fails without reasonable excuse to provide information or take some other step requested by the NFO as part of its investigative process. This may include:
  - 7.8.1 proceeding with the resolution of the Complaint based on the information available, including drawing an adverse inference from the party's failure to comply, or
  - 7.8.2 where the uncooperative party is the Complainant, refusing to continue considering the Complaint.
- 7.9 The NFO may adopt any administrative procedure and set any timeframes for handling Complaints that it considers appropriate, provided that such procedures and timelines must not be inconsistent with these Rules or any applicable legislative provision.

## 8 DETERMINATION OF DISPUTES

### 8.1 Decision Making Criteria

8.1.1 While the NFO is not bound by the legal rules of evidence or by its (or a Predecessor Scheme's) previous decisions, the NFO must determine what in its opinion is equitable, fair and reasonable in all the circumstances, by having regard to any applicable law (including applicable case law) and also considering but not necessarily being bound by:

- a) procedural and administrative fairness, in relation to the Complaint;
- b) previous relevant Rulings of the NFO or Predecessor Schemes;
- c) relevant industry practice; and

- d) any industry Codes applicable to the subject matter of the Complaint.

## **8.2 Disputes of Fact**

- 8.2.1 The NFO must resolve material disputes of fact on a balance of probabilities.
- 8.2.2 If an Ombud is of the opinion that a material and conclusive dispute of fact cannot be resolved on a balance of probabilities the parties concerned must be advised that a determination in favour of the one or the other party cannot be made.
- 8.2.3 Notwithstanding Rule 8.2.2, if in the opinion of an Ombud a material and conclusive dispute of fact can best be determined by the hearing of evidence, it may be so determined.
- 8.2.4 A hearing as aforesaid may be conducted by an Ombud or any other person or persons appointed for that purpose by the Ombud.
- 8.2.5 At such a hearing all issues of a procedural or evidentiary nature must be determined by the Ombud or other person or persons so appointed in terms of Rule 8.2.4.

## **9 RECOMMENDATIONS, DISMISSALS AND RULINGS**

### **9.1 Recommendations**

- 9.1.1 If the Complaint is not resolved by other means, the NFO must make a Recommendation to the parties setting out its view, with reasons, on whether the Complaint should be upheld or dismissed and any appropriate remedies.
- 9.1.2 A Recommendation may propose, but is not limited to, any of the outcomes that may be determined in a Ruling, as set out in Rule 9.4.1. If the Parties agree to implement the Recommendation, the NFO will regard the Complaint as finalised by agreement between the Parties on that basis.

### **9.2 Dismissals**

- 9.2.1 The NFO may dismiss a Complaint without further consideration of its merits, or at any stage of the complaint handling process, and must provide reasons for the dismissal, if it appears that:
  - (a) The Complaint has no reasonable prospect of success;
  - (b) The Complaint is being pursued in a dishonest, frivolous, vexatious, abusive, or unreasonable manner;
  - (c) The Complaint can more appropriately be dealt with by a court of law;
  - (d) The Complaint is predominantly about investment performance or the reasonable and legitimate exercise of the Participant's commercial judgment, unless the investment performance was guaranteed expressly or implicitly or the performance appears to the Ombud to be so deficient, or the exercise of the commercial judgment appears to be so detrimental, as to raise a prima facie presumption of misrepresentation, negligence or maladministration;
  - (e) The Complainant has not suffered, and is not likely to suffer financial loss, or material inconvenience or distress either within the meaning of Rule 9.4.1 (g) or at all (or has been appropriately compensated for such loss and the NFO would not award any further amount);
  - (f) The NFO considers that the Complaint involves (or may involve) another party who has not consented to the submission of the Complaint to the NFO and without that person's consent it would not be appropriate for the NFO to consider the Complaint.
- 9.2.2 A Party may object to a decision by the NFO to dismiss a Complaint

without further consideration of its merits within 30 days of being informed of the decision.

- 9.2.3 If a party so objects, and an Ombud considers that the objection may have merit, the Complaint must be accepted and follow the Complaints process.

### **9.3 Rulings**

- 9.3.1 If either of the parties indicate that they do not accept a Recommendation referred to in Rule 9.1 or do not comply with a Recommendation that they have accepted within the period indicated in the Recommendation, an Ombud must reconsider the Complaint and issue a Ruling which sets out the decision of the Ombud and the reasons for the decision.
- 9.3.2 Notwithstanding Rule 9.3.1, an Ombud may choose to provide the parties with a provisional Ruling, setting out the provisional decision of the Ombud and reasons for the provisional decision.
- 9.3.3 The parties must be granted an opportunity to either accept the provisional Ruling or to challenge it. If no party challenges the provisional Ruling, the complaint is regarded as finalised by agreement between the Parties on that basis.
- 9.3.4 If a party challenges a provisional Ruling, the Ombud will reconsider the Complaint and issue a Ruling.
- 9.3.5 Subject to the Participant's right of appeal in terms of Rule 10, a Ruling is final and binding on the parties if accepted by the Complainant.
- 9.3.6 If a Complainant does not accept a Ruling, the Complainant is not bound thereby and may –
- a) apply for leave to appeal in terms of Rule 10 after a Ruling is issued if the conditions for appeal are satisfied; or
  - b) pursue the Complaint in another forum.

### **9.4 Remedies and Dismissals**

- 9.4.1 An Ombud has the power to make one or more of the following Rulings subject to any Applicable Monetary Limits:
- a) Determine that a Complaint is outside the NFO's jurisdiction on the grounds set out in Rule 4.2 or in accordance with Rule 4.3.3;
  - b) Uphold the Complaint, either wholly or in part, including by making an appropriate monetary award subject to the Applicable Monetary Limits;
  - c) Dismiss the Complaint on the grounds set out in Rule 9.2.1;
  - d) Make a Ruling of a procedural or evidentiary nature;
  - e) Order the Participant, in addition to any other Recommendation or Ruling, to pay interest to the Complainant at a rate and from a date that is considered to be fair in the circumstances;
  - f) Order a Participant to take, or refrain from taking, any action in regard to the resolution of the Complaint as may be deemed necessary;
  - g) Subject to Applicable Monetary Limits, award compensation for material inconvenience or distress or for financial loss suffered by the Complainant as a result of error, omission, or maladministration (including manifestly unacceptable or incompetent service) on the part of the Participant.

## 10 RIGHT OF APPEAL

- 10.1 The NFO must establish an Appeal Tribunal consisting of three members who must be retired judges of the High Court, the Appeal Court or the Constitutional Court, or Senior Counsel. The members of the Appeal Tribunal must be appointed by the Board for a period of three years at a time, and the Board must also appoint one of such members as the chair of the Appeal Tribunal.
- 10.2 A Complainant or Participant may apply for leave to appeal against a Ruling, to the Appeal Tribunal. An application for leave to appeal to the Appeal Tribunal must be made within 30 days from the date on which the Ruling was made or such further period which in the discretion of the Appeal Tribunal is condoned on good cause shown by the applicant.
- 10.3 The chair of the Appeal Tribunal must designate a member of the Tribunal to decide whether leave to appeal should be granted based on the submissions of the parties to the Complaint.
- 10.4 Leave to appeal must be granted by the Appeal Tribunal if the Tribunal is of the opinion that one or more of the following apply:
  - 10.4.1 There are reasonable prospects that the Appeal Tribunal will reach a different conclusion to that of the Ombud;
  - 10.4.2 The Complaint raises issues which may have general or systemic implications, including systemic issues as contemplated in Rule 19, in relation to the financial sector or a significant part of it;
  - 10.4.3 The Complaint raises matters of public or policy interest;
  - 10.4.4 There is *prima facie* evidence that the Ombud misunderstood the law, or misunderstood the scope of its jurisdiction, or did not follow a fair process;
  - 10.4.5 It is in the interests of justice to do so.
- 10.5 The chair of the Appeal Tribunal must appoint one or more members of the Appeal Tribunal to consider an appeal.
- 10.6 The Appeal Tribunal determines its own procedures for the conduct of an appeal, including evidence related procedures; provided that such procedures must be consistent with these Rules and must allow for appeals to be conducted with as little formality and technicality, and as expeditiously, as a proper consideration of the appeal and the principles of administrative justice permit.
- 10.7 If the appeal is upheld by the Appeal Tribunal, it has the discretion to either remit the Complaint to the NFO for redetermination or if it considers that it would benefit the parties, it can reach its own decision in the Complaint and make any Ruling the NFO would have been able to make in terms of these Rules.

## 11 ENFORCEMENT

- 11.1 If a Participant fails or refuses to comply with a Ruling or with a decision of the Appeal Tribunal within the period indicated in the Ruling or decision:
  - 11.1.1 The Participant must be given notice by the NFO that it must comply with the Ruling or decision within a period of 4 weeks or such other period as the NFO decides.
  - 11.1.2 If the Participant does not comply with such notice the NFO may report the non-compliance to the Board, the FSCA, or the NCR as appropriate, and to the Ombud Council.
  - 11.1.3 The NFO may publish in whatever manner the Head Ombud considers to be appropriate, the fact of such non-compliance.
- 11.2 The Head Ombud may consider allowing the Participant a further

opportunity of not more than 10 days to make representations as to why the NFO should not publish in accordance with Rule 11.1.3, the fact of the non-compliance.

- 11.3 In addition to its obligation under section 217(2) of the FSR Act, the NFO must advise the FSCA or the NCR, as applicable, of any material contravention of these Rules or any persistent or material failure to co-operate with the NFO by a Participant, either generally or in relation to a particular matter, to enable them to consider appropriate action.

## 12 COMPLAINANT'S RIGHTS

A Complainant may institute litigation or use an alternative forum to pursue a Complaint against a Participant at any time, including if it does not accept a Recommendation or Ruling or a decision by the Appeal Tribunal in relation to a Complaint. The NFO or Appeal Tribunal must cease considering the Complaint.

## 13 CONFIDENTIALITY

- 13.1 All information obtained by the NFO in connection with a Complaint, other than information already in the possession of the party wishing to use the information, prior to being obtained by the NFO, or to which such party is entitled in law or by virtue of the contractual relationship between the parties, is privileged and may not be used in any court proceedings unless by an order of court or with the consent of all the parties.
- 13.2 The parties must maintain the confidentiality of all information provided to them in the complaint handling process and thereafter except -
- 13.2.1 to the extent reasonably necessary to resolve the Complaint;
  - 13.2.2 to the extent reasonably necessary to discuss the Complaint with their lawyer, adviser, accountant or insurer;
  - 13.2.3 with the consent of the party who provided the information;
  - 13.2.4 as required or permitted by law; or
  - 13.2.5 where the information is already publicly available.
- 13.3 The NFO must not begin consideration of a Complaint until the Complainant has confirmed acceptance of the confidentiality provisions in a format required by the NFO.
- 13.4 The NFO, its officers and employees must not disclose to any person any information concerning a Complaint made to the NFO that is likely to make it possible to identify the Complainant or Participant, or any other confidential information except -
- 13.4.1 as authorised by the party identified;
  - 13.4.2 to carry out their responsibilities in terms of these Rules or under the FSR Act; or
  - 13.4.3 as required by law.
- 13.5 The NFO may provide information obtained from the parties to a Complaint to:
- 13.5.1 Any regulator with an interest in the Complaint or the type of subject matter to which the Complaint relates, including but not limited to, the Ombud Council, the FSCA, the NCR, or the Council for Debt Collectors; or
  - 13.5.2 Any insolvency practitioner of a Participant.

## 14 REPORTING AND PUBLICATION OF RULINGS AND INFORMATION

- 14.1 As part of its public reporting the NFO must publish a report annually within six months of the end of the financial year, setting out the activities during the previous financial year.

- 14.2 The NFO must also publish at least on an annual basis, statistical information about the number of Complaints submitted to the NFO, the way in which such Complaints were handled, the number of Complaints closed, and the outcomes of those Complaints, including such statistical information per Participant.
  - 14.3 Subject to Rule 14.4, the NFO must publish any Ruling made against a Participant in terms of the Rules which has not been substantially overturned on appeal, and any decision on appeal against a Participant. The publication must include a summary of the relevant facts, the reason for the decision, the Ruling and the identity of the Participant.
  - 14.4 The NFO must not publish a Ruling or a decision where the publication is likely to expose the identity of the Complainant, unless written consent from the Complainant is received.
  - 14.5 The NFO must also publish such information as required by the Ombud Council.
- 15 PRECEDENTS  
Rulings or Recommendations by the NFO or a Predecessor Scheme and decisions of the Appeal Tribunal do not establish legal precedent.
- 16 ACCESS TO INFORMATION  
When any party to a Complaint requests the NFO to provide access to any information about a Complaint, the NFO may respond to that request as it considers appropriate subject to the POPI Act, the Promotion of Access to Information Act 2 of 2000, and any other applicable legal obligations.
- 17 RESTRICTIONS APPLICABLE TO PARTICIPANTS
- 17.1 A Participant may not prevent the NFO from considering or continuing to consider the Complaint by issuing proceedings in a court, other than to the extent necessary to preserve the Participant's legal rights.
  - 17.2 A Participant must not seek judgment or take other action to pursue debt recovery or legal proceedings against the Complainant that the Participant began before the Complainant submitted the Complaint to the NFO, other than to the extent necessary to preserve the Participant's legal rights.
- 18 IMMUNITY FROM LIABILITY AND PROTECTION FROM BEING SUBPOENAED  
The NFO, the Head Ombud, the Ombuds, the members of the Appeal Tribunal, the Board members, a party authorised by the NFO to carry out any duties or exercise any powers, any NFO employees, contractors and agents are not liable to any party to a Complaint for any loss or damage arising directly or indirectly in the course of carrying out the NFO's functions in good faith, nor may they be subpoenaed by any party to the Complaint.
- 19 SYSTEMIC ISSUES
- 19.1 A systemic issue is an activity, action or practice by one or more Participants that also has or is likely to have an effect on financial customers other than the Complainant. The systemic issues must be identified by the NFO as a result of Complaints to the NFO.
  - 19.2 The NFO must investigate a potential systemic issue and engage with the Participant or Participants regarding the issue. If a systemic issue is identified as such by the NFO, there must be further engagement with the Participant or Participants regarding the extent of the issue and the proposed remedial action.

- 19.3 The NFO is obliged to report the details of the systemic issue, including the identity of the Participant or Participants, to the FSCA in terms of section 217(3)(b) of the FSR Act, and must also report such information to the NCR and the Ombud Council where appropriate.

## 20 COMPLAINTS ABOUT THE NFO'S SERVICE

- 20.1 A party to a Complaint who is dissatisfied with the standard of service provided by the NFO may lodge a complaint with the NFO about its service. This Rule deals with dissatisfaction about the service the NFO delivered and not about the NFO's decisions regarding the merits of the Complaint.
- 20.2 On receipt of the service complaint, the NFO must respond to the party within a reasonable time. If the party remains dissatisfied after receiving the response, the party may refer the service complaint to the Independent Assessor.
- 20.3 The Independent Assessor is appointed by the Board. The Independent Assessor's role is to consider whether the NFO provided a reasonably appropriate standard of service during the complaint handling process. The Independent Assessor's function supplements the NFO's complaints and feedback process, which deals with complaints about the Scheme's service.
- 20.4 The Independent Assessor does not have the power to re-open a Complaint submitted to the NFO or to consider the merits of a Complaint or the substantive outcome of a Complaint.
- 20.5 If the Independent Assessor finds that the NFO has not provided an appropriate standard of complaint handling service, the Independent Assessor must recommend in writing to the NFO the action that the Scheme should take. This can include an apology by the NFO to a party.
- 20.6 The Independent Assessor must provide a copy of the recommendation to the party who referred the matter to the Independent Assessor.
- 20.7 The Independent Assessor is governed by separate rules set by the Board.

## 21 INFORMATION ABOUT THE NFO

- 21.1. Subject to Rule 21.2, Participants must disclose the availability and contact details of the NFO -
- 21.1.1. to customers at point of sale and in relevant periodic communications;
  - 21.1.2. in accordance with any legislative or regulatory requirements or conduct standards;
  - 21.1.3. to Complainants when a Complaint is not resolved in favour of the Complainant;
  - 21.1.4. to members of the public on its website and preferably also at its premises.
- 21.2. A Participant who was a member of a Predecessor Scheme immediately prior to the Date of Commencement of the NFO is required to comply with Rule 21.1 as soon as reasonably possible after that date but by no later than six calendar months after the Date of Commencement of the NFO, provided that the Participant continues to comply with the corresponding customer disclosure obligations of the Predecessor Scheme in accordance with the rules of that Scheme.

## 22 PARTICIPATION AND FUNDING

22.1. The Participants must pay the amounts the NFO charges, in accordance with the funding model approved by the Board, to the NFO, as and when required. The amounts charged could be in the form of annual participation fees or case fees or both.

22.2. Failure to pay the amounts due, may lead to one or more of the following actions by the NFO:

22.2.1 Institution of legal action for the recovery of the outstanding amounts, together with interest and costs on an attorney-client scale;

22.2.2 Notifying the relevant regulator of the non-payment to enable them to consider appropriate regulatory action against the Participant;

22.2.3 Publication of the non-payment and reporting the information to any relevant industry body.

## 23 CONSUMER EDUCATION

The NFO may contribute to the education of Financial Customers by the sharing of information to enable them to make informed financial decisions and make effective use of the services of Participants.



**SCHEDULE “A” to the NATIONAL FINANCIAL OMBUD SCHEME RULES:  
APPLICABLE MONETARY LIMITS**

For purposes of these Rules, the following limitations apply in respect of Complaints falling within the jurisdiction of the NFO:

**1. For non-life insurance Complaints:**

1.1 The NFO may not consider a Complaint that relates to an amount that:  
(a) exceeds R5 (Five) million for Complaints relating to all types of cover, except for homeowners'/buildings cover;  
(b) exceeds R10(Ten)million for Complaints arising from homeowners'/buildings cover, unless the Participant agrees to these limits being exceeded or the Complainant agrees to limit the Complaint to these amounts.

1.2. The same limits apply to personal lines and commercial lines Complaints.

**2. For Banking, including bank credit Complaints:**

2.1 The NFO may not consider a Complaint that relates to an amount that:  
(a) exceeds R5 (Five) million unless the Participant concerned has agreed to this limitation being exceeded;  
(b) is part of a larger claim by the Complainant against the Participant involving more than R5 million, unless the Complainant agrees to limit the claim to R5 million; or  
(c) together with another claim which the Complainant could make against the Participant would add up to a total of more than R5 million, unless the other claim is separate or unrelated.

2.2 The NFO may only consider a Complaint by or on behalf of a Complainant who is:  
(a) a natural person ; 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 (Ten) million.

2.3 The NFO may make an award up to R10 000 in favour of a Complainant when a bank unnecessarily delays the proceedings of the NFO or fails to respond to a request from the NFO.

**3. For non-bank Credit Complaints:**

3.1 The NFO may not consider a Complaint that relates to an amount that:  
(a) exceeds R5 (Five) million unless the Participant concerned has agreed to this limitation being exceeded; or  
(b) is part of a larger claim by the Complainant against the Participant involving more than R5 million, unless the Complainant agrees to limit the claim to R5 million; or  
(c) together with another claim which the Complainant could make against the Participant would add up to a total of more than R5 million, unless the other claim is separate or unrelated.

- 3.2 The NFO may only consider a Complaint by or on behalf of a Complainant who is:
- (a) a natural person; 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

**4. For Life Insurance Complaints:**

Subject to paragraph 5, awards are not subject to any monetary limits.

**5. For all types of Complaints considered by the NFO:**

A limit of R50 000 (fifty thousand Rand) applies in respect of amounts awarded by the NFO in accordance with Rule 9.4.1(g) as compensation for material inconvenience or distress or for financial loss suffered by the Complainant as a result of an error, omission or maladministration (including manifestly unacceptable or incompetent service) on the part of the Participant. The NFO may make such an award in addition to or regardless of whether any other award the NFO may make in relation to the Complaint.