

To: Professor Poonam Puri

From: OBSI's Consumer and Investor Advisory Council (CIAC)

Re: Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Banking-Related and Investment-Related Complaints

“Alternative Dispute Resolution (“ADR”) schemes that decide individual decisions in arbitration-like processes, do not generally have the capacity to aggregate individual claims and decide them collectively, as most Ombudsman schemes do. ADR bodies should migrate from models of individual arbitration to this ombudsman model. Thus, both sectoral legislation that requires ADR, and the generic consumer ADR legislation, should specify that consumer ombudsmen models should be required, rather than other types of general ADR.”¹

The Consumer and Investor Advisory Council (CIAC) advises the Ombudsman for Banking Services and Investments Board (the “Board”) on issues and challenges faced by consumers and investors in dealing with OBSI to address and resolve complaints with financial service providers. CIAC is also able to supply information and expert advice to the Board on issues related to the financial services sector, client experience, social policy, ombudsman operational activities, social conditions, equality and disability issues, outreach activities and other issues as requested by the Board. As an advisory body to the Board any formal reports or position papers produced by CIAC must be provided to the Board for consideration, action and publication as the Board sees fit. Any material developed by CIAC for the Board is confidential and can be released publicly only after review and approval by the Ombudsman and CEO, and the Board Chair. Generally, there has been a reluctance to grant this approval. We are therefore grateful that we have been afforded the opportunity to submit a public submission for this evaluation .

¹ Delivering Collective Redress: New Technologies by Christopher Hodges and Stefaan Voet, Hart Publishing 2018

You are currently conducting two separate, but simultaneous, reviews of OBSI's operations and practices relating, respectively, to its banking and investment-related mandates. In terms of the banking review, you are mandated to report on whether OBSI is fulfilling its obligations as outlined in the Complaints Regulations in the Bank Act and FCAC's complaint guidelines (CG-13); with respect to the investment review, you are tasked to report on whether OBSI is fulfilling its obligations as outlined in the MOU between the Participating CSA Members and OBSI; and, with respect to both reviews, you are required to report on whether any operational, budget and/or procedural changes in OBSI would be desirable in order to improve OBSI's effectiveness in fulfilling its mandated provisions and/or achieving recognized best practices for financial services ombudsmen. From a regulatory perspective, we understand the requirement for two reviews each subject to its respective terms of reference. From our perspective as CIAC, this distinction is less meaningful. We typically evaluate OBSI and interact with the Board on organization-wide issues and practices where the differences between the two business lines are subsumed in the broader context. In addition, the two reviews address issues and pose questions that are relevant to both OBSI's banking and investment services and the intersection of these two activities. Therefore, we have opted to prepare this single comment letter that we hope will help inform both your banking review and your investment review. Certain comments in this letter will apply to both reviews while others will only apply to a particular one. For each comment, where the relevant review is not clear from the context, we have specifically identified it.

Background Information and Context

Before responding to the questions posed in your evaluation, we would like to supply some background information and context relevant for both reviews. In preparing this comment letter we have drawn heavily on the experiential and anecdotal knowledge of CIAC members. At the same time, many of our observations are grounded on and informed by an analysis²

² Financial Data Analysis of Canadian and International External Complaint Bodies, prepared by Andrew Teasdale, CFA September 2021

(copy attached) of external complaint bodies recently prepared by our member, Andrew Teasdale (the Teasdale Analysis”). To our knowledge, this analysis is the most current and comprehensive comparison of international dispute resolution bodies now available. It has provided CIAC with a valuable tool to evaluate and benchmark the performance of OBSI. It has also alerted us to the importance of factoring jurisdiction-specific and entity-specific factors into any comparison between external dispute resolution bodies. For OBSI these jurisdiction-specific qualifiers include operating in a country that exhibits internationally low standards for internal complaint resolution, low per capita levels of funding for independent external complaint resolution and relatively low competency and accountability expectations for financial advisors. The entity-specific qualifiers for OBSI include operating with two mandates under two regulators and, with respect to banking complaints, being in the relatively unique and compromising situation of having to compete to attract banks to use its services.

In addition to making allowance for OBSI’s disadvantageous operating environment, we believe that it is also important to understand the perceptual challenges that it faces. OBSI must serve multiple stakeholder groups, each of which has a different, and sometimes incompatible, perception of what that service should look like. Regulators and industry members regard it, and refer to it, as an external dispute resolution service. At the same time, consumers, investors and their advocates see it and expect it to perform as an ombudsservice. These two perspectives create two vastly different sets of expectations about how OBSI should operate and how it should be evaluated. The regulator/member vision is an OBSI that functions as a last resort, low cost, arm’s length dispute resolution service. This is clearly at odds with the consumer/investor vision of an ombudsservice that helps complainants navigate the complaint handling process, has the ability to enforce its recommendations and proactively defends the public interest. Given these competing expectations, it is not surprising that OBSI, throughout its twenty-five-year history, has been both a target for criticism and an ongoing source of disappointment for its different stakeholder groups.

Your current reviews of OBSI’s banking and investment services have been mandated by its respective regulators, FCAC and CSA/JRC, to assess the efficiency of OBSI as a dispute resolution service for its members. Efficiency is an important standard to evaluate, but we encourage you

to consider contextual constraints and effectiveness criteria in your assessment. In the interests of both fairness and integrity, it is important that both reviews are informed by and sensitive to the expectations and experiences of consumers or investors. In this note, to the best of our ability and experience, we have tried to provide a representative depiction of these consumer/investor expectations and experiences. We hope that they contribute to a more fulsome understanding and evaluation of the strengths, weaknesses and potential of OBSI banking and investment services.

General Observations

The effectiveness of regulatory-type organizations is typically most dependent on three factors – clarity of mandate, governance structure, and capacity (e.g., authority and funding). All of these factors are relevant in evaluating the effectiveness of OBSI but, atypically for this type of organization, competitive landscape must also be considered. In terms of mandate clarity, the fact that OBSI operates subject to two similar, but not identical mandates is problematic. It adds a degree of complexity and ambiguity to the operations of OBSI and precludes some scale efficiencies that it might otherwise enjoy. For consumers and investors, it is disappointing that the JRC/CSA and the FCAC have not collaborated more closely to eliminate or at least reconcile the differences in their respective expectations and requirements for OBSI. The absence of this type of cooperation, given the significant regulatory overlap in banking and investment services is an ongoing source of frustration for consumers and investors.

Turning to governance, OBSI's board composition reflects its heritage from when it was first created by the banking industry. Among stakeholders, industry and industry alum continue to enjoy relatively high representation on the Board while other stakeholder groups, including consumers, investors and other vulnerable communities, remain under-represented or not represented at all. CIAC believes that this industry bias is a factor in the Board's narrow interpretation of the limited role it is prepared to see OBSI play in the complaint resolution process in order not to jeopardize its 'independence.' Operating within this constraint, OBSI studiously avoids saying or doing anything that could be perceived as favouring or advantaging

one party compared to the other. This strict even-handedness has precluded OBSI from promoting its services more aggressively, it has inhibited its willingness to be more proactive in identifying and investigating potentially inappropriate systemic practices, and it has limited its capacity to assist complainants navigate the complex complaint process.

In terms of capacity, while both the FCAC and the CSA/JRC have assigned significant responsibility to OBSI, they have to date not been prepared to provide it with the commensurate authority or funding. The absence of binding authority, particularly with respect investment services, discourages some investors from bringing their complaints to OBSI and prolongs and complicates the process for those that do. Also, convoluted (investment services) and ill-defined (banking services) mandates for reporting systemic issue are at least partly responsible for OBSI's inability/reluctance to identify any of these issues in recent years. For consumers and investors, OBSI annually reporting the absence of any systemic issues fails their basic eye test and generates both scepticism and criticism. While CIAC believes that OBSI should be doing a better job reporting systemic issues, we concede that until regulators more explicitly mandate and more appropriately fund the identification and investigation of systemic issues it will be difficult for OBSI to satisfy public expectations in this area.

OBSI funds its operations from fees collected on a cost-recovery basis from member firms. Member firms have a strong interest in keeping these fees as low as possible, and in order to maintain their goodwill and membership, the Board has been reluctant to raise OBSI's fees. This industry-centric funding model understandably appears flawed from the perspective of consumers and investors. It provides one stakeholder group, industry members, with disproportionate influence in setting OBSI's fees and approving its budget. This influence has resulted in OBSI's budgeted revenues and expenses in recent years remaining relatively unchanged at approximately \$9 million. Compared to the ombudsservices in other jurisdictions, this level of funding is extremely low on a per capita basis.³ Absent a coordinated initiative by the FCAC and the CSA/JRC to re-think this funding model, OBSI will not be able to make the

³ Financial Data Analysis of Canadian and International External Complaint Bodies, prepared by Andrew Teasdale, CFA September 2021

investments in people and technology necessary to operate as an effective ombudsservice that resolves disputes and fulfils its public interest mandate.

For OBSI, its capacity constraints are compounded by virtue of a competing bank dispute resolution service. In our view, the presence of an alternative bank dispute resolution body has introduced additional complexity and inconsistency into the complaint handling process without any offsetting benefits for consumers and investors. It has also made it more difficult for OBSI to fulfil both its banking and investment mandates. For a bank complainant, the presence of an alternative dispute resolution body, where choice lies with the bank, creates a more opaque process with no obvious value-add. For OBSI, fragmenting the bank complainant universe between two organizations deprives it of scale economies, complicates the identification of system-wide issues and contributes to inconsistent outcomes for bank complainants. Also, given the funding implications associated with retaining a bank as a member, particularly a big bank, a perception is created in order to retain the bank as a member the complainant may be disadvantaged.

Less obvious, but also significant, is the adverse impact that the alternative bank dispute service has on OBSI's investment services. OBSI has been designated by the CSA/JRC as the sole dispute resolution service for investment complaints. However, the pervasiveness of bank-owned investment dealers introduces potential complications and confusion. Specifically, a complaint that originates at a bank-owned investment dealer sometimes gets routed through that bank's multi-stage complaint handling process. This process can engage the involvement of the bank's internal ombudsoffice. OBSI's ability to help a complainant either navigate or avoid the involvement of the parent bank's ombudsoffice can be blunted if the parent bank is not a member of OBSI.

Our research found that dispute resolution bodies in other jurisdictions do not typically compete with one another and discovered no evidence to suggest that competition is the evolutionary model, especially in financial services. In international jurisdictions where competing providers do exist (e.g., Switzerland and Germany), they generally do not serve the same membership. CIAC strongly supports FCAC adopting the international best practice and

designating OBSI as the sole dispute resolution body for banking. That said, we do believe that ombudsman and dispute resolution models should be evaluated on an ongoing basis against competitive global benchmarks in order to identify best practises and learn lessons to help set standards and assess performance.

Banking Services

We begin our specific observations by referencing and generally endorsing the findings in the FCAC's 2020 review of external complaints bodies (the FCAC Review⁴). This report covered many of the topics that you are currently reviewing including timeliness, accessibility, impartiality/independence, accountability, transparency and effectiveness. The FCAC Review provided, in our view, a fair assessment of OBSI, grading it positively in most categories while identifying some opportunities for improvement in others. In terms of the latter, we concur with the FCAC Review that OBSI should work to shorten its complaint resolution cycle times; we acknowledge that OBSI provides reasonably good accessibility but could do better to accommodate more vulnerable individuals and communities; and, in terms of accountability, we feel that OBSI has room for improvement.

The FCAC Review holds OBSI to the accountability standards appropriate for a dispute resolution service. CIAC would like OBSI to embrace accountability standards more appropriate for a consumer/investor ombudsservice. Specifically, we would like to see OBSI adopt a more public profile involving more transparent reporting and analysis of its activities and decisions. As a key player in the banking and investment complaint handling process with an explicit public interest mandate, OBSI needs to be more publicly visible and accountable. This level of accountability is impossible so long as the general public is unfamiliar with OBSI and does not have easy access to the information necessary to make an informed assessment of its performance. We encourage you to recommend that regulators relax their restrictions on OBSI's ability to make more anonymized information and analysis available about the type of complaints it is investigating and the nature of the recommendations it is making. Also, we ask

⁴ Industry Review: The Operations of External Complaints Bodies FCAC 2020

that you recommend that regulators provide more explicit direction and support to allow OBSI to become more proactive in identifying and alerting consumers about systemic issues.

In terms of transparency, we believe that OBSI is performing relatively well but can do more. From CIAC's perspective transparency engages OBSI's public interest responsibility to inform and educate the banking and investing public about the complaint handling process and the role OBSI can play in that process. In this area, we believe that OBSI has work to do. When we asked the Board to take on this public interest responsibility more aggressively, we have encountered push back on two fronts. One is a resource constraint. We are told that, caught in the vice of a rising case load and member pressure to keep rates low, OBSI is too stretched to fund or staff a nation-wide public interest promotion/education campaign. The second, as already noted, is attributable to the Board's strict interpretation of 'independence' in the context of everything that OBSI does. CIAC has consistently encouraged the Board to adopt a broader definition of independence to compensate for the inherent resource and expertise gap that exists between complainant and member firm. We encourage you to recommend that FCAC align OBSI's banking mandate more closely with its current investment mandate. This is because we find the CSA/JRC formulation that combines the standard of independence with the standard of fairness more balanced and more appropriate. The absence of a level playing field in most complaint situations, requires OBSI, in our view, to balance its desire to maintain independence with a similar ardor to promote fairness. It would be a positive development if both FCAC and CSA/JRC could assure the Board that OBSI would not be offside its independence standard when helping consumers and investors understand and navigate the complaint process.

The FCAC Review questioned the merits of a multiple-external dispute body model. It acknowledged that "the multiple-ECB model is not consistent with international standards" and "can have a negative affect on consumers' perceptions of the fairness and impartiality of external dispute resolution." The review also expressed concern that "the challenge of raising consumers' awareness about their right to escalate a complaint is compounded when there are multiple external dispute resolvers." From our perspective, the FCAC's concerns are on point and align with the anecdotal evidence of confusion and suspicion that this multiple external

dispute body model creates for consumers. We trust that this evaluation will validate the inappropriateness of a competitive bank dispute resolution model and will recommend that the FCAC designate OBSI as the exclusive dispute resolution body for banking services.

Investment Services

In terms of investment services, no recent analogue to the FCAC review is available. The anodyne annual reviews performed by the JRC do not provide many insights. Typically, they simply confirm that OBSI is meeting the standards established by provincial regulators and then provide the assurance that their efforts to grant OBSI binding authority are active and ongoing. The last substantive review of OBSI's investment services dates back to the 2016 Independent Evaluation and, while the external environment has experienced notable change since that time, many of its more significant recommendations remain both relevant and unaddressed. Among these outstanding recommendations, we would include granting OBSI binding authority, adopting a more robust public policy posture, making more information about cases and decisions available to the public, raising the compensation cap as soon as possible and reviewing it regularly thereafter, and submitting a small sample of decisions on a regular basis to a qualified external party for review. The continuing relevance of the 2016 Independent Evaluation is at once impressive and disappointing. Impressive in that so many of its recommendations have past the test of time and disappointing because so many of them have been allowed to pass the test of time and remain outstanding. We trust that your review will validate the merits of these recommendations and that you will include them in your own list. We also hope that you will be able to leverage the disappointing response by regulators to the 2016 Independent Evaluation, to create a greater sense of urgency around the recommendations in your forthcoming report.

Specific Questions

One of the purposes of your evaluation is to conduct a high-level benchmarking exercise that compares OBSI to other financial services ombudsman schemes or equivalents in comparable international jurisdictions both operationally and with respect to OBSI's general organizational approaches to matters. The Teasdale Analysis will be an invaluable resource for performing this benchmarking exercise and we will allow the data and comparisons in that analysis speak for themselves.

The investment services terms of reference for this evaluation specifically asks for feedback on the effectiveness of the "naming and shaming" system. CIAC does not believe that "naming and shaming" is an adequate substitute for granting OBSI binding authority. For one thing, naming and shaming does not discourage dealers from low balling harmed investors. As long as OBSI is not able to issue binding decisions, dealers will be motivated to pressure complainants to settle for lower dollar amounts. Also, naming and shaming does not address the reluctance of some investors to bring their complaint to OBSI specifically because they are aware that OBSI will not be able to provide them with a binding decision.

This reluctant complainant phenomenon also factors into the question in the investment services evaluation about whether the \$350,000 limit on OBSI's compensation recommendations should be increased. Without binding authority, this question is somewhat moot. If investors are currently deterred from bringing their complaint to OBSI for fear of being low-balled, it is unlikely that raising the cap on recommendations will reduce this reluctant complainant phenomenon and may actually exacerbate it. However, if your report recommends that OBSI be granted binding authority we encourage you to include a recommendation that the compensation limit be raised immediately to \$500,000 and be adjusted in line with inflation thereafter.

Conclusion

The quote at the top of this submission suggests that models of individual arbitration should migrate to an ombudsman model. Members of CIAC believe that OBSI, both in form and

substance, should be given the responsibility and means to make this migration. CIAC aspires for OBSI to become a full-fledged ombudsservice and it is this prospect that underlies most of our comments in this submission. Put most simply, in our view OBSI is fulfilling its banking and investment mandates well and, with regard banking, significantly better than the other dispute resolution body. However, we want more, the public deserves more, and regulators need to do more. It is past time that Canada's financial service regulators overcome their jurisdictional pettiness and work together more closely to provide Canadian consumers and investors with a more effective and efficient financial dispute resolution process based on a single independent ombudsservice that is provided with the authority and resources necessary to operate well. Your contemporaneous reviews of banking and investment complaint handling have created a unique opportunity for fundamental change. Please use this opportunity to encourage regulators to work together to make these changes and institute these reforms so that OBSI can migrate as soon as possible from a dispute resolution service to a world class ombudsservice.

Members of CIAC would like to thank you for meeting with us and considering this written submission. We would also like to reiterate our thanks to the Board for allowing CIAC to actively take part in this process and agreeing to post this comment letter on the OBSI website.

Appendix A

Systemic Fairness and Financial Data Analysis of Canadian and International External Complaint Bodies

Andrew Teasdale, CFA

January 2022

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Abstract

Canada is currently in the midst of a review of its consumer alternative dispute resolution (CADR) bodies and processes. All four external independent complaint bodies, the OBSI, the GIO, the OLHI and the ADRBO are described as ombudsman. A 2018 review of banking CADR unearthed serious system and procedural concerns regarding fairness and process outcomes at both the external and internal complaint level, and especially with respect to systemic issues. Systemic issues are of considerable importance to fairness outcomes for consumers and impact confidence in financial services. Consumer ombudsman are intended to serve the wider public interest, and not just the surviving individual complainant, and hence confidence is tightly wound around the ability to address systemic issues. Systemic issues are founded on and impact fairness.

But how does Canada compare to its international peers, and can we compare one CADR regime to another? Data on complaints, systemic funding for CADR at the financial services level, and a simple metric of complaint costs is provided for a wide range of CADR bodies across the world. Annual data from 2020, and in some instances 2019, from Asia, Canada, Europe, Africa and Australasian entities is analysed and tabulated. The findings are stark showing Canada falling well behind in terms of funding and complaint volume while evidencing higher processing costs. This data raises serious concerns over funding and the reach of fairness and leads to questions about the adequacy of regulatory and legislative support for CADR in Canada.

A system model of an evolved consumer ombudsman is used to illustrate system components and their interaction, the wider environment, and the fairness construct. CADR needs to be viewed as a wider construct with a wider set of influences and supports. Fairness is not only the most important overriding principle on which CADR and regulation co-exist, but it also has capacity for both detail and definition. Why does Canada lack CADR capacity, is its fairness construct impaired and to what extent is its regulation supportive of or in conflict with a consumer ombudsman's public interest objectives?

Introduction

The primary focus of the research included in this document was to provide a comparative analysis of Canadian and international external complaint resolution data for a range of ombudsman and dispute resolution providers. In doing so it was also necessary to conceptualise an evolved model of consumer alternative dispute resolution (CADR) with which to address a) questions arising from the data and b) to address comparative function and hence efficacy of consumer alternative dispute resolution going forward, and in particular the consumer ombudsman model.

Easily accessible European, Asian, Australasian, UK and Canadian data is addressed. Data is drawn from 2020 sources including 2020 annual reports, other than those jurisdictions where only 2019 annual reports were available. Data was collated between June and December 2021.

The Quebec AMF lacked the necessary public data and reporting to develop appropriate comparisons at this time. The impact of this data exclusion is considered marginal given a) the significance of the data assessed and b) that many of the Canadian ombuds organisations also process Quebec data.

The analysis addresses a number of different external complaint regimes that span formal arbitration, to informal mediation and formal arbitration, to handler/ombudsman, from disparate, to centralised and integrated, to those that handle and oversee referrals to firms and others that provide early extensive advice and early resolution. The more formal the arbitration structure however the more limited the data set – note the Swiss data for example – and so data tends to be more representative of either consumer ombudsman models or evolved arbitration models with informal mediation/investigative stages associated with consumer ombudsman.

Outside of the data and the point in time comparison, we also see extensive change within each country. Change appears to be moving in one direction, and that direction is one with increasing transparency, systemic focus and consumer and public interest - fair treatment of consumers matters. Comparison of one regime to another should not therefore focus on the point in time difference but also the rate of change of regimes and their direction of change. In this respect full assessment of CADR (consumer alternative dispute resolution) must also assess regulatory and legislative change and direction and pace of change as well as the overall consumer protection environment. To do this effectively we need an evolved conceptual model of CADR in order to assess CADR function with respect to both fairness and system interaction.

The data analysed pose a number of questions. Why the disparity between Canadian and international jurisdictions, and what is the evolutionary track of Canadian CADR?

When compared against other jurisdictions Canada falls well behind both in terms of funding for CADR and with respect to complaint volume. Canada lags behind many of its competitors' standards of competency and accountability for advice, as well as regulatory standards for internal complaint resolution¹. Given that concepts such as fairness and independence are influenced by system standards and system interaction, this report also addresses the interaction of CADR with the wider regulatory framework. How supportive and collaborative and consumer focused is that framework? What is the fairness model? To illustrate this, the report posits a wider systemic profile of an evolved model of CADR and provides a limited analysis of its regulatory support component in the Canadian context with reference to Australian and UK benchmarks.

¹ Specifically best interest standards exist for advice in Australia, the UK and Europe and for investment advisers in the US. Canada's Consumer Focused Reforms specifically exclude any form of fiduciary responsibility irrespective of the scope of the relationship - <https://www.securities-administrators.ca/resources/client-focused-reforms/csa-publications-cfr-2/>.

This report does not provide a detailed quantitative or qualitative review of overall consumer support frameworks and social culture, but this is something that is also relevant to, and supportive of, environment and culture impacting financial services and the operation of their external complaint bodies – anecdotal reference is however provided. But it does ask us to raise, when addressing CADR, what is the consumer complaint culture and is society as a whole supportive of consumer rights and transparency and openness of the complaint process?

Compared to other countries Canada's ombuds organisations receive much less funding per capita: Canada's four external complaints organisations (OBSI, OLHI, GIO and ADRBO) receive 6% of the UK's FOS and 8% of Australia's AFCA's funding. In Canada fewer complaints reach an external independent medium than in other countries: Canadian ombuds complaints per capita are 2.3% and 5.6% of the UK's and Australia's per capita external complaints respectively, 6% of Norway's and 12% of New Zealand's.

If we look at costs per complaint, the OBSI, designated as an ombudsman but lacking many of its powers and functions, also appears to have the highest cost per complaint of the ECBs studied. This cost issue needs to be addressed and explored and this report provides further perspective on this matter.

Complaint processing per se is complex along a number of dimensions (function, system interaction, fairness) and most ECBs studied had a range of different approaches. Some processes were heavily involved in providing assistance and early advice, looking to resolve cases as early as possible (Finland for instance). Others had involved processes for referral and registration of complaints yet to pass through the internal dispute stage. Some remained heavily formal with respect to submission of the complaint and provided limited investigation of complaints and limited enablement of the consumer complaint itself – Italy for instance, and the ADRBO and possibly Canada's insurance ombudsman (OLHI) appear to fit this profile.

It is also worth building into conceptual models of CADR the academic work in the area of distributive, procedural and interactional justice and the developing awareness of vulnerability and consumer behavioural influences on outcomes. Most important of all, when we assess the data, then reference the model and function of CADR and ask ourselves if we achieve the three components of fairness, we realise that fairness is the most critical component of the model, the system and the objective.

This report focuses on system fairness as the fundamental essence of all interactions and all functions.

Areas of Analysis

The analysis in this document looks at the following data parameters/benchmarks:

- Big picture per capita expenditures and comparative expenditures
- Cost per complaint
- Complaint volume
- Compensation and compensation limits

Each of these complaint benchmarks have fairness implications and considerations.

It also provides:

- A brief review of the various CADR (referred to as external complaint bodies or ECBS by Canada's FCAC) models and a later section on a conceptual evolved model of consumer alternative dispute resolution.
- A reconciliation of UK FOS and Canadian OBSI and OLHI investment complaints; classification of complaints between various products and services vary across jurisdictions and this analysis allows for better comparison of OBSI's and Canada's securities complaints relative to one of its more evolved international peers.
- An assessment of cost differentials between OBSI and ADRBO complaint processes as these have implications for system fairness and function.
- A brief assessment of Canadian and selected international regulatory frameworks, their complaint handling rules, and their interaction with CADR/ECBs including emphasis on the concept of fairness.
- The issue of transparency and the publication of written determinations considered by many to be key to improving CADR accountability and to iterative improvements in system function and integrity.

Consumer Alternative Dispute Resolution (CADR)/External Complaint Body (ECB) Models

In “Consumer Redress: Implementing the Vision” Hodges (2016)², speaking about Europe, noted that the “development of consumer alternative dispute resolution is still only in its infancy”. But he could just as easily have been speaking about CADR globally. He noted specifically the arbitration and ombudsman models and the various bases on which they were derived (national, sectoral public, semi-official or operated privately). Arbitration models take longer than informal mediation or ombudsman processes (and some of the schemes in this review have a complex interplay between all three – i.e., the Dutch). Mediation as well has different connotations depending on whether you are talking ombudsman style mediation or more formal regulated mediation that we see for example in some of the Swiss ECBs. Additionally, more complex investigations of ombudsman models may also be more resource heavy, but it is difficult to fully reconcile all models and their varying components to one another, especially since all models are evolving.

Limited detail on case costs for various levels of case complexity across ECBs further complicates matters, as does limited detail on individual models themselves – there is a case for greater transparency and comparison of CADR models to others and the work involved in this report would argue for this. The section addressing a conceptual model of an evolved CADR provides further detail.

Hodges (2016) also addresses the wider vision of CDR systems that provide 1) Consumer advice, 2) Dispute resolution, 3) Aggregation of data, 4) Publication of aggregated data, 5) Improving market behaviour. In the book “Delivering Collective Redress: Innovative technologies,” Hodges and Voet note the following stages “in sequence” of an ombuds: triage, assisted negotiation (mediation), a decision that is legally binding on the trader or non-legally binding but having strong persuasive effect. In this same book Hodges and Voet address the ability of ombuds organisations to provide collective redress more effectively for systemic issues via regulatory redress and consumer ombudsman:

“ADR schemes that decide individual decisions in arbitration-like processes, do not generally have the capacity to aggregate individual claims and decide them collectively, as most Ombudsman schemes do. ADR bodies should migrate from models of individual arbitration to this ombudsman model. Thus, both sectoral legislation that requires ADR, and the generic consumer ADR legislation,^[2] should specify that consumer ombudsmen models should be required, rather than other types of general ADR.”³

In Consumer ADR and Collective Redress⁴ Cosmo Graham discusses the relevance of addressing systemic issues;

“compensation and redress is given to those who complain, sometimes only to those who complain persistently. With respect to those who do not complain he notes “There is a concern that these people should be able to receive redress and there should be systems that cater for

² Hodges, Christopher, Consumer Redress: Implementing the Vision (June 9, 2016). Pablo Cortés (ed.), The New Regulatory Framework for Consumer Dispute Resolution (Oxford University Press, 2016) Forthcoming, University of Leicester School of Law Research Paper No. 16/27, Available at SSRN: <https://ssrn.com/abstract=2793603> or <http://dx.doi.org/10.2139/ssrn.2793603>

³ <https://www.bloomsburycollections.com/book/delivering-collective-redress-new-technologies/ch1-introduction-the-scope-and-the-criteria>

⁴ <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198766353.001.0001/acprof-9780198766353-chapter-21>

them. This can be seen as a fairness consideration which can also be linked to efficiency considerations.”

CADR should be able to address wider system issues and internal dispute resolution and regulatory guidance should do the same. Systemic issue powers are important considerations in system fairness outcomes and define regulatory intent to achieving fair consumer outcomes. Systemic issues are therefore important components of a wider system construct focused on fairness and raise the importance of these functions within CADRs/ECBs. This is more fully addressed in a subsequent section of this paper.

The components of a wider consumer dispute resolution body (CDR) noted by Hodges are similar to those of Gill and Hirst (2016)⁵. They noted the functions of a consumer ombudsman to be 1) to provide independent dispute resolution, 2) a strict alternative to the courts and an equitable jurisdiction to provide additional consumer protection 3) to provide advice and assistance to consumers in their dispute, 4) to equalise the balance of power and provide special assistance to the most vulnerable, 5) to manage expectations where complaints are not valid, 6) to raise standards and 7) to enhance consumer confidence and trust.

Hodges (2016) also notes that “triage, information and advice should be the initial stage of a CDR scheme” and that “regulatory control over a market requires the maximisation of data on what is going on”. He also argues for accessibility and communication and notes the BelMed⁶⁷ national website provided by Belgium as an example – Norway also has a central consumer complaint website that can direct consumers to complaint providers in any given sector.

Gill and Hirst further noted a) “that ombudsmen would do a lot of the ‘donkey work’ for the consumer in terms of framing issues and requesting documents and that this would not generally be done by adjudication or arbitration schemes” and b) “The fair and reasonable standard and the provision of an equitable jurisdiction was seen as being distinct from other mechanisms, which were more likely to be restricted to the strict letter of the law in their decision making”. Additionally, while referencing Gilad 2008⁸ they also noted the importance of therapeutic activities as a key component of a consumer ombudsman model. What is not usually referenced are the advice and structural processes of financial services entities and how better definition and delivery of process could likewise set fairness benchmarks within the service process (outcomes, process and relationships).

Environment and culture are also clearly important once you look beyond the reductive confines of pure dispute resolution. While Norway has arbitration as opposed to an ombudsman as a final stage, it has a much more focused consumer complaint culture and similarly Finland has an extended advice component to its dispute resolution. Hodges (2016) states “all of the Nordic states have what might be described as an ADR culture, given that on a successive basis since the 1970s, all C2B claims have been handled by consumer complaint boards” and additional reference is noted in a chapter from

⁵ <https://eresearch.qmu.ac.uk/bitstream/handle/20.500.12289/4556/Defining-Consumer-Ombudsmen-Report-2016.pdf;jsessionid=4568D05E11A2E6A2B78A689F215FE0C6?sequence=1>

⁶ <https://www2.le.ac.uk/departments/law/news-events/transformation-consumer-dispute-resolution-eu/adr-odr-in-belgium-stefaan-voet-lu.pdf>

⁷ https://www.academia.edu/3213762/Belmed_The_Belgian_Digital_Portal_for_Consumer_A_O_DR

⁸ Gilad, Sharon. (2008). Accountability or Expectations Management? The Role of the Ombudsman in Financial Regulation. *Law & Policy*. 30. 227 - 253. 10.1111/j.1467-9930.2008.00275.x. https://www.researchgate.net/publication/227742895_Accountability_or_Expectations_Management_The_Role_of_the_Ombudsman_in_Financial_Regulation

“Rethinking Nordic Courts”⁹. Europe has been moving ahead with a developing a comprehensive consumer ADR framework¹⁰.

The data analysis in this document is drawn from a number of different regimes cutting across different perspectives and cultures. While one could argue that data from one model cannot be compared to data from another model, the reality is that differing models show much richer public interest contexts that are relevant to qualitative data interpretation.

- On one dimension we have the large centralised highly integrated regimes of the UK, Australia, Ireland, Norway, Finland and Holland and the evolving integrated regimes of Taiwan and South Africa. Italian and Spanish regimes are also moving towards higher levels of collaboration and integration.
- We have the handler/ombudsman models of the UK, Canada, Australia, Ireland and one could also include South Africa.
- We have the informal mediation followed by arbitration committee models of the Nordic countries and the Dutch and the more formal arbitration models of the Swiss.
- We have the regulatory framework models of the French (ombudsman embedded in the AMF and insurance regulator), the Spanish and Italian.
- We have models that have a structured and detailed registration and referral process, Australia, Ireland and New Zealand for instance and models with extensive consumer support and a focus on advice and early resolution (note the Finnish model).
- We have developing models, such as the Spanish regulatory model that has added a complaint resolution body “for the protection of financial consumers” that fits onto existing regulatory ECBs, the Taiwanese model that has taken on regulatory enquiries and well-developed models that are continuing to expand their range of complaints.
- We see models that are embedded in cultures focused on consumer dispute resolution (note the Dutch and the Nordic ADR regimes), and specifically Europe that has a much wider ADR regime with its 2013 Directive.
- We see ECBs embedded in regulatory regimes with much more specific consumer protection focus and highly detailed, extensive and accountable regulation of consumer complaints.
- There are the multi-ombudsman regimes seen in South Africa that is moving towards integration, the Canadian siloed regime that sees little apparent change, to ECBs that cooperate with others and other countries (Malaysia and Singapore). We also note the New Zealand multi-ombuds model, which is similar to the Canadian model but is also quite different.
- We see regimes with strong systemic issue powers (Australia, UK, Ireland and to a lesser extent New Zealand) and regimes with binding and without binding authority.

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https://www.researchgate.net/publication/354973588_Institutional_Aspects_of_the_Nordic_Justice_Systems_Striving_for_Consolidation_and_Settlements

¹⁰ <https://europeanjusticeforum.org/topics/adr-ombudsman/>

- We see regimes that still retain formal induction processes and that provide little or no support and assistance to consumers – note Canada’s ADRBO (although recent changes may impact the way ADRBO operates) and the Italian ACF in particular (the online application process that specifically states that the success of the complaint will depend on the arguments and information provided).
- And we also have models with much higher levels of regulatory engagement and detail – note the Spanish regulatory model where the complaint framework provides extensive detail on firm as well as external complaint resolution – and note the UK’s FCAC where there is substantive data on system level complaints.
- We also see various levels of engagement in the process from both regulators and ombuds organisations and the recent Australian review of AFCA is a good case in point where both ASIC and AFCA made submissions. Regulatory support for ombuds organisations can be seen as an important evolutionary component of the wider system in which complaint and dispute resolution is embedded.

External complaint bodies exist within systems, and systems both determine and are determined by standards, competencies and accountabilities. Canada lags best practices around the world when it comes to standards of competency and accountability for advice¹¹ and when it comes to specifically defining rules, regulations and expectations for internal complaint and dispute resolution. Europe, the UK and Australia have a best interest standard and the US has best interest standards for investment advisers and now has a higher standard of accountability for brokers – US regulation for the broker market acknowledges a fiduciary responsibility albeit one that remains below best practices proposed by many professional bodies.

It is important that we look at international jurisdictions to better understand the CADR model and its evolution. Some might argue that single ombuds/CADRs lack competitive imperatives, but we do in fact have a wealth of comparisons in which to assess both function and efficacy.

¹¹<https://www.fsrao.ca/sites/default/files/comments/2020-11/Teasdale%20A%20CFA%20%28Proposed%20Rule%20%5B2020-001%5D%20Financial%20Professionals%20Title%20Protection%20%29.pdf>

Data qualification and validation

Comparing ombudsman and financial complaint systems across jurisdictions, based on financial data, is difficult since data is not always directly comparable or available. A more complete explanation of data used and assumptions made for some of the data can be found in Appendix A.

For example, the UK's FOS has had to deal with large numbers of payment protection insurance (PPI) cases that have affected funding and case numbers. Complaint numbers ex-PPI are shown in the analysis. Investment complaints are also categorised differently across jurisdictions and some effort has been made to provide a more realistic comparison of "investment complaints" between the UK FOS and Canada's ombuds organisations.

AFCA registers and refers complaints to firms' internal dispute resolution (IDR) that have yet to go through IDR and part of their case data incorporates these figures – AFCA registration and referral does not record all firm level complaints and Australia's financial services regulator is looking at recording financial system complaints as per the UK's FCA. AFCA's compensation data refers primarily to AFCA resolved cases, although AFCA will record compensation data from firms if this is provided (this is understood not to be a significant factor and compensation noted by AFCA applies mostly to cases passing through their EDR processes). The fact that AFCA expends time on registration and referrals needs to be taken into consideration when addressing simple costs per complaint calculations. Also, systemic and strategic functions are not accounted for by a simple expenditure to complaint analysis. Other jurisdictions also provide referral/registration and monitoring services while others focus more heavily on advice and informal early resolution processes.

Canada's OBSI provides a compensation summary for cases, but Canada's GIO, OLHI and ADRBO do not. There are also questions about OLHI's complaint levels and the extent to which complaints are investigated. Other data that is not comprehensively covered by the analysis is that of published decisions, but Canadian ombuds organisations output in this area is restricted. Published decisions resulting from written determinations may offer support for quicker complaint resolution at the more informal mediation/facilitation level; a lack of written determinations may impact efficiency at this level. ADRBO has a much higher level of complaints deemed out of mandate and subject to their initial view procedure (now believed to have been revised) which means that fewer costs are expended on investigation, advice and/or consumer support.

The Dutch model has a higher cost arbitration component and a lower cost informal mediation component. Canada's OBSI, relative to other ombuds organisations, may employ a more intensive investigative model¹². Comparisons of Canadian data to other jurisdictions which have different processes and imperatives need to make allowance for this possibility.

The Irish model also has a registration and referral process, and complaint cost analysis should factor this into cost comparisons. Ireland also has systemic issue focus which generates value from its expenditures.

South Africa has a lower case cost, which may partly be attributable to purchasing power parity, but fewer cases reach the more detailed written determination stage at their FAIS. Higher levels of complaints settled at the informal ombuds stage will lower costs. South Africa also engages in more specific oversight of referrals, and this is noted in the data used to derive the complaint numbers.

¹² Lower case volume, lack of binding decisions, industry resistance to earlier resolution and perceived threats to existence may all impact investigative imperative and hence costs.

Finland also has a significant advice function within its dispute resolution body (informal mediation followed by arbitration) and many cases are dealt with before they even reach mediation. Using Finnish comparisons is even more tenuous. Hodges (2016) notes the importance of a triage and advice stage, and this component is strongly evident within FINE.

Taiwan also has an extensive advice component to its operations and factoring this into an efficiency calculation is beyond a simple expenditure to case analysis.

New Zealand is also a complicated comparator with four different ECBs, two of which are ombuds organisations. Costs per complaint and complaint resolution efficacy may well be affected by this model. Nevertheless, there are some interesting practices evolving within New Zealand ombudsman (note the FSCL Early Assistance Team). Data qualification is also problematic especially with regard to how enquires and complaints and disputes are defined by the different operators.

The French AMF Ombudsman is embedded within the AMF, France's key regulator, as is its insurance counterpart. French case numbers are similar to Canadian numbers.

Compensation limits also skew data; for example, Canada has a C\$350,000 limit, the UK has close to a C\$500,000¹³ limit (indexed) and Australian compensation limits¹⁴ for certain claims can extend to A\$5m. Comparable claims for AFCA investment cases are understood to be A\$500,000 per claim with a limit of \$1m (2020). There is no publicly available data on the distribution of claims and claims awards. Singapore has no limits for cases resolved via mediation but has a \$100,000 Singapore dollar limit for adjudication – the largest compensation figure noted in their 2020 annual report was \$4m SD.

The UK's FOS does not provide compensation statistics per se (overall compensation data for complaints in the UK is however provided for by the FCA its regulator).

Canada's regulators do not provide big system data and firms are not required to publicly report detailed financial complaint and redress data. IIROC and MFDA do provide "complaint" data¹⁵ reporting but the numbers of cases suggest they are restricted to "clear" regulatory breaches – limited descriptions of regulatory complaint data are a feature of Canadian regulation. Changes to complaint handling rules by the FCAC and IIROC (discussed in the section addressing supporting regulatory frameworks) look to get a better handle on complaint data but there is limited detail on the extent to which this data will be made public.

The FCAC's report into bank complaint resolution¹⁶ estimated 5m consumers bring at least one complaint to banks each year. Public data is available for the major bank internal ombudsman with respect to cases and enquiries (for insurance, banking and securities) and TD provides an escalation rate which allows us to make some assumptions about complaint volume at the complaint level before bank IOs.

Complaint data itself may also be categorised differently and one set of data may not be directly comparable to another; what constitutes an investment complaint in one jurisdiction may be different from another; in the UK, some insurance products are deemed investments whereas in Canada these would be directed to the OLHI.

¹³ For 2020.

¹⁴ <https://www.afca.org.au/news/latest-news/afca-complaint-monetary-limits-updated>

¹⁵ <https://www.iiroc.ca/industry/enforcement/Pages/Statistics.aspx> - <http://mfda.ca/enforcement/enforcement-statistics/>

¹⁶ <https://www.canada.ca/en/financial-consumer-agency/programs/research/banks-complaints-handling-procedures.html>

Financial data in annual ombudsman reports is also reported differently. The UK's FOS provides comprehensive and detailed financial statements. Canada's ADRBO, however, provides no such reporting (ADRBO data is limited to firm payments for dispute resolution services).

This report is also based mostly on one year of data and therefore items that may be impacting one year data will be reflected in country comparisons. That said, there are some strong conclusions that can be drawn from the analysis.

The biggest impact on costs and efficiency are process and function and their interaction with the environment. Providing advice, early resolution, facilitating negotiation, having well documented case outcomes and clear and accountable processes for written determinations and/or ombudsman/arbitration panel decisions, systemic and strategic remits and other wider public issue function can all impact cost.

Better comparison of the efficacy of CADR/ECBs would be facilitated by better definition of process and function (relative to a comprehensive universal benchmark), public interest objectives and independent assessment of the operating/supportive environment and culture.

Data in this report was compiled between June and December 2021 and regulatory guidance and/or proposed changes to regulation, both domestic and internationally, are similarly restricted to this time period.

Per capita funding and the Public Interest

Canada's financial services ombuds organisations (OBSI, ADRBO, OLHI, GIO) together spent some thirty-seven cents per capita according to 2020 annual reports. This compares to the UK's FOS of C\$6.16, Australia's AFCA of \$4.86, and Singapore's FIDREC of \$0.97 per.

Figure 1 shows funding C\$ per capita (foreign currency converted to C\$) for a range of international ombuds and external complaint providers relative to Canada.

Figure 1

Entity	Revenue C\$	C\$ per capita	Complaints / cases	Per complaint
OBSI - 2020 annual report - to 31 October	9,048,555	0.24	813	11,129.83
Canada Combined External Ombuds	13,947,159	0.374	3,524	3,957.76
UK FOS	412,426,800	6.16	273,026	1,510.58
UK Pensions Ombudsman	12,461,000	0.19	3,592	3,469.10
Total UK	424,887,800	6.34	276,618	1,536.01
AFCA	123,815,520	4.86	80,546	1,537.20
AFCA ex registration and referrals	123,815,520	4.86	43,108	2,872.21
Ireland FSPO	12,516,092	2.53	5,275	2,372.72
Ireland - ex registration and referrals	12,516,092	2.53	3,825	3,272.18
Norway	8,799,692	1.65	5,509	1,597.33
New Zealand	6,576,916	1.35	3,801	1,730.31
Dutch - Kifid	16,663,007	0.97	3,223	5,170.03
Singapore FIDREC	3,544,294	0.62	1,188	2,983.41
South Africa OBS, OSTI, OLT, FAIS, Credit, Pensions Adjudicator	21,869,839	0.373	40,046	546.12
Taiwan	5,587,431	0.237	11,173	500.08
Malaysia (OFS, SIDREC)	3,250,177	0.10	1,388	2,341.63

Of the ombuds studied with relevant available data, only Malaysia and Taiwan had a lower C\$ per capita budget - The Malaysian ombudsman, in its current form, has only been in place since October 2016.

Figure 2 shows per capita spending adjusted for complaint costs. The adjusted column looks at the combined Canadian ombuds funding adjusted for average complaint costs across the three ombuds. The adjusted OBSI column shows the funding efficiency based on OBSI costs alone.

Canada's financial services ombudsman per capita funding (OBSI+OLHI+GIO+ADRBO) is some 6% of the UK's FOS, 8% of Australia's AFCA¹⁷ and 60% of Singapore's – see figure 2. Since financial services ombudsman's functions extend to public interest, systemic and strategic (all three related), including improving standards throughout the complaint process, Canada appears markedly underfunded¹⁸.

¹⁷ Malaysian RM is C\$0.3 and the South African Rand is C\$0.085.

¹⁸ Canada's low complaint per capita, high cost per complaint, limited systemic and questions over strategic influence and strategic commitment raise questions over the efficacy of the OBSI especially.

Figure 2

Canada per capita relative to		Adjusted	Adjusted OBSI
UK FOS	6%	2.32%	0.5%
AFCA	8%	2.99%	0.7%
AFCA ex registration and referrals	8%	5.59%	1.3%
Ireland FSPO	15%	8.84%	2.0%
Ireland - ex registration and referrals	15%	12.19%	2.8%
Norway	23%	9.13%	2.1%
New Zealand	28%	12.09%	2.8%
Dutch - Kifid	39%	50.32%	11.6%
Singapore FIDREC	60%	45.33%	10.5%
South Africa OBS, OSTI, OLT, FAIS, Credit, Pensions Adjudicator	100%	13.81%	3.2%
Taiwan	158%	19.92%	4.6%
Malaysia (OFS, SIDREC)	367%	217.33%	50.1%

South Africa and Taiwan, after adjustment for lower costs (revenue per complaint), have higher per capita funding than Canada.

Funding Fairness considerations

CADR has evolved to become much more than the final level of dispute resolution. In those jurisdictions that have moved towards best interest standards and fair treatment of consumers, CADR has become a principal component of system integrity. In these systems, at the heart of modern CADR lies fairness.

One of the better arguments supporting the need for addressing systemic issues is that provided by Cosmo Graham in *Consumer ADR and Collective Redress*¹⁹.

. Funding for CADR is one measure of the commitment, the transparency and the accessibility of the fairness construct, not just at the complaint but at the system level. How committed is the system to achieving fair treatment of consumers and fair outcomes at or before the complaint?

¹⁹ <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198766353.001.0001/acprof-9780198766353-chapter-21>

Costs per complaint

The OBSI, in particular, and Canada’s ombuds organisations, had higher average complaint costs than their international peers – see figure 3.

Figure 3

Entity	Expenditure C\$	Complaints/ cases	Per complaint	Enquiries	Enquiries per capita	Enquiries to complaints
OBSI - 2020 annual report - to 31	8,577,218	813	10,550.08	5,691	0.00015	7.00
GIO	1,704,657	276	6,176.29	5,443	0.00015	19.72
Dutch Kifid - ex out of mandate	14,745,143	2,965	4,973.07			
Dutch Kifid	14,745,143	4,785	3,081.53			
Canada Combined External Ombuds	13,947,159	3,374	4,133.72			
Ireland FSPO (2019)	10,980,588	5,275	2,081.63	32,688	0.00662	6.20
Ireland - ex registration and referrals (2019)	10,980,588	3,825	2,870.74	32,688		
AFCA - including registration and referrals	129,280,443	80,546	1,605.05	162,792	0.006	3.78
AFCA ex registration and referrals	129,280,443	43,108	2,998.98	162,792	0.006	3.78
Singapore FIDREC	3,311,522	1,188	2,787.48	7,049	0.001	5.93
New Zealand	6,975,812	3,801	1,835.26	11,464	0.002	3.02
UK FOS	469,888,500	273,026	1,721.04	642,556	0.010	2.35
Malaysia	3,214,907	1,388	2,316.22	12,276	0.0004	8.84
AFCA	129,280,443	80,546	1,605.05	162,792	0.006	2.02
ADRBO	913,880	584	1,564.86	2,282	0.00006	3.91
OLHI	2,280,067	1,851	1,231.80			
Norway	8,373,116	5,509	1,519.90			
Taiwan	6,185,431	11,173	553.61	34,243	0.001	3.06
South Africa OBS, OSTI, OLTl, FAIS, Credit, Pensions' Adjudicator	18,280,814	40,046	456.50	151,490	0.003	3.78

Canadian ombuds costs appear to be higher than international peers. OBSI, especially. Qualifications with respect to Canadian data are noted at the end of this section.

Dutch and Irish ombuds also had relatively high costs as did AFCA ex registration and referrals:

- The Irish ombuds, like AFCA, addresses referrals to firms; complaints including referrals were 5,275 and excluding, some 3,612. The costs of addressing complaints therefore lies somewhere between the two calculations. The Irish FSPO is also the product of a recent merger (2018) and the data retrieved is from the 2019 report.
- Dutch data is much more limited and has a high out of mandate figure: as a % of assumed within mandate cases (1820/(4785-12820)), Dutch out of mandates were 61% of actual cases. Compare this with OBSI’s 23/354 for banking (6.5%).

It is important to note that “costs per complaint” does not adjust for the costs of supporting enquiries, a referrals system, or addressing systemic issues and pursuing strategic objectives – both AFCA and

FOS have significant responsibilities for both, and an increasing number of dispute resolution providers are addressing and monitoring referrals to firms.

Australia for instance has a much more involved process for addressing enquiries (registrations and referrals) and the AFCA costs per complaint are \$1,605 if we look at all cases (including registrations and referrals) and \$2,988.98 if we only include complaints actually processed by AFCA. Therefore, costs per complaint processed internally by AFCA are clearly less than \$2,988.98 and more than \$1,605. As far as enquiries are concerned, AFCA does not specifically denote enquiries but does note telephone calls and online chats. AFCA enquiry data is noted in red to emphasise that this data may not accurately represent all enquiries – written and e-mail enquiries for instance are not clearly noted.

The OBSI has a high enquiry to complaint ratio. On a per capita basis, enquiries (.00036 for Canadian data combined) lag behind all jurisdictions bar Malaysia and hence the enquiries to complaints ratio is not necessarily meaningful. Enquiry data for Norway, Switzerland, Netherlands and Finland were also not available – Swiss data would require analysing eight individual complaint bodies.

Qualifications with respect to Canadian data:

ADRBO does not provide a full financial statement and actual total expenditures are not provided. The only information available is that of fees, which this analysis has had to use as an expenditure proxy. Many associated costs (unknown) are borne by ADR Chambers. Additionally, the many issues identified by the FCAC in its report suggests higher expenditures on certain facets of their process are required and hence costs per complaint are not representative of best practise costs. Additionally, it is extremely likely that ADRBO spends much less on other aspects of a consumer ombuds function.

ADRBO's costs per complaint are indeed significantly lower than the OBSI, however much of this disparity may be due to ADRBO's historically limited number of investigations – this is further discussed in the section OBSI v ADRBO.

OBSI's costs per complaint are further discussed in the next section "OBSI's cost per complaint."

With respect to the OLHI, it is not clear from the annual report whether the 1851 complaints noted are actual complaints (cases started as opposed to complaints made) given the small number of actual investigations completed (11). Enquiry data is not noted in the OLHI annual report. The last independent review stated that most complaints were rejected at an early stage, and this would be equivalent to OBSI and ADRBO out of mandates. If 50% of cases were out of mandate then OLHI costs per complaint, based on those within mandate alone, would double. Furthermore, if those cases within mandate but deemed without merit (without investigation) were similar to the ADRBO's historical initial view protocol, then investigation costs would be higher still, i.e., more cases rejected before investigation. More detail on the OLHI's processes is included in Appendix A.

OBSI's cost per complaint

The reason for the OBSI's higher complaint cost (expenditure divided by cases resolved) is not immediately obvious. Most of the OBSI's cases are investment cases and these tend to be more complex and therefore higher cost. That said an analysis of the UK's FOS 21/22 budget noted a resolved investment and pension case cost of C\$2,280 (C\$1.7 exchange rate) and a budgeted cost of C\$1,328.

It may well be that lower complaint volumes restrict the OBSI's complaints to more complex cases but there is no specific evidence supporting this. It is also likely that lower case volumes negatively impact case costs because large volumes of similar cases could allow for easier assessment and/or determination.

It is possible that the OBSI is employing a more rigorous investigative stance with respect to all its complaints, especially with respect to suitability issues. In the latest independent review of New Zealand's banking ombudsman²⁰ it was noted *“that a dispute is outside jurisdiction is cheapest, than a dispute that is resolved by facilitation, and finally the most expensive is a case that requires a preliminary view or a final decision. To give a feel for the fees, a preliminary view or final decision is approximately ten times more expensive than a decision regarding lack of jurisdiction.”*

The ability to resolve cases through early resolution, or advice, or facilitation and informal mediation as opposed to more thorough investigation and formal ombudsman decision may be impacting OBSI costs per case. But the ability to effect these types of processes may also depend on industry buy-in and regulatory support of ombudsman decisions and service. The OBSI 2016 independent review certainly noted the need for less reliance on negotiated facilitated settlements in favour of more written determinations, so it is difficult to see formal investigations as the root cause of higher costs based on the state of play as of 2016. Ninety percent of the UK FOS's decisions, noted in its 2020 annual report, were addressed by informal views.

That said, instituting early resolution services, such as those in New Zealand and Finland for example, could require an additional budget and regulatory as well as legislative support for the consumer ombudsman as a public interest body. It is also unclear to what extent OBSI investigations are able to rely on precedent to support early and quicker resolution. What are the issues that the OBSI sees as obstacles to quicker more and effective resolution?

Other factors impacting OBSI productivity include the following:

- Financial institution delays as noted by the FCAC²¹; “From the time a consumer first submits a complaint to the ECB, FCAC found that it took ADRBO 156 days and OBSI 112 days to propose final recommendations.” OBSI's 2018 report²² noted an average cycle time of 53 days for banking complaints, effectively doubling the time it took to process banking complaints. It is unclear whether investment complaints were similarly impacted.
- Regulatory failure to implement binding decisions and other regular delays and deliberation, hence limited effective support for the OBSI. Also note the historic ambiguity with respect to internal ombudsman and the lack of prominence of OBSI within the complaint options information set provided by institutions.
- Loss of banking clients to ADRBO forcing unnecessary reorganisation.

Productivity data (as opposed to cycle times – how long it takes to close a case) is also not available for the OBSI.

OBSI V ADRBO

In figure 3, OBSI case costs for the 2020 annual report were \$10,550 and for ADRBO \$1,564. There was no differentiation between banking and investment case costs noted in OBSI's annual report.

However, the ADRBO's processes for initiating an investigation are different from those of the OBSI, as per the following statement from a recent ADRBO communication:

²⁰ <https://bankomb.org.nz/assets/Independent-review-2019/53129c14cb/Independent-review-Banking-Ombudsman-Scheme-2019.pdf>

²¹ <https://www.canada.ca/content/dam/fcac-acfc/documents/programs/research-surveys-studies-reports/operations-external-complaints-bodies.pdf>

²² [file:///D:/Users/atamr/Downloads/Annual%20Report2018_EN%20\(9\).pdf](file:///D:/Users/atamr/Downloads/Annual%20Report2018_EN%20(9).pdf)

“ADRBO could issue an Initial View Letter for cases where ADRBO believed that it was “highly unlikely that an investigation would either yield a different conclusion than the Member Bank’s position or result in any compensation to the Complainant.” For instance, if the Member Bank could show that its processes had been properly adhered to and a thorough investigation conducted for which ADRBO believed it would be “highly unlikely” to come to a different conclusion with the available evidence, ADRBO could proceed with an Initial View Letter and not investigate.”²³

If we look at cases resolved, OBSI resolved (final recommendations) 314 for 2020 and ADRBO resolved 528. Of ADRBO’s 528, 367 were provided an initial view letter. With 70% fewer cases for investigation, costs per complaint resolved are going to be much reduced for ADRBO. What we do not know is how long it takes to complete an initial view letter (we know the cycle times, but not the man hours) and we also do not know the number of OBSI cases that might be addressed easily and within a similar time frame.

However, if we assume that an initial view letter takes up say 20% of the time it takes an investigation then initial view letters take up close to 14% of the budget. At 367 initial views, the noted fees for the year (\$913,880) would equate to a cost per initial view of \$346. The investigation cost would be \$5,502, or the balance of the budget (86%) allocated to 143 investigations. We can reference the New Zealand Banking Ombudsman Independent review assessment of the costs of determining out of mandate as being 10% of the costs of more formal investigations to put some context into the assumptions.

The FCAC review noted that ADRBO relied on consumers’ submission and evidence alone, and that would further reduce the time allocated towards resolving a case relative to the OBSI. Given the comments re ADRBOs processes in the FCAC ECB review, one cannot rely on the presumption that ADRBO cost difference is due to operational efficacy.

However, what we can clearly ascertain is that in terms of outcomes, the ADRBO process is much more favourable to banks than the OBSI’s; fewer complaints are investigated (historically) and costs per complaint resolved lower than that available through the OBSI. No wonder that banks have moved across to a more cost-effective environment. Not only are external complaint case processing costs lower but the banks’ own operational costs for dealing with the external complaint process are likewise, by implication, much reduced.

Of those ADRBO cases deemed in mandate (initial view and investigations), those assessed in the complainant’s favour were 3% (15/528) of the total. In fact, the average statistic for 2018 to 2020 (3 years) for ADRBO was 3%, so the complainant outcome was constant. OBSI on the other hand found in the complainant’s favour in 11% of cases (34/314), with an average for 2018 to 2020 of 10%. OBSI found in the complainant’s favour on average 3.36 times the rate that ADRBO did. This excludes all re-extensions and all original offers deemed fair and split decisions. ADRBO complaints denied, including initial views and those complaints denied after investigation, amounted to 92% of complaints versus the OBSI’s 60% over the three period 2018 to 2020. This document does not include data on international comparisons for complaints found in favour of the complainant, but of the data seen, a 3% figure is the lowest observed.

Scotia Bank Analysis

We can also look further at the differences in outcomes between the OBSI and ADRBO by analysing Scotia Bank complaints pre and post transfer to the ADRBO.

²³ https://bankingombuds.ca/?page_id=1092&lang=en

Chart 1 shows OBSI Scotia investigations and ADRBO Scotia investigations and chart 2 shows complaints found in investors’ favour – re chart 2, OBSI data for 2017 is adjusted for early settlements and original offers deemed fair which are included in the complaints in favour total. 2017 data does not provide this detail and the chart shows 2017 complaints in favour (23) adjusted for an assumption re early settlements and original offers deemed fair (based on 2018 data).

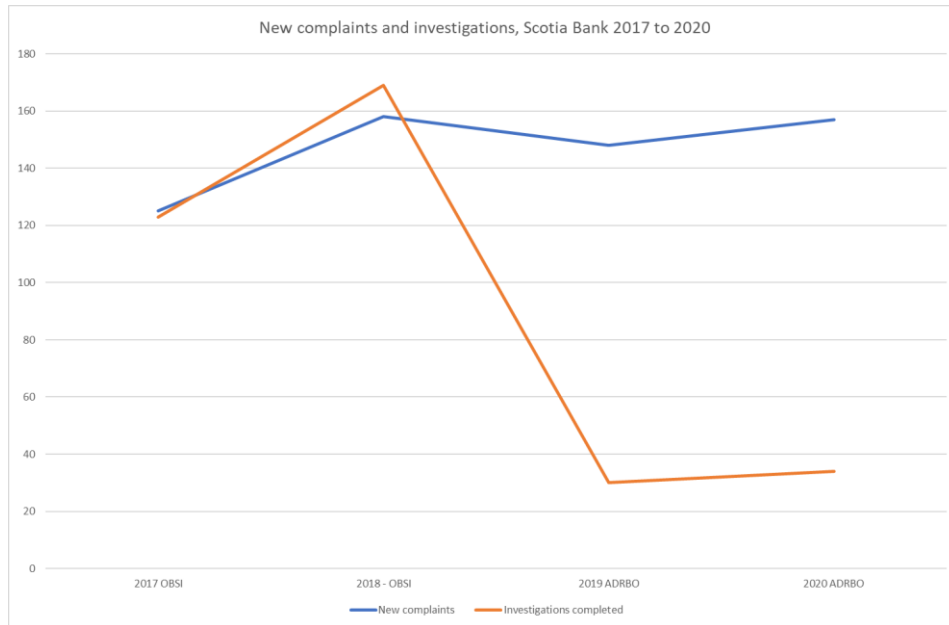


Chart 1

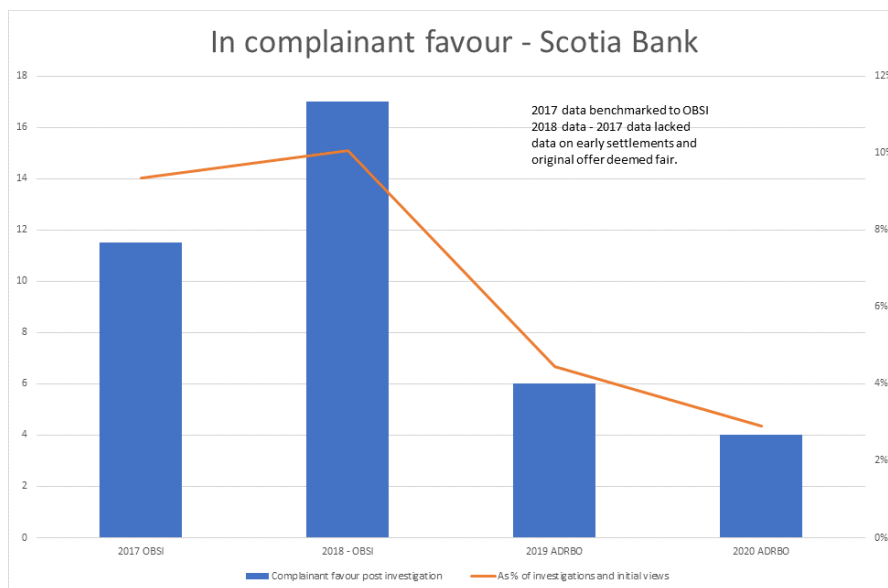


Chart 2

These two charts show a clear trend of outcomes in the firm’s favour post transfer to ADRBO.

Costs per complaint fairness considerations

Costs should clearly not be the only or the most important indicator of fairness at the complaint level. However, costs can indicate barriers to fairness with respect to complaint resolution and these barriers may be system wide. Failure to investigate complaints properly and fully, to support consumers in making a complaint and to address root system causes of complaints also impair the fairness construct.

Complaints/cases

The following tables (figures 4 and 5) provide an analysis of complaints from a number of international Ombudsman and external dispute resolution providers. With the exception of Malaysia, Canada has the lowest complaint coverage per capita of those countries studied.

Figure 4

	A	B	C	D	E
	Entity	Complaint	Per capita		Canada Relative
1	FCAC - Banking - estimated minimum	5,000,000	0.13396		
2	OBSI - 2020 annual report	813	0.00002		
3	Canada Combined External Ombuds	3,524	0.00009		
4	OBSI and ADRBO banking complaints	938	0.00003		
5	OBSI banking	354	0.00001		
6	OBSI Investments	459	0.00001		
A	OBSI + OLHI - investments + pensions (personal)	663	0.000018		
B	OBSI + OLHI - investments + pensions (personal)	535	0.000014		
7	TD, RBC, Scotia - adjusted	5,105	0.00014	"3/7	69.0%
8	TD, RBC, Scotia - adjusted banking	4,428	0.00012	"4/8	21.2%
9	TD, RBC, Scotia - investments	272	0.00001	"6/9	169.0%
9b	Escalation rate (6% TD)	85,081	0.00228		
10	UK FCA	5,146,338	0.07681	"3/10	0.12%
11	UK FCA - Banking + home finance	2,093,462	0.03125	"4/11	0.08%
12	UK FCA - ex PPI	3,800,338	0.05672		
13	UK FCA Investments	126,812	0.00189	"6/13	0.6%
14	UK FOS - apportioned	275,530	0.00411	"3/14	2.3%
14b	UK FOS ex PPI - apportioned	193,433	0.00289		3.3%
15	UK FOS Banking & Home Finance (apportioned)	136,859	0.00204	"4/15	1.2%
16	UK FOS Investments + pensions (personal) - apportioned	17,186	0.00026	"6A/16	6.9%
16 b	The above excluding life and critical illness (FOS and Life OLHI)	14,002	0.00021	"6B/16b	6.9%
17	AFCA	80,546	0.00316		
18	AFCA ex registration and referrals	43,108	0.00169	"3/18	5.6%
19	AFCA ex - banking	22,942	0.00090	"4/19	2.8%
20	AFCA ex - investments	3,507	0.00014	"6/20	8.9%
21	Norway (broad mandate)	5,509	0.00103	"3/21	9.1%
22	Finland - FINE	8,401	0.00151	"3/22	6.2%

Compared to the more established jurisdictions of the UK and Australia, Canada has between 2% (14E) and 6% (18E) of the complaints reaching the UK and Australian ombuds, with similar figures for Scandinavian bodies.

Line 1 provides an estimate of Canada's banking complaints from the FCAC's report into Bank complaint handling – 5m consumers were estimated to have made at least one complaint per annum

to Canada's banks. Canada's banks are meant to provide detailed reports on complaints to the FCAC and accordingly the estimate provided by the FCAC is rooted in hard data.

Please see the Section on "UK FOS and OBSI Apportionment and Investment Case Analysis" for an explanation of 6A and 6B and 16 and 16B.

Comparing the FCAC's estimate (0.13396 per capita – 1C) to the UK FCA's number (2020 data, 0.03125 complaints per capital – 11C), we arrive at estimated FCAC Canadian banking complaints that number over four times the UK's. Yet, we see that ECB bank complaints (OBSI and ADRBO) are only some 1% of the UK's FOS data and some 2.8% of AFCA's data. Greater clarification of this estimate is therefore required.

Figure 5

	A	B	C	D	E
	Entity	Complaint	Per capita		Canada Relative
	23 New Zealand (2 ombuds/2dispute resolution)	3,801	0.00078	"3/23	12.1%
	24 New Zealand - banking dashboard	100,846	0.02072		
	25 Ireland FSPO (average 2019/2020 complaints)	3,677	0.00074	"3/25	12.7%
	26 South Africa OBS, OSTI, OLTi, FAIS, Credit, Pensions Adjudicator	40,046	0.00068	"3/26	13.8%
	27 Spain (Banking, Securities, Insurance and Pensions)	28,123	0.00060	"3/27	15.8%
	27b Spain System Complaints (via BoS, CNMV, DGSFP)	939,738			
	28 Italy (ABF+ACF)	32,452	0.00054	"3/28	17.6%
	29 Taiwan (FOI)	11,173	0.00047	"3/29	19.9%
	30 Swiss Banking Ombudsman (broad mandate for banks - one of 8 ECBs)	2,175	0.00025	"3/30	37.1%
	31 FIDREC - Singapore (broad manadate)	1,188	0.00021	"3/31	45.3%
	32 Dutch Kifid	2,965	0.00017	"3/32	54.7%
	33 France (Insurance + AMF +ASF)	7,237	0.00011	"3/33	87.5%
	34 France (AMF)	961	0.00001	"6/34	85.8%
	35 Malaysia (OFS and SIDREC)	1,388	0.00004	"3/35	217.3%
Note	UK FOS as % of UK FCA	5.4%		"10/14	
	Spain System as % of ECBs	3.0%		"27/27b	

Figure 5 shows Canada's complaints (Combined ombuds and ECBs excluding Quebec) relative to the next two groups: New Zealand, Ireland, South Africa, Spain, Italy and Taiwan.

The red shaded area shows Malaysian and French data. The French system shows comparable complaint levels to Canada. No data, as noted, is publicly available for Quebec's AMF.

Internal ombudsman extrapolation

TD Bank's 2020 Internal Ombudsman's annual report noted an escalation rate of 6%. If we apply this 6% to the adjusted bank internal ombudsman data (insurance, banking and investments) for TD, RBC and Scotia, we arrive at a pre ombudsman complaint estimate of 85,081 (B9b – figure 4) – i.e., complaints standing at the end of the second stage of bank complaints. The three internal ombudsman represent some 63% of the nation's banks and IO data is adjusted by 0.63 to arrive at an assumed system IO complaint volume.

Further analysis (D7 to D9) shows that fewer banking complaints reach the external complaint bodies than investment complaints, possibly because of the CSA's influence on investment complaints. For example, OBSI investment complaints are 169% of bank IO data for investments, whereas OBSI/ADRBO data is only some 21% of bank IO banking complaints. This raises questions with respect to FCAC oversight and bank complaint processing.

If internal ombuds complaints were to pass directly through to external complaint bodies, Canada's percentages as noted in figure 4, column E, would double. If Canada's consumers were able to reach the OBSI and other external complaint bodies earlier, if the OBSI option were not muted in complaint communications and instructions, how many cases would reach the OBSI and other external bodies?

Interestingly we can also compare internal dispute resolution complaint volumes to international jurisdictions via this crude parameter (i.e., the TD ombuds escalation rate). In Spain for example, system complaints reported in the embedded regulatory complaint processes recorded complaints per capita of nine times that noted by the TD escalation rate assumption. So, we can cross reference from a number of jurisdictions to assess reported system complaints.

UK FOS and OBSI Apportionment and Investment Case Analysis

The OBSI reporting year is to 31 October and the UK FOS year is to 31 March (similar to Canada's OLHI). The specific data for this section of the analysis has a) been apportioned, 50% of the UK FOS's 2020/2021 data plus 50% of the 2019/2020 data has been used to calculate specific allocations to investment and banking that would more or less match the OBSI time frame.

The UK FOS from 2020 to 2021 has included life insurance (term life and accident insurance) in the investment calculation and has created a new investment and pension section. Previously investments and pensions had been separated and life and accident had been in the insurance section. Since the OBSI can deal with personal pensions via those managed via CSA registrants but excludes those managed via the insurance sector, providing a like for like comparison of OBSI investment cases versus overseas jurisdictions is difficult. Moreover, the OLHI deals with investment, retirement and life components of complaints but does not differentiate specifically those which would be considered investment. If this were the case, we could have excluded the FOS data on life and accident and compared the OLHI investment data plus the OBSI data to produce a relatively accurate comparison.

In order to make some critical comparisons we have provide two analyses:

Analysis A – We have used the FOS data structure (Investment plus personal pensions – note the UK's Pension's Ombudsman addresses other pension complaints), used the OBSI data and the OLHI life, retirement and investment section and 2/3rds of the OLHI's "Other" to arrive at a comparative figure. The OLHI "Other" component of complaints includes annuity, locked in retirement options and job loss claims – we have made a simplifying assumption re the annuity and locked in retirement claims.

Analysis B – We have excluded the FOS's Life and Accident and the OLHI's Life.

Both analyses are based on apportioned data with the proviso that OLHI for 2020 to 2021 is not yet available and hence cannot be apportioned – 2019/2020 OLHI data has been used in whole.

In this respect we see that Canadian ombuds investment complaints are some 7% of UK investment complaints.

Canadian estimates from international data

Figure 6 calculates what Canadian complaint numbers would be if we were to extrapolate from international per capita complaints: column F shows what the Canadian complaint volumes would be if we were to benchmark against the international external complaint body noted.

Figure 6

A	B	C	F
Entity	Complaint	Per capita	Normalised
Canada Combined External Ombuds	3,524	0.000094	
OBSI and ADRBO banking complaints	938	0.00003	
OBSI Investments	459	0.00001	
OBSI + OLHI - investments + pensions	663	0.000018	
OBSI + OLHI - investments + pensions - ex life	535	0.000014	
UK FCA	5,146,338	0.07681	2,866,913
UK FCA - Banking + home finance	2,093,462	0.03125	1,166,222
UK FCA - ex PPI	3,800,338	0.05672	2,117,085
UK FCA Investments	126,812	0.00189	70,644
UK FOS - apportioned	273,026	0.00408	152,097
UK FOS Banking & Home Finance (apportioned)	103,070	0.00154	57,418
UK FOS Investments + pensions (personal) - apportioned	17,186	0.000257	9,574
The above excluding life and critical illnes (FOS and Life OLHI)	14,002	0.00021	7,800
AFCA	80,546	0.00316	117,895
AFCA ex registration and referrals	43,108	0.00169	63,097
AFCA ex - banking	22,942	0.00090	33,580
AFCA ex - investments	3,507	0.00014	5,134
Norway (broad mandate)	5,509	0.00103	38,592
Finland - FINE	8,401	0.00151	56,518
New Zealand (2 ombuds/2dispute reso	3,801	0.00078	29,149
New Zealand - banking dashboard	100,846	0.02072	773,378
Ireland FSPO (2019/2020 average)	3,677	0.00074	27,782
South Africa OBS, OSTI, OLT, FAIS, Credit, Pensions Adjudicator	40,046	0.00068	25,524
Spain (Banking, Securities, Insurance and Pensions)	28,123	0.00060	22,362
Spain System Complaints (via BoS,	939,738	0.02002	747,231
Italy (ABF+ACF)	32,452	0.00054	20,068
Taiwan (FOI)	11,173	0.00047	17,693
Swiss Banking Ombudsman (broad mandate for banks - one of 8 ECBs)	2,175	0.00025	9,500
FIDREC - Singapore (broad manadate)	1,188	0.00021	7,774
Dutch Kifid	2,965	0.00017	6,443
France (Insurance + AMF +ASF)	7,237	0.00011	4,028
Malaysia (broad mandate)	1,285	0.00004	1,501

If we normalise the data to the Australian (AFCA) and UK (FOS) experience we would see Canadian ombuds complaints of between 63,000 (AFCA) and 152,000 (FOS) – i.e., for the combined Canadian Ombudsman organisations.

We can also normalise the investment complaint data to Australian and UK ombuds and we would see between 5,000 (AFCA) cases reaching the OBSI and 7,000 to 10,000 (FOS) complaints of an investment nature reaching a combined OBSI/OLHI as opposed to the 354 noted in the 2020 annual OBSI report and the estimated investment complaints for both the OBSI and the OLHI of 663 and 535, depending on the components of the calculation.

Estimated system complaints for Canada if we normalise using UK FCA data, would total 1.166m for banking and 70,644 for investments. Similarly for banking complaints benchmarked off New Zealand's Bank Complaint dashboard we would see Canadian system banking complaints at 773,387²⁴.

Drawn from the NZ Banking Ombudsman site; showed 50,523 complaints for the first six months of 2021; if we annualise this and the normalise it to Canada's population we arrive at pre ombudsman banking system complaints of 773,387.

Data is also available from Spanish external dispute resolution providers CNMV (2019 report which estimated an escalation rate of less than 4%²⁵), DGSFP (system complaints from the DGFSP 114,525) and Bank of Spain (806,913).

Funding per capita and complaints per capita

Lower funding is associated with lower complaint volume – see figure 7.

We can also assess the relationship between complaints per capita and funding per capita. Dividing per capita complaints by funding per capita allows us to assess effectiveness of funding with respect to complaint processing. In this case the OBSI has a low complaint generation relationship with funding relative to UK, Australia, Norway, New Zealand, South Africa. The Dutch, Singapore and Irish ratios are broadly similar with that of the joint Canadian ombuds. The table also shows data for AFCA and the Irish FSPO with and without system referrals – the C/D efficacy ratio for the two is likely to lie between the two figures. Many of the European dispute resolution providers (France, Spain, Italy) did not publish the necessary funding data to gain this additional perspective.

²⁴ Drawn from the NZ Banking Ombudsman site; showed 50,523 complaints for the first six months of 2021; if we annualise this and the normalise it to Canada's population, we arrive at pre ombudsman banking system complaints of 773,387

²⁵ P20, <http://www.cnmv.es/DocPortal/Publicaciones/Informes/Complaints2019en.PDF>

Figure 7- Funding per capita and complaints per capita

A	B	C	D	C/D
Entity	Complaint	Per capita	Fund per capita	
OBSI - 2020 annual report	813	0.00002	0.24	0.01%
Malaysia (OFS+SIDREC)	1,388	0.00004	0.10	0.04%
Canada Combined External Ombuds	3,524	0.00009	0.37	0.03%
Dutch Kifid	2,965	0.00017	0.97	0.02%
FIDREC - Singapore (broad manadate)	1,188	0.00021	0.62	0.03%
Taiwan (FOI)	11,173	0.00047	0.24	0.20%
South Africa OBS, OSTI, OLTi, FAIS, Credit, Pensions Adjudicator	40,046	0.00068	0.37	0.18%
Ireland FSPO - ex referrals	3,825	0.00077	2.53	0.03%
Ireland	5,038	0.00102	2.53	0.04%
New Zealand	3,801	0.00078	1.35	0.06%
Norway (broad mandate)	5,509	0.00103	1.65	0.06%
AFCA - ex registration and referral	43,108	0.00169	4.86	0.03%
AFCA	80,546	0.00316	4.86	0.07%
UK FOS - apportioned	275,530	0.00411	6.16	0.07%

Some might say that OBSI numbers would be higher if we included those complaints routed via firms, internal ombudsman. But this was assessed. Given the low case volume reaching bank's internal ombudsman, cases redirected via the bank's internal ombudsman do not appear to make a significant dent in lower system complaint volumes (i.e., still represent low per capita complaint volumes) suggesting issues throughout the complaint process. Clearly it is one key factor. The FCAC report itself noted concern over high rates of attrition of consumers in the banking complaint process.

International ranking of ECBs

Figure 8 provides an ordered tabulation of complaints per capita, ranked lowest to highest, of ECBs, and other entities, studied. Canada's ombuds organisations have fewer complaints of all international bodies studied with the exception of Malaysia. This might be marginally different if we had access to Quebec AMF data.

Figure 8

A	B	C
Entity	Complaints	Per capita
TD, RBC, Scotia - investments	272	0.000007
OBSI banking	354	0.000009
OBSI Investments	459	0.000012
OBSI + OLHI - investments + pensions - ex life	534.88	0.000014
OBSI + OLHI - investments + pensions	663.28	0.0000178
OBSI - 2020 annual report	813	0.000022
OBSI and ADRBO banking complaints	938	0.000025
Malaysia (broad mandate)	1,285	0.000040
Canada Combined External Ombuds	3,524	0.000094
France (Insurance + AMF +ASF)	7236.95	0.000108
TD, RBC, Scotia - adjusted banking	4,428	0.000119
TD, RBC, Scotia - adjusted	5,105	0.000137
AFCA ex - investments	3,507	0.000138
Dutch Kifid	2,965	0.000173
Canada ECBs + IOs	6,740	0.000181
FIDREC - Singapore (broad mandate)	1,188	0.000208
UK FOS Inv + pensions - apportioned ex Life	14,002	0.000209
Swiss Banking Ombudsman (broad mandate for banks - one of 8 ECBs)	2,175	0.000255
UK FOS Investments + pensions - apportioned	17,186	0.000257
Taiwan (FOI)	11,173	0.000474
Italy (ABF+ACF)	32,452	0.000538
Spain (Banking, Securities, Insurance and Pensions)	28,123	0.000599
South Africa OBS, OSTI, OLTi, FAIS, Credit, Pensions Adjudicator	40,046	0.000684
Ireland FSPO (average 2019/2020 complaints)	3,677	0.000744
New Zealand	3,801	0.000781
AFCA ex - banking	22,942	0.000900
Norway (broad mandate)	5,509	0.001034
Finland - FINE	8,401	0.001514
AFCA ex registration and referrals	43,108	0.001691
UK FCA Investments	126,812	0.001893
UK FOS Banking & Home Finance - apportioned	136,859	0.002043
Escalation rate (6% TD) - pre IO complaint estimate	85,081	0.002280
AFCA	80,546	0.003159
UK FOS	273,026	0.004075
UK FCA - Banking + home finance	2,093,462	0.031246
UK FCA - ex PPI	3,800,338	0.056721
UK FCA	5,146,338	0.076811

Adding back the internal complaint processed by internal ombudsman at TD, RBC and Scotia would raise Canada's ranking, but not significantly so; this latter analysis ignores the fact that there may be double counting of data from the IOs noted as well as ignoring data from other IOs for which public data is not available.

Also of note is the Canadian ombuds escalation rate analysis: here we use the TD escalation rate of 6% on the adjusted internal ombuds complaint data (i.e., TD, RBC and Scotia adjusted to a "what if all banks") to produce an estimated level of complaints at the pre internal ombudsman complaint level.

UK FOS data is also apportioned (2019/2020 and 2020/2021). Please refer to the section "UK FOS and OBSI Apportionment and Investment Case Analysis" for more information on the apportionment and the analysis for investments.

Complaint volume and fairness considerations

Canada's complaint volumes are significantly lower than most other jurisdictions. We should be asking ourselves why? The fairness construct operates at numerous levels. Fair complaint resolution for those who pass through the many layers should not be the objective measure of fairness or of system efficacy. One could anecdotally argue that Canadians are not complainers and hence this is not an issue. However, lack of complaints does not mean there is lack of cause for complaint and hence issues with system and fairness throughout. One could argue that with low levels of complaints reaching Canada's consumer ombudsman that there is even greater imperative to both address the systemic broadly and to be strategic with the intelligence gained. What are the fundamental system barriers to addressing the systemic and are they themselves factors impairing the fairness construct?

Compensation

The following table (figure 9) shows compensation data for the ECBs studied. The UK’s FOS does not provide this detail publicly. Of Canada’s ECBs, the OBSI is the only one that publishes compensation data. With no compensation data for ADRBO, OLHI or GIO, the only metric available to assess ombudsman compensation in Canada is that of the OBSI.

Column denoted “OBSI as % of ...” shows the OBSI compensation per capita as a % of the relevant international comparison.

Figure 9

	A	B	C	D	E	F	
	Entity	Compensation C\$	As % expenditure	Complaint resolved	Per complaint resolved	Per capita	OBSI per capita as % of ...
1	Canada - system wide	NA					
2	OBSI - 2020 annual report	1,722,878	20.1%	719	2,396	0.05	
3	Canada Combined External Ombuds (Using AFCA data)	5,868,758		3,374	1,739	0.16	29%
4	ADRBO banking complaints	N/A					
5	OBSI banking	511,095		314	1,628	0.01	
6	OBSI Investments	1,211,878		405	2,992	0.03	
7	UK FCA	6,068,677,162		5,146,338	1,179	90.58	0.05%
8	UK FCA - Banking + home finance	199,244,911		2,093,462	95	2.97	0.46%
9	UK FCA - ex PPI	680,527,517		3,800,338	179	10.16	0.45%
10	UK FCA Investments	57,098,816		126,812	450	0.85	3.81%
11	AFCA	258,600,000	200%	76,681	3,372	10.14	0.46%
12	AFCA ex registration and referrals	258,600,000		29,986	8,624	10.14	0.46%
13	AFCA ex - banking	100,000,000		22,119	4,521	3.92	0.35%
14	AFCA ex - investments	53,400,000		3,205	16,661	2.09	1.55%
15	AFCA Systemic	179,000,000		447,000	400	7.02	0.66%
16	AFCA Total	437,600,000				17.16	0.27%
17	FIDREC - Singapore (broad mandate)	41,473,686	1252%	1,018	40,740	7.27	0.63%
18	Italy (ABF + ACF)	75,245,000	NA	32,428	2,320	1.25	3.70%
19	South Africa OBS, OSTI, OLT, FAIS, Credit, excl Pensions Adjudicator	32,721,485	179%	59,894	546	0.56	8.26%
20	New Zealand	2,702,471	42%	3,736	723	0.56	8.31%
21	Malaysia (OFS only)	11,040,000	513%	966.00	11,429	0.35	13.36%
22	Spain (BoE data only)	4,609,862	NA	21,320	216	0.10	47.00%
23	France AMF only	795,007	NA	639	1,244	0.01	389.36%

Canadian compensation per capita, as measured by the OBSI data, is significantly lower than all other jurisdictions assessed, with the exception of the French AMF and Spain BoE data shown— France and Spain data are incomplete. As noted, adding back internal ombudsman cases to the OBSI could theoretically double the statistic noted, all other things being equal. Italian data (exception ACF data) and Spain data is highlighted as the analysis is based on new cases and not resolved cases.

Total system Canadian compensation, if parameterised against AFCA data (noted in red) would still consign it to the lowest compensation per capita. This means what if we were to use the AFCA relationship between total compensation and investment compensation and use this against OBSI investment compensation we would arrive at an estimated Canadian ombuds compensation statistic – but this assumes that process and outcomes in Canada’s other ECBs are similar to AFCA’s.

Compensation data is averaged against resolved complaints as opposed to successful complaints for the sake of simplicity.

With respect to AFCA compensation

Please note that the table assumes that all AFCA compensation is applied to complaints resolved by AFCA and does not adjust for compensation paid by internal dispute resolution. Communication from AFCA has confirmed that a) compensation is primarily related to disputes addressed directly by AFCA, b) that where a company reports compensation paid during the internal dispute resolution process that this is included in the AFCA compensation figure, but c) that IDR compensation within the AFCA totals is not considered significant and that the simplification used is reasonable. This report does not have access to data that would allow us to eliminate IDR related compensation from AFCA itself. We also note that the South African OSTI excludes data from cases settled during the referral stage from its statistics.

Compensation limits

Different jurisdictions have different compensation limits, but these are evolving.

A	G	H	I	
Entity	Compensation limit - 2020 C\$	Home currency	Max compensation 2020	Binding
OBSI	350,000	350,000		No
GIO	Undisclosed			No
OLHI	No limit			No
ADRBO	No limit			
UK FOS	595,000	350,000		Yes
AFCA - banking	500,000	500,000	1,000,000	Yes
AFCA Banking SME	2,000,000	2,000,000	5,000,000	Yes
AFCA - investments	500,000	500,000	1,000,000	Yes
AFCA General Insurance	250,000	250,000	1,000,000	Yes
South Africa OBS, OSTI, OLTi, FAIS, Credit, Pensions Adjudicator				
OBS	170,000	2,000,000		
OSTI/OLTi				
Personal, General complaints - OSTI	297,500	3,500,000		
Personal home owners	552,500	6,500,000		
FAIS	68,000	800,000		
Credit and Pensions	UND			
FIDREC - Singapore - Per claim adjudication	92,000	100,000		
FIDREC - Mediation	No limit			
Malaysia (broad mandate)	75,000	250,000		
SIDREC -deals via mediation with claims for more than 250000 (voluntary scheme)	75,000	250,000		
New Zealand - Banking Ombudsman	315,920	359,000		Yes
IFSO, FSCL, FDRS - New Zealand	176,000	200,000		Yes
Taiwan	45,788	1,000,000		Yes - but limit
Ireland	745,000	500,000		Yes
France (AMF)	No limit			No
Italy - ABF	298000	200000		No
Italy - ACF	745000	500000		No
Kifid	1490000	1000000		Arbitration binding
Norway	UND			No
Finland	UND			No
French AMF	No limit			No
French Insurance Mediator	UND			UND
Spain (BoE, CNMV, DGSFP)	BoE+CNMV (UND), DGSFP (any amount)			No
Spain - Independent Administration Authority For the Protection of Financial Consumers	745000	500000		UND

Compensation limits can affect total compensation payouts: for instance, FIDREC had one instance of a \$4m Singapore dollar compensation (mediation has unlimited compensation) which skewed results higher, and Australia has much higher compensation limits than either the UK or Canada.

Many European ECBs have much higher compensation limits than the OBSI (the Irish, the Italian ACF and the new Spanish IAAPFC have Euro 500,000 limits). Malaysia (MYR250,000-C\$75,000), Taiwan (TWD1,000,000 – C\$45,788) have much lower limits, as do Singapore's FIDREC for adjudication (S\$100,000), and similarly South African for its FAIS and OBS (insurance ombuds have much higher limits). However, recommendations are in place to increase South African FAIS compensation and South Africa's ombuds organisations may well merge into one centralised body.

It is worth noting that the UK FOS allows for non-binding recommendations on higher amounts and many ombuds organisations allow for this procedure providing both parties agree to it. There is a drift towards higher compensation limits. When addressing compensation limits it is worth looking at the FCA's review of the FOS's compensation.²⁶

²⁶ <https://www.fca.org.uk/publications/policy-statements/ps19-8-increasing-award-limit-financial-ombudsman-service>

Supporting Regulatory Frameworks

Assessing internal dispute resolution frameworks and the regulatory frameworks around them is not the primary focus of this document and its research. However, since an assessment of external complaint resolution (CADR) should realistically reference a model of the system in which complaint resolution takes place, these are clearly important inputs with impact and require some discussion. Moreover, given the data on the small number of complaints reaching external complaint bodies in Canada there is a need for more detailed evaluation of their impact on CADR. ECBs are meant to be independent bodies, but their outcomes are inextricably intertwined within their systems and their system's decision rules; as such independence is bounded²⁷.

The FCAC review into banks' internal complaint handling²⁸ raised some serious concerns about the efficacy and integrity of bank complaint handling. Given the reach of banking within the securities and financial services industry the FCAC findings have relevance beyond banking and raise questions over complaint handling rules and their handling within the broader financial services arena (CSA/IROC/MFSA and FSRA). Poor Internal Dispute Resolution (IDR) impacts consumer confidence and complaint handling within an ECB – for example, poor internal complaint handling could increase the time it takes an external complaint handler to assess a case as well as impact the evidence available to assess the claim properly and fairly. Moreover, it may also lead to higher rates of complainant attrition, negatively affecting systemic fairness outcomes.

Should the detail (the spelling out) of the complaint handling rules matter? It should not if firms and regulators are focused on fair treatment of consumers. But jurisdictions that have detailed complaint handling guidance appear to have a) better data, b) more evolved external and internal complaint handling, c) high levels of regulatory involvement in internal and external complaint handling (including transparency with respect to deliberation and rumination) and d) better reporting on areas of weakness and omission in internal complaint handling as well as an evolved and evolving focus on consumer vulnerabilities, fairness outcomes and professional standards of conduct and competency.

As such, detailed direction and guidance regarding complaint handling has evolved as a result of greater focus on internal complaint handling, fairness, standards and competencies and the wider system itself. Short circumspect directives on the basics of complaint handling absent system transparency and introspection could therefore imply less engagement with and focus on complaint handling, complaint outcomes and fair treatment of consumers.

A 2011 literature review and analysis of the Effectiveness of Regulation²⁹ noted the importance of regulatory advice and guidance:

“Advice and guidance are recommended as ‘the first and preferable way to induce compliance’ and seen by businesses as the most important approach for reducing administrative burden on businesses. Advice and guidance cover a broad range of activities and is used widely in a range of forms by all regulators studied. There is useful evidence of how to make advice and guidance effective and when and how to use it.”

This section provides a brief review of some of Canada's supporting regulatory frameworks, with respect to complaint handling, relative to other jurisdictions' internal complaint handling function.

²⁷ Where an entity is bounded by a system it is important that system deliberations concerning its operations are transparent and in the public domain to support effective independence.

²⁸ <https://www.canada.ca/en/financial-consumer-agency/programs/research/banks-complaints-handling-procedures.html>

²⁹ <https://www.gov.uk/government/publications/effectiveness-of-regulation-literature-review-and-analysis>

We focus primarily on the UK³⁰ and Australia³¹ and two components of the framework: that which addresses complaint handling and that which addresses fairness.

One aspect of the Canadian system that differs from many others is the fractured and disparate nature of financial services regulation, not just across provinces but between product areas and regulators and their SROs. This adds complexity and risks inconsistency in outcomes, the impact of which can be heightened by lack of transparency and differences in regulatory standards.

Securities Complaint handling

The Canadian Securities Administrators' NI 31-103³² is remarkably brief and circumspect with respect to internal complaint handling rules and amounts to no more than nine brief points. Compare this to detailed documentation and expectations regarding internal dispute resolution from the UK's FCA and Australia's ASIC:

Compare Canada's NI 31-103

A registered firm must document and, in a manner that a reasonable investor would consider fair and effective, respond to each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm.

With the FCA's Disp 1.4.1

Once a respondent has received a complaint, it must:

- (1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the complaint;
 - (b) whether the complaint should be upheld;
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint; taking into account all relevant factors.
- (3) offer redress or remedial action when it decides this is appropriate;
- (4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and
- (5) comply promptly with any offer of remedial action or redress accepted by the complainant.

And ASIC's statements:

³⁰ <https://www.handbook.fca.org.uk/handbook/DISP/1/?view=chapter>

³¹ <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-271-internal-dispute-resolution/>

³² https://www.osc.ca/sites/default/files/2020-09/ni_20190612_31-103_unofficial-consolidation.pdf

We expect financial firms to comply with our IDR standards for the design, implementation, and ongoing improvement of financial firms' IDR processes. 'Process' refers to the totality of all procedures, documents, policies, resources, systems, governance and arrangements in place to manage complaints.

The culture of the firm should: (a) recognise that everyone has a right to complain; and (b) be receptive to complaints and demonstrate a commitment to resolving complaints through action.

Firms should encourage complaints and make it easy for people to voice their concerns by developing an IDR system that is readily accessible and easy to use. Firms should proactively identify people who might need additional assistance.

We expect staff who deal with complaints to have the knowledge, skills and attributes to effectively perform their roles. This includes: (a) knowledge of this regulatory guide, consumer protection laws relating to financial products and services, AFCA approaches and relevant industry codes of practice; (b) an understanding of the products and services offered by the financial firm; (c) empathy, respect and courtesy; (d) awareness of cultural differences and the ability to identify and assist complainants who need additional assistance; (e) strong verbal and written communication skills; and (f) analytical thinking and good judgement.

The above is important in that it emphasises culture, the voice of the complainant and the need to demonstrate commitment to addressing the accessibility of the complaint process. Differences are also noted with respect to expectations with regard to the professionalism of the complaint process. Note the CSA's reference to what a reasonable investor would expect.

The FCA also references the Financial Services Ombudsman (Disp 1.3.2A) and its place in complaint processing, where no such reference exists within NI 31-103:

..ensure that lessons learned as a result of determinations by the Ombudsman are effectively applied in future complaint handling, for example by:

- (1) relaying a determination by the Ombudsman to the individuals in the respondent who handled the complaint and using it in their training and development;
- (2) analysing any patterns in determinations by the Ombudsman concerning complaints received by the respondent and using this in training and development of the individuals dealing with complaints in the respondent; and
- (3) analysing guidance produced by the FCA, other relevant regulators and the Financial Ombudsman Service and communicating it to the individuals dealing with complaints in the respondent.

ASIC notes:

For the financial dispute resolution system to be fully effective, financial firms need to establish appropriate links between their IDR process and AFCA.

This linkage between the external complaint process and the firm's own processes is absent in Canadian regulatory communications.

The definition of a complaint is also more detailed. Compare the CSA's NI 31-103's

“complaint” means a complain that :(a) relates to a trading or advising activity of a registered firm or a representative of the firm, and (b) is received by the firm within 6 years of the day when the client first knew or should have known of an act or omission that is a cause of or contributed to the complaint;

To the FCA’s

any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which:

- (a) alleges that the complainant has suffered (or may suffer) economic loss, material distress or material inconvenience; and
- (b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products or claims management services, which comes under the jurisdiction of the Financial Ombudsman Service.
- (3) (in DISP 1.1 and (in relation to collective portfolio management) in the consumer awareness rules, the complaints handling rules and the complaints record rule) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

Australia’s ASIC’s Rule 271³³ also emphasises a wider definition of complaint:

[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

A consumer or small business is not required to expressly state the word ‘complaint’ or ‘dispute,’ or put their complaint in writing, to trigger a financial firm’s obligation to deal with a matter according to our IDR requirements.

³³ <https://download.asic.gov.au/media/3olo5aq5/rg271-published-2-september-2021.pdf>

And what of systemic issues? NI 31-103 is silent on systemic issues, but the FCA's Disp 1.3.6 is clear:

Where a firm identifies (from its complaints or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service or claims management service, it should (in accordance with Principle 6 (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those customers are given appropriate redress or a proper opportunity to obtain it. In particular, the firm should:

- (1) ascertain the scope and severity of the consumer detriment that might have arisen; and
- (2) consider whether it is fair and reasonable for the firm to undertake proactively a redress or remediation exercise, which may include contacting customers who have not complained.

And so is ASIC's Rule 271 (RG 271.118-122)

Boards must set clear accountabilities for complaints handling functions, including the management of systemic issues identified through consumer complaints.

Financial firms must: (a) encourage and enable staff to escalate possible systemic issues they identify from individual complaints; (b) regularly analyse complaint data sets to identify systemic issues; (c) promptly escalate possible systemic issues to appropriate areas within the firm for investigation and action; and (d) report internally on the outcome of investigations, including actions taken, in a timely manner

The early identification and resolution of systemic issues by financial firms should prevent these matters being escalated to AFCA. AFCA also has a statutory responsibility to identify, refer and report systemic issues to a regulator where it considers that there is a systemic issue arising from its consideration of a complaint: see RG 267.65.

Importantly the systemic focus of UK and Australian complaint handling rules is strengthened by robust systemic issue remits of their consumer ombudsman.

IIROC's client complaint handling rules (included in IIROC rules 3700s), despite noting "fair and thorough investigation" and "proper consideration of the facts" are no less circumspect, especially with respect to systemic issues (which it alludes, i.e., "frequent and repetitive complaints") and to their failure to reference ombudsman decisions³⁴. IIROC's rules³⁵ also lack clear direction with respect to supporting consumers through the complaint process, something which is becoming more important in global regulatory communications and the importance of culture. Supportive guidance as well as a review of complaint handling within firms also appears to be lacking. The review of complaint handling within this research has been brief and may well have missed important documentation. Nevertheless, a thorough web-based search of complaint handling issues was made for all the entities noted in this section and Canadian content was found to be limited.

³⁴<https://www.iroc.ca/rules-and-enforcement/iroc-rules/3000/3722-handling-client-complaints#3925188384-4259091021>

³⁵ <https://www.iroc.ca/rules-and-enforcement/iroc-rules/3000/3786-client-complaints#3925188384-4259091021>

Recent proposals from IIROC to update internal complaint and investigation reporting³⁶ note that “Dealers are not consistently reporting to us or conducting investigations on all matters where there is a risk of material harm to clients or the capital markets or where there is material noncompliance with IIROC requirements, securities laws or other applicable laws.” Despite this the proposals lack clarity regarding complaint issues and expectations and data on complaints and issues of harm themselves. The proposed complaint handling standard is also framed as one that a reasonable investor would consider “effective, fair and expeditious” despite the complexity of fairness protocols and the component parts of justice as fairness – distributive, procedural and interactive. Complaint handling with its high proficiency requirements is surely above a “reasonable investor” standard although a well-defined complaint standard may be considered appropriate by a reasonable investor. Being able to construct a concept at the point of entry or interface is a complicated process. In the absence of a formal assessment of current complaint handling within IIROC firms it is also unclear the extent to which the proposed changes are designed to enhance regulatory enforcement and/or internal complaint processing.

The UK’s FCA has produced a number of other documents on complaint handling processes which help inform its commitment to complaint handling, including the following:

- Review of complaint handling in banking groups, 2010 (FSA)³⁷
- Complaint Handling, (Thematic Review), 2014 (FCA)³⁸
- Improving complaints handling, feedback on CP14/30 and final rules (2015)³⁹
- Complaints handling review findings (2018)⁴⁰
- Understanding complaints root cause analysis (2018)⁴¹

The FCA has also developed extensive guidance and content on vulnerability and the impact of vulnerability throughout the financial service process – note its FG21/1 Guidance for firms on the fair treatment of vulnerable customers (2021)⁴².

Similarly with respect to ASIC in addition to the substantial guidance provided by Rule 271 ASIC commissioned a 2018 independent report on “The consumer journey through the Internal Dispute Resolution (IDR) process of financial service providers”⁴³ and the 2017 Ramsey report, “Review of the financial system external dispute resolution and complaints framework”⁴⁴. ASIC’s 2019 Consultation Paper⁴⁵ also noted issues with internal dispute resolution.

A review of the CSA’s and IIROC’s website (other than IIROC’s rule 3700 and the recent consultation noted) showed no recent similar documents addressing member firm complaint handling. The FCAC report into bank internal complaint handling is to date the only authoritative review of financial services complaint handling in Canada.

³⁶ <https://www.iroc.ca/news-and-publications/consultations/proposed-amendments-respecting-reporting-internal-investigation-and-client-complaint-requirements>

³⁷ <https://www.fca.org.uk/publication/archive/fsa-review-of-complaint-handling-in-banking-groups.pdf>

³⁸ <https://www.fca.org.uk/publication/thematic-reviews/tr14-18.pdf>

³⁹ <https://www.fca.org.uk/publication/policy/ps15-19.pdf>

⁴⁰ <https://www.fca.org.uk/publications/multi-firm-reviews/complaints-handling-review-findings>

⁴¹ <https://www.fca.org.uk/firms/complaints-handling-review-findings/understanding-complaints-root-cause-analysis>

⁴² <https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers>

⁴³ <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-603-the-consumer-journey-through-the-internal-dispute-resolution-process-of-financial-service-providers/>

⁴⁴ https://cdn.treasury.gov.au/uploads/sites/1/2017/06/R2016-002_EDR-Review-Final-report.pdf

⁴⁵ <https://download.asic.gov.au/media/5113692/cp311-published-15-may-2019.pdf>

Bank Complaint Handling

The recent FCAC reviews into a) external complaint bodies and b) into banks internal dispute resolution provides to date the most authoritative insight into bank internal and external dispute resolution. Proposed changes to complaint handling guidelines⁴⁶ currently exclude fairness as a key principle but include it within guidelines once (point fifteen “consistent, fair and objective”) and address systemic issues and their root causes, but only briefly and without detailed guidance. Accessibility is addressed but support is limited to navigation which, without detailed guidance, is insufficient to address vulnerability and other issues impacting efficacy of dispute resolution.

How these new FCAC guidelines will work in practise without the ability to effectively enforce them and without an emphasised duty of care and fairness remains to be seen. It is also unclear as to the emphasis the FCAC is applying to well-resourced complaint processes, in particular processes based on impartiality, consumer support, independent decision making and well evidenced decisions. The extent to which system wide data will be publicly available with respect to complaints and how a bank is supposed to encourage an open and welcoming complaint culture is also open to speculation. How is complaint management and culture to be assessed, overseen, and corrected?

Most of all the omission of fairness as a key guiding principle casts doubt over the commitment to addressing complaint handling and by default fairness within service provision.

Insurance complaint handling

FSRA, the regulator of insurance, credit unions, mortgage brokers, and pensions related financial services recently provided a high-level document addressing best practices and principles of complaint resolution⁴⁷ but as yet has not gone deeper into complaint handling within its purview, although this is in the planning stage. The CCIR provides brief one page guidance on expectations regarding complaint handling within its “GUIDANCE CONDUCT OF INSURANCE BUSINESS AND FAIR TREATMENT OF CUSTOMERS”⁴⁸ and one page guidance on fair treatment of customers.

Fairness

Suranovic notes that the “The literature on fairness is diverse, multi-disciplinary, and often impenetrable”⁴⁹. Kahneman et al (1986)⁵⁰, noted that “the absence of considerations of fairness and loyalty from standard economic theory is one of the most striking contrasts between this body of theory and other social sciences – and also between economic theory and lay intuitions about human behaviour...the standard microeconomic model of the profit maximising firm assigns essentially no role to generosity and social conscience...the economic agent is assumed to be law-abiding but not “fair”.”

Tax et al (1998)⁵¹ noted three components of fairness: distributive (equity, equality and need), procedural (process, decision, accessibility, timing, flexibility), and interactional (honesty, politeness, effort, empathy). They noted that “firms should reassess the fairness and appropriateness of existing processes, outcomes, and employee-customer communications” and that “Providing fair outcomes

⁴⁶ <https://www.canada.ca/en/financial-consumer-agency/corporate/transparency/consultations/complaint-handling-procedures/draft-guideline.html>

⁴⁷ <https://www.fsrao.ca/complaints-resolution-policy-framework-and-best-practices>

⁴⁸ [3377 \(ccir-ccra.org\)](https://www.ccir-ccra.org)

⁴⁹ <https://onlinelibrary.wiley.com/doi/10.1111/1467-9701.00274>

⁵⁰ https://www.researchgate.net/publication/24102966_Fairness_and_The_Assumptions_of_Economics

⁵¹

https://www.researchgate.net/publication/248777710_Customer_Evaluations_of_Service_Complaint_Experiences_Implications_for_Reiationship_Marketing/citation/download

requires that firms understand the full costs incurred by customers as a result of both the service failure and the complaint process.” More importantly they noted “From a process perspective, complaint handling can be viewed as a sequence of events in which a procedure, beginning with communicating the complaint, generates a process of interaction through which a decision and outcome occurs. Justice literature suggests that each part of the sequence is subject to fairness considerations and that each aspect of a complaint resolution creates a justice episode (Bies 1987)”.

Despite the clear formulation of distributive, procedural and interactional justice, aspects of fairness itself remains elusive and not well defined. Fairness in financial services rests largely on the following:

- a) The validated styles and disciplines, processes and techniques, expertise, experience, resources, technology and culture, professional standards, competencies and ethics and representations of service, in particular advice-based services as well as product development.
- b) Regulation and regulatory standards governing competencies, ethics, service representation and associated standards.
- c) Legal decisions and principles, although not binding – legal decisions are however informed by regulation⁵².

It is the complex interplay of the above on which the three aspects of justice as fairness (DJ, PJ, IJ) feed. In many jurisdictions regulation has raised the importance of professional standards and accountabilities for financial advice addressing issues of fairness with respect to the asymmetries and accountabilities associated with advice provision. Best interest standards have a higher fairness threshold for consumers and in this respect evolution of regulation in those jurisdictions imposing best interest standards have different fairness environments and lead to differences in the fairness of outcomes.

Since legislation and regulation are important inputs into legal decisions and the making of precedent, the wider framing of fairness and fair outcomes - that encapsulates professional, regulatory, industry and firm standards - is critical to the both the execution and the perception of fairness..

To what extent are fundamental fairness of process inputs critical to complaint culture and to justice as fairness with respect to procedural and distributive justice? To what extent is a process that is meant to be impartial and fundamentally fair likely to be impaired by a conflict between system rules and fairness principles?

Mary Condon (2013) noted that fairness “goes beyond the legal standards imposed by courts, regulators, or professional bodies, to consider "general principles of good financial services and business practice". If this is the case this would place an ombuds organisation within jurisdictions with weaker fairness frameworks at risk of conflict and exposed to the influence of industry interests. If the fairness framework is impaired and complaint processing reinforces this asymmetry, then how will consumers interface with the complaint’s process?

Every system requires a fully developed fairness framework that addresses the boundaries of fairness (including the impact of asymmetries, complexity, behavioural framing) and its accountabilities. When we see low volume complaint levels reaching ombuds organisations we need to ask ourselves why? Is fairness an issue? The FCAC review of bank internal complaint handling suggests there is a

⁵² <http://www.lawcom.gov.uk/wp-content/uploads/2016/08/No.124-Fiduciary-Duties-and-Regulatory-Rules-A-Consultation-Paper.pdf>

lack of commitment to both fairness and procedure within complaint handling Canadian the Canadian banking system.

In the UK, the FCA has a regulatory fairness standard⁵³ and have extended this to a new consumer duty⁵⁴ “to bring about a fairer, more consumer focused level playing field.”

In Australia AFCA has its Fairness Project “to provide a certainty about how AFCA assesses what is fair in a way that is clearly understood by all stakeholders.”⁵⁵ South Africa also has a Treating Customers Fairly regulatory initiative.

If we look through external complaint handling communications (interactional justice and fairness) we see high visibility given to fairness statements in international jurisdictions compared to Canada. The following are fairness statements regarding an organisation’s commitment to fairness and are taken from the relevant body’s report (reports used for data in this research).

Australia (AFCA)

“Even though we are not a regulator, we want to be loud and clear at calling out bad practices and unfair treatment. “

UK (FOS)

Chair – “This is an organisation whose values and purpose, rooted in fairness, align with my own, and I look forward to helping the service fulfil its vital role as it continues to navigate an ever-changing landscape. “

Ombudsman – “While pressures on people’s finances may be unavoidable, unfairness is not. The more effectively and sensitively firms engage with customers’ individual circumstances, the less detriment, and the fewer disputes, will arise.”

“It’s essential that we’re accessible to everyone who needs us, removing any actual or perceived barriers. The advice our team provided often related to mental ill health, autistic spectrum conditions, and consumers who were struggling to cope or having thoughts of suicide. “

Taiwan (FOI)

“a publicly accountable scheme dedicated to resolving financial consumer disputes and protecting the rights and interests of financial consumers. “

“..the FOI will continue to implement the objectives of the FCPA and resolve financial consumer disputes fairly, reasonably, and effectively to protect the rights and interests of financial consumers.”

⁵³ <https://www.fca.org.uk/publication/archive/fsa-tcf-towards.pdf>

⁵⁴ <https://www.fca.org.uk/publications/consultation-papers/cp21-36-new-consumer-duty-feedback-cp21-13-further-consultation>

⁵⁵ <https://www.afca.org.au/about-afca/fairness/fairness-project>

Finland (FINE)

“FINE’s mission is to promote the position of the customers and the further the development of best practices in the financial sector, and this mission materialises every single day in our work. As one of our people said, “because it is intrinsic for us”.”

“...our 2022 vision: being visible, influential and making our voice heard...Our work will also help the service providers to develop their customer experience, and our voice will be heard timely in the right places to further the best practices and customer position in the financial sector”

“to promote customers' interest and confidence in financial activities, to improve consumers' financial literacy and otherwise to develop everyday practices in the field of financial activities in a manner consistent with its healthy development.”

In Canada there is limited discussion of fairness. Although most guidance and rules note terms such as fair and with respect to complaint handling there is little further discussion of what fairness means.

South Africa (FAIS)

“The mission of the FAIS Ombud is “to promote consumer protection...Our service is for people from all backgrounds...We must constantly strive to educate both ourselves and those we serve about our services and make our services easily accessible...We are responsible to the communities in which we live and work ...We must be good citizens and support civic initiatives...regulation must be accompanied by the appropriate enforcement mechanisms which allow not only for contravening financial services providers to be penalised for their actions, but for consumers to be compensated for any loss or damage they may have suffered on account of these actions...”

Canadian fairness statements

The OBSI provides a detailed explanation of its procedural justice⁵⁶ and frames this as its fairness service commitment. It also provides a fairness statement⁵⁷ which (e.g., fairness both in process and outcome and with respect for differences, needs and circumstance) is robust. But the OBSI lacks a wider system supporting commitment to fairness. The old FSCO (now the FSRA) had a treating customers fairly statement⁵⁸ and this remains in place⁵⁹but this is lacking within CSA and FCAC⁶⁰ guidelines. Current statements are bounded by regulatory standards governing competencies and accountabilities and service representations., which are lower in Canada. Is this part of the problem surrounding complaint volumes and public interest funding of external complaints per se?

Canada’s ADRBO has a limited fairness statement⁶¹ noted under “ADRBO Investigation,” OLHI, while noting important fairness considerations, likewise has a limited fairness statement⁶² as does the GIO⁶³. These fairness statements tend to also focus on broad and universal higher-level principles

⁵⁶ [Principles-of-Natural-Justice-in-Ombudsmanship.pdf \(obsi.ca\)](#)

⁵⁷ <chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.obsi.ca%2Fen%2Ffor-firms%2Fresources%2FDocuments%2Ffairness-statement.pdf&clen=87207&chunk=true>

⁵⁸ [Treating Financial Services Consumers Fairly Guideline - https://www.fSCO.gov.on.ca/en/about/superintendent_guidelines/pages/fair-treatment-guidelines.aspx](https://www.fSCO.gov.on.ca/en/about/superintendent_guidelines/pages/fair-treatment-guidelines.aspx)

⁵⁹ <https://www.fsrao.ca/regulation/guidance/fair-treatment-customers-insurance>

⁶⁰ (There are currently no general provisions prohibiting unfair treatment more broadly under the federal regime) P2 Report on Best Practices in Financial Consumer Protection (2017)

⁶¹ https://bankingombuds.ca/?page_id=22&lang=en

⁶² <https://olhi.ca/about-olhi/service-standards/>

⁶³ <https://giocanada.org/wp-content/uploads/2021/11/GIO-Fairness-Standard.pdf>

whereas much of the regulation governing financial services conduct is more important with respect to actual fairness outcomes.

Transparency and publication of written determinations

The data focus of this document's research has focused primarily on issues of funding and complaint volumes, but there are other indicators of external complaint body efficacy. One such indicator is the number of published decisions. In this section we compare Canadian, Australian, UK and Irish case studies/published written determinations.

Figure 10

Published decisions/determinations	Pa	2020	Total	From	To	Years
UK FOS		24,000	215,000			
AFCA	4,972		6,225	Oct-19	31-Dec	1.25
Irish FSPO - short summary, selected decisions	333		1,000	Jan-18	31-Dec-20	3.00
OBSI - short case study summary	5		89	2003	2021	18.00

Figure 10 shows that Canada's OBSI has published on average five case studies (not written determinations) a year. The UK FOS published 24,000 written determinations in its 2020 reporting year, the Australian AFCA and Irish FSPO an average of 4,972 and 333 per annum. Publicising decisions enhances transparency and accountability and could be an indicator of strategic influence efficacy and certainly touches on systemic issues. It is also likely an indicator of resource pressures as well as internal process resource. Graphically the above table can be presented as follows:

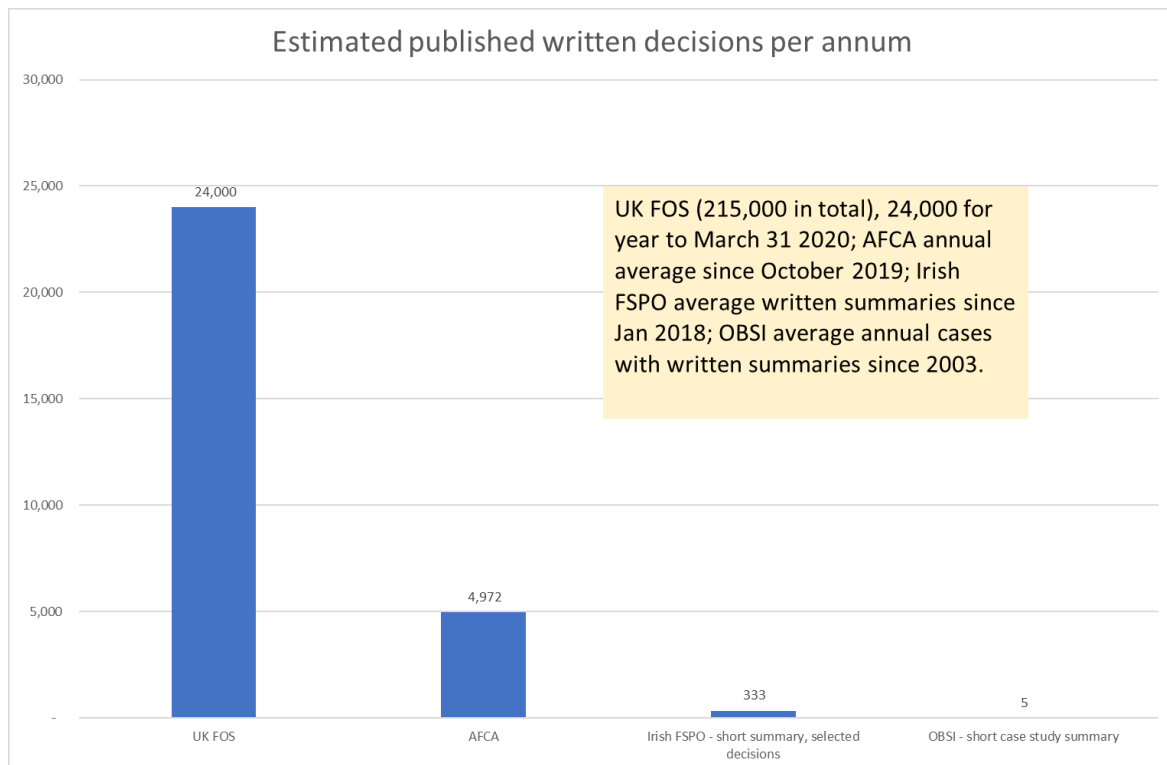


Chart 3

AFCA and the FOS both make the name of the firm public while the Irish FSPO keeps both firm and complainant confidential. New Zealand's Banking Ombudsman published around fifty-three case studies in 2020 (at the time of data assessment), and hence while limiting transparency to the more limited case study format still managed to provide valuable case information to the public. It is unclear

why Canada's ombuds organisations/dispute resolution providers provide such limited case study examples. Some of the Nordic countries provide written decisions going back decades.

A conceptual evolved model of Fair, Systemic, Consumer Alternative Dispute Resolution

What is the objective model of fair, independent, impartial complaint resolution, both internal and external?

Fairness as a framework, an input and an outcome

In the proposed model fairness is critical to system integrity and efficacy.

Fairness frames the outcomes of interactions for complexity, cognition, behavioural heuristics and other vulnerabilities impacting decision making, including those arising from various asymmetries, especially in positions of trust. As noted in the section on fairness, economic theory focused on rationale informed investors would not have fairness, but self-interest, as a component or element. But within financial services where we have representations of trust, confidence, experience and expertise, either making or helping investors make informed decisions, fairness is a complex tangible and necessary construct.

Fairness as justice within complaint processing, as noted, has three components: distributive, procedural and interactional justice. These three components should mirror the fairness outcome in advice-based processes especially, but also with respect to product development. Distributive is the expected and calibrated outcome of process and procedure, and interaction the profiling, assessment and communication/interaction that also helps adjust outputs and process for personal preferences and capacities. Complaint architecture in financial services should reflect those of objective process standards. Improving process, outcomes and interactions should be a central focus of regulation and that of professional and firm competencies, ethics and culture.

An industry's firm, professional and regulatory standards impact those of the complaint process. Weak complaint or incomplete processing may be indicative of systemic issues within culture, competencies, process, interactions and regulation. If complaint processing is symmetrical with service outputs, then complaint processing should aim to reinforce objective and/or represented standards. Evolution of standards and concepts and structures should also be captured by the framework; what may once have been a fair output may no longer be acceptable, or long since surpassed by improvements in knowledge, process and technology. Regulation as such needs to keep pace with the expanding boundaries of technical and ethical fairness.

An evolved consumer ombudsman model should therefore as a matter of first principles reflect the fairness structures of the subject matter and relationships and technical proficiencies of the marketplace in question. It should be able to support the duality of justice outcomes and service outcomes: interactional, procedural and distributive.

An evolved CADR/consumer ombudsman therefore needs to be synchronised with fundamental structural concepts of fairness that impact outcomes, processes and interactions, notably: cognitive, informational and behavioural asymmetries including aspects of vulnerabilities that lie outside these domains. This is a systemic perspective and a systemic function.

A conceptual model of a consumer ombudsman has a number of components, relationships and perspectives.

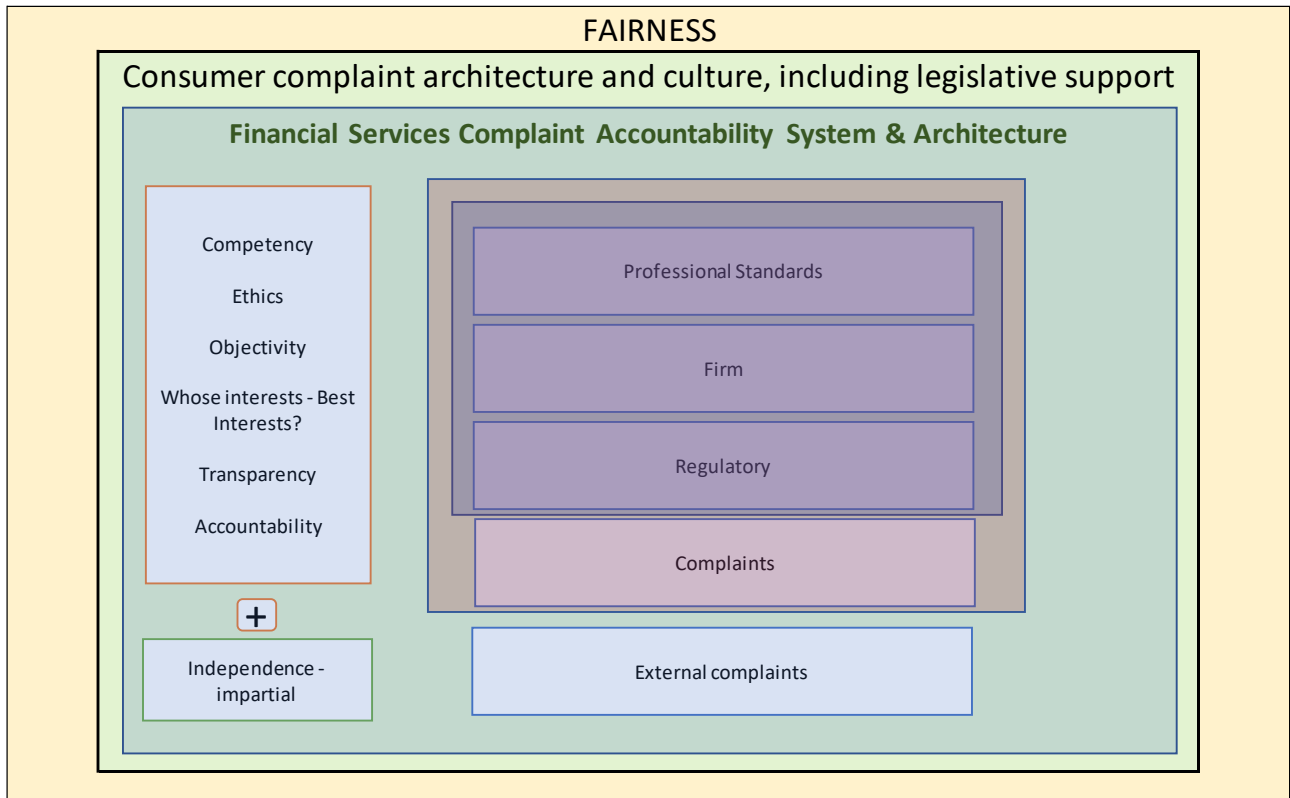
- A fairness construct, requiring definition, as noted above.
- A universal system and system components comprising the following:
 - professional standards (competencies and ethics) and accountabilities, and how these translate into regulatory and firm standards and culture (including fair treatment standards);
 - how complaints are addressed, emphasized and supported throughout the system; the external complaints process and how this feeds back to conduct, standards and regulation and
 - generic consumer complaint culture and the extent to which it is reinforced by legislative support and social cultural norms.
- Well defined component functions of external complaint resolution, especially those of an evolved model of consumer ombudsman; optimally these should reflect system functions and fairness imperatives.
- Clear objectivity of external complaints with respect to the public and the consumer interest and the ability to fully evocate this function. This is a systemic fairness function and loops back to the fairness construct.

Fairness is therefore a framework, an interaction, an input and an outcome. If the framework is to be effective, i.e., to be fair, it needs to be integrated and interactive with effect.

Systemic view of dispute resolution

Figure 11 shows a conceptual universal system view of evolved external complaint resolution and its component environment.

Figure 11- Universal System View



Component system parts

On the right hand side, we have the following:

1. **Professional standards:** the primary means by which standards of service competency and ethics are set and underpin all commitment to treating consumers of financial services fairly. Professional standards have interactional, procedural and distributive consequence. Does the system link professional standards via regulation to conduct and complaints?
2. **Firm culture and service standards:** these may override, positively or negatively, professional standards and may or may not comply with regulatory standards. Again, this component has interactional, procedural and distributive consequence.
3. **Regulation:** determines the minimum standards of competency, ethics and advice and overarching standards of accountability - regulatory architecture and focus does not usually address complaints directly. It should however seek to eliminate complaints, via regulation of and guidance re conduct, where there are issues of fairness.
4. **Internal dispute resolution:** should be a function of professional, firm and regulatory standards and should reinforce the integrity of these same components. The FCAC report into internal complaint handling raised concerns over the wider fairness framework and regulatory commitment to both complaint standards and standards of conduct and competency. Once we understand the fairness framework, we can view any component of the system within the fairness frame.
5. **External complaints:** this addresses professional standards, good/best industry practices, regulation and internal complaint processing via a number of routes. How external complaints is able to affect system outcomes is dependent on function (binding decisions, systemic issue powers and strategic influence capability), legislative and regulatory support and social

culture with respect to complaints and complaint resolution. As the conceptual model implies, it also relies of a clear, robust and detailed understanding of fairness within the domain of focus.

System principles

On the left hand side we see, inter alia, competency, ethics, objectivity, “whose interests – best interests?,” transparency and accountability as hallmarks of an effective system.

Once we include external complaint handling, we introduce and formalise independence and impartiality, of importance where there is a potential conflict not just between consumer and firm but expected regulated, professional and firm standards of conduct and advice and the specific service and/or product outcome.

In reality, with respect to complaint handling, these additional traits should apply to internal complaint handling, otherwise why go through the internal complaint process? Timeliness, according to the literature, is a key component of justice as fairness. Regulatory standards regarding fairness and consumer interests are understood to be critical to the ability to incorporate professional standards, fairness, impartiality and independence into the complaint process.

Component layers

We also have five component layers to the system itself:

- The Fairness construct – fairness should be clearly defined with respect not just to the three universal components of justice as fairness but the overarching principles governing fairness and fair outcomes. Interaction, process and outcome are all similarly components of service, advice and product.
- The wider consumer complaint architecture and culture including legislative support of both complaints and fairness standards including overarching principles governing fairness.
- The financial services complaint accountability system and architecture that includes overarching principles, standards and obligations and stretches from professional standards to external complaint resolution.
- We have the primary regulatory and professional standards model: for those jurisdictions incorporating best interest standards and professional competencies into their model, professional standards are effectively considered part of this component. Excluding professional standards, and effectively best interests, complicates the ability to provide competency, ethics, objectivity and fairness. A vaguer standard makes it harder for external complaints to define fairness in terms of outcomes and treatment for consumers with respect to those same outcomes for firms and registrants.
- We have the firm and the regulatory model including complaints that depends on the extent to which fairness and professional standards are incorporated and internal dispute resolution standards are set. This discrete layer should effectively disappear in an evolved model where complaints are viewed as part of the primary service model.

Component functions of an evolved consumer ombudsman

Based on the review of the literature and a review of the various CADR in this document, the objective components (figure 12) of evolved CADR (Consumer Alternative Dispute Resolution), consumer ombudsman could be noted as follows:

Figure 12- Evolved CADR function (Consumer Ombudsman)

Consumer advice, education	Early resolution	Triage and outreach
Supporting effective complaints	Evidence, inquisitorial, vulnerable	Balanced playing field - fairness
Dispute resolution	Informal	Recommendation/conciliation/informal mediation
	Formal	Written determination/ombudsman
Therapeutic outcomes		
Strategic influence	Raise standards/improve market behaviour, publication of decisions, data aggregation and publication	
Systemic issues		
Enhance consumer confidence and trust		
Consumer protection		

- Consumer advice and education is integral to early resolution and should extend to the firm as well as the CADR provider. Interaction should however not just be a justice as fairness component. In this respect systemic issues at the service induction level may be a precursor to a complaint and illustrates the parallel processes of service and complaint resolution.
- Supporting effective complaints: the system should support those consumers making complaints, enabling their ability to express and to understand and to facilitate a complaint in the first place. Without enabling an outcome, we cannot have fairness. Supporting effective complaint resolution should extend to the firm/the registrant and should prioritise professionalism, evidence, objectivity, impartiality, fairness, independence, and introspection. Supporting complaint efficacy is critical to levelling the playing field and in achieving fair outcomes. It is also critical to resolving the complaint and is a component, to various degree, of all complaints. While processes should be capable of supporting vulnerable investors as a priority within CADR, vulnerable investors are less likely to reach a CADR point. Addressing vulnerability should be a system strategic imperative as well as a CADR priority.
 - Hence supporting effective complaints requires a systemic focus and funding and collaboration to provide for systemic and strategic input. Without supportive effective complaints fairness as a construct is also arguably impaired.
- Dispute resolution, both informal and formal: the ability to resolve a complaint early will depend, inter alia, on social and cultural norms and the system's commitment to fairness as well as a CADR's effectiveness of process and ability to secure redress. All stakeholders should have confidence in the fairness of the process and its outcomes. Formal process appears critical to setting complaint standards, supporting informal resolution and to accountability via transparency of decision making.
 - Fair and effective dispute resolution requires common system goals and standards throughout service provision and complaint resolution at the firm level. Whether fairness is being achieved is partly dependent on barriers to complaint resolution at the IDR and CADR interface but also impairment in the fairness construct. Are system principles, key to setting standards and guidance, supportive of actual fairness and

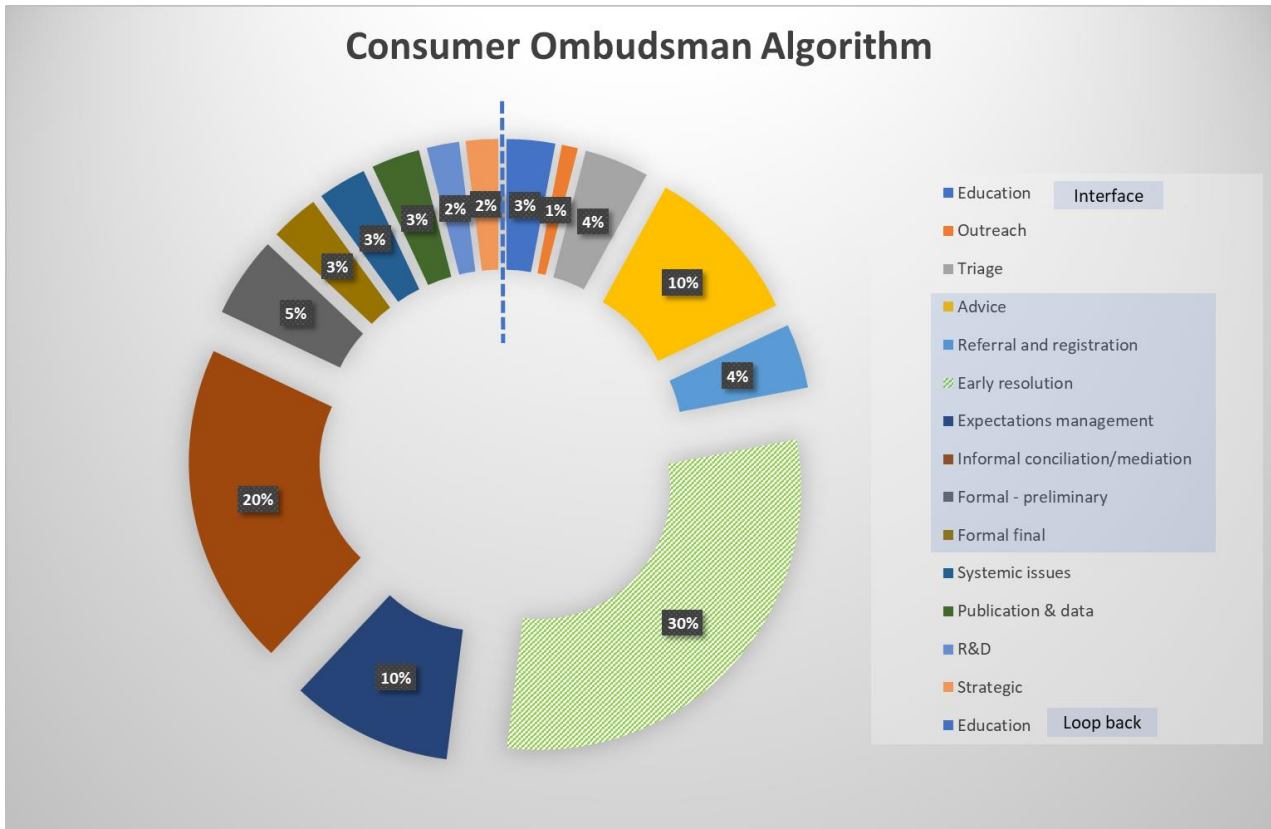
reflective of complexity, cognitive, informational and behavioural asymmetries and boundaries of human interaction with the system. Is the system from the roots up structured to deliver fair outcomes? Regulators if they are sincere and committed to fair complaint resolution need to start with their own regulated standards and firms likewise with their own.

- Therapeutic outcomes: how do a) we interact with and understand perspectives, b) communicate process, approach, outcomes, and c) finally, how do we help consumers move on and re-establish trust in financial services. This is an important aspect of interactional justice requiring higher level sensitivity to cognitive, behavioural and other consumer vulnerabilities.
- Strategic influence and systemic issues are both dependent on and influence the prior processes. Awareness of the wider system should reinforce the imperative for systemic issue protocols and the value of strategic influence of a CADR.
 - Addressing systemic issues also involved consideration of those who have not complained. This is a component of fairness and system integrity. Limiting systemic purview could be considered a restriction on a system's fairness outcomes.
 - Implicit with systemic and strategic issue function is the ability to learn from complaints and to relate issues unearthed to wider system function and evolution. These functions require funding (includes funding for R&D). Funding for this functionality is likewise an indicator of the system's commitment to the fairness construct and a willingness to be open, transparent, and accountable.
 - Strategic influence also requires high level transparency which is aided by publication of written decisions/determinations. Again, what is the impact of the funding model on this functionality? We need to be open to fairness and the fairness construct at all levels.
- Consumer confidence and trust and consumer protection goals are dependent on prior process components. They are also a reflection of system fairness at all points.

Process and algorithm

When addressing effective cost of a consumer ombudsman or similar CADR it is important that we can attribute expenditure to components and process to validate quality and fairness of process. What would such an algorithm look like? The following graphic is a simplistic view of the various process components that could take up a consumer ombudsman's operational focus. It is represented as a pie chart with ad hoc percentage allocations.

Figure 13



Fairness and the data analysis

Briefly, we have addressed fairness, a conceptual system model and the component functions of an evolved consumer ombudsman. Funding for CADR has implications for fairness in that each of the functions performed by an objective model of consumer ombudsman/CADR (early resolution, education, strategic influence, systemic remit, formal and informal dispute resolution) all have implications for fairness and are part of the fairness construct. The roots of the fairness construct start well before CADR and well before regulation, but regulation gives it form and imperative.

Restrictions on systemic issue powers and funding for early resolution, education, outreach and strategic impact all affect fairness structures and outcomes. This is particularly so if internal dispute resolution has critical fairness defects.

Discussion

The analysis of data drawn from numerous sources raises a number of questions with regard to the efficacy of external dispute resolution in Canada, especially that of the consumer ombudsman model. The sections on fairness, regulatory support, system model and consumer ombuds functionality give perspective and a framework to look more deeply at the resulting issues.

First, Canada's External Complaint Bodies receive much lower funding per capita than their peers and process much fewer complaints. Canada also falls behind many countries that are much newer to the CADR/ECB arena.

How fair is Canada's CADR and is the low complaint volume and low per capita funding having a) systemic impact and b) neglecting fairness within industry service and complaint process outcomes? Given the absence of information from securities and insurance regulators on the current state of complaint handling it is difficult to assess how fairly consumers are being treated. Are we seeing appropriate complaint volume, are complaints being addressed when they do reach CADR (note FCAC concerns re investigation of complaints) and to what extent should we have confidence in Canada's CADR's ability to address systemic issues? How can we address concerns over the level of funding directed towards CADR?

Canada's costs per complaint are also higher than its international peers (those for which data is available). The 2016 Independent Review of the OBSI hinted at productivity issues but also identified many plausible barriers to a more efficient process. Looking at international jurisdictions we can see a much more complaint and consumer friendly environment suggestive of significant cultural and environmental barriers within Canada to consumer interests.

Do low complaint volumes also reflect these barriers? Lower costs in Canada's other "ombuds" organisations do not fully address fairness in all the justice as fairness components and cannot, if so, be relied upon to assess system efficiency – low investigations per complaint ratios noted within OLHI and ADRBO should alone invalidate lower apparent case costs. There is a palpable lack of consistency along a number of dimensions amongst Canada's ombuds organisations, not just within procedural investigative fairness but commitment to interactive fairness (therapeutic outcomes), which is reinforced by insufficient transparency about decisions and decision making. Again, can consumers be confident in Canada's CADR? If ombuds signify a systemic commitment to fairness can we call our external complaint handlers ombudsman?

A fair comparison of costs and an effective assessment of fairness for Canada's ombuds can only be achieved once we have properly defined each ombuds functional model and fairness construct. Leading international jurisdictions have much greater attention to function and fairness throughout the financial and regulatory system, especially with respect to the evolution of professional competencies, conduct and accountability for advice. This makes it easier for an ombuds to address systemic issues.

From a pure cost point of view the processing of banking complaints via ADRBO, for instance, has been much cheaper and much less time consuming for those institutions that have transferred their external complaints to the ADRBO. But the service and the outcomes are not comparable. At the same time, the OBSI, whether this is through lack of regulatory support, industry resistance, insufficient case volume and lack of resources, does appear to be struggling to reach international benchmarks, not just in terms of cost but also in terms of fulfilling the wider remit of a consumer ombudsman organisation. This should not be justification for a case against the OBSI but as justification for more robust commitment to CADR and fairness. If there is a finger, it should point everywhere.

The recent FCAC review of external complaint bodies and their processes raised serious concerns over investigative competency (of ADRBO specifically) and of the ECBs' ability to properly address systemic issues. The concerns raised by the FCAC with respect to the narrow focus of complaint processing within the ADRBO may well extend to Canada's other financial service ombuds organisations. Likewise, the troubling assessment of internal complaint handling within banking raises similar concerns over securities, insurance and other services as well as regulatory commitment to fairness. Can consumers express confidence not just in CADR but in our firms and our regulators and our legislators and by implication in our professional bodies? This is a system and all components of the system are accountable.

Clearly Canada needs to decide what type of model of external complaint resolution it wishes to develop and support. At the same time, we should be careful of static comparisons. All of the jurisdictions assessed in this document are evolving and changing and hence we need to focus on the direction of change and not just the present state. Greater consideration and understanding of external dispute resolution in the wider regulatory and professional standard context are also necessary. Palpable lack of regulatory support for higher standards of complaint resolution is also a significant factor in Canada as is the state of play with respect to internal dispute resolution itself. Any assessment of external complaint resolution should also be made with reference to the wider consumer protection environment across industries and services.

This report has also shown that there is lacking strong empirical assessment of external complaint handling costs and processes, and consideration of the reasons for these cost differentials. International ombuds organisations would do well to set robust data and process reporting protocols to allow for more effective comparison between one another, especially with respect to attribution of costs to their component functions. This would enhance transparency and accountability and help set meaningful benchmarks for comparison of standards, process efficacy and emergence.

While funding levels for Canadian ECBs is lower than most other jurisdictions, so are actual complaints that reach the ECB level. Canada lacks system wide data and while system wide data does not seem to be readily available for all jurisdictions, there is data for the UK, developments to provide such data for Australia, and data is available in part in New Zealand and more substantially in Italy and Spain. Estimates from the FCAC suggest that this data is available, but it is not readily discernible from IIROC/MFDA/CSA or FSRA data.

No data is, unfortunately, available for Quebec's AMF which would have been useful. Without this data it is difficult to provide a definitive Canada wide assessment of complaints and data outputs will be affected by this.

Lower funding and fewer complaints reaching the ECBs raises questions over the public interest, systemic issue mandates and the ability of the wider regulatory system to be strategic. While Canada's ECBs have lower funding and receive much fewer cases, Canada's regulators' own rules and guidance regarding effective complaint handling are also of concern. Why are so few complaints reaching the ECBs? The analysis noted that even if we were to include internal ombudsman complaints, Canada would still fall well short of international complaint volumes.

External complaint resolution is emerging globally, but in Canada funding, complaint volumes, regulatory standards, systemic issue focus, consumer assistance and empowerment are underdeveloped. One key insight that can be drawn from the data and the assessment of processes in other jurisdictions is that Canada will need significant additional funding support and much stronger regulatory and legislative commitment to fully develop the potential for public interest focused external complaint resolution.

At present, outside of Quebec, the aspirations of the OBSI with respect to consumer and public interest is an outlier in the context of internal and external complaint resolution within Canada. We have neither the embedded regulatory model of certain European countries, nor the consumer ombudsman models of the UK, Australia, New Zealand and South Africa and lack the consumer protection focus of those Nordic and European models with an historical arbitration focus. Globally, we see greater system integration between regulators and complaint providers and a move towards greater consumer protection, transparency, higher standards and accountability and the development of external complaint models based on the principles of the consumer ombudsman model.

There is however one overarching insight that can be drawn from the data, the conceptual model and the assessment of function, and that is the centrality of the fairness construct. Does Canada lack a commitment to fairness and is this failure to commit to fairness central to its inability to support a fully-fledged consumer ombudsman model?

As Tax et al (1998) noted with respect to Bies (1987), each part of “the sequence” creates a “justice episode”. This aspect of fairness as being something definite and identifiable at each point of a process confirms the systemic importance of CADR and the importance of CADR with respect to service process and advice within financial services. If we do not commit to fairness at the root and along the way, then how can we commit to fairness at the end and for all? If fairness as a construct produces outcomes that differ from the system, then we have conflict between fairness and self-interest.

The outcomes of the service and the complaint resolution should coincide as one with minor difference. In this context the inability of Canada’s regulators and legislators to support an evolved model of consumer ombudsman with systemic and strategic influence and binding powers raises concerns over the ability of its CADR to satisfy expectations of confidence. If the term ombudsman signifies a confidence in the system, then how can we have confidence in bodies that are not able to address the system and inconsistencies in outcomes?

Summary

This paper provides a comparative assessment of global CADR complaint volumes, funding and a simple metric for processing costs. Canada is found to have one of the lowest levels of complaints and the lowest levels of funding for consumer alternative dispute resolution amongst the jurisdictions studied. With opportunity for strategic influence limited and systemic issue powers severely restricted it is difficult to see Canada's CADR as a fully evolved CADR construct. The data provides a stark backdrop against which to evaluate the systemic limitations of Canada's CADR.

It is difficult to see why consumers should have confidence in complaint handling and by virtue of this the system itself. A firmer fairness standard needs to be developed and regulators and legislators need to support and emphasise the importance of fairness at both the complaint and the service process level.

What is Canada's aspirational consumer ombudsman model and to what extent is it going to draw on the considerable global CADR experience assembled in this report? Whose interests are first?

Andrew Teasdale, CFA

Appendix A - Data Qualification and explanation

Every external complaint body tends to have a unique way of noting actual data. This section provides additional explanation of data and data representation.

UK FCA

System wide data for the UK's FCA was drawn from the FCA's aggregate data held on its website⁶⁴. Data used is that for 2020 H1 and H2. Data itself was drawn from the product group page.

Here is a summary of some of the FCA data for 2020:

FCA data 2020 - H1 + H2	
Closed within 3 days	1,947,033
Closed within 8 weeks	2,020,530
Unsuitable advice	975,040
Unsuitable advice/investments	14,622
Advising, selling and arranging	28,394
Complaints opened	5,146,338
Banking and credit cards	1,877,107
Home Finance	216,355
Investment complaints opened	126,812
Investment complaints settled over 8 weeks	14,165
Decumulation & pensions	114,194
Unsuitable advice	975,040
Insurance & pure protection	2,811,870
Redress paid	3,569,810,095
Redress - Bank and Credit Cards	174,265,573
Redress - decumulation and pensions	48,900,842
Redress home finance	24,979,338
Redress insurance and pure protection	3,264,565,526
Redress - investments	57,098,816

UK FOS

The UK FOS is a classic modern ombudsman as per Hodges (2016)⁶⁵ and Gill (2016⁶⁶). UK FOS data was drawn from three areas:

- The 2020 annual report⁶⁷

⁶⁴ <https://www.fca.org.uk/data/complaints-data>

⁶⁵ https://privpapers.ssrn.com/sol3/papers.cfm?abstract_id=2793603

⁶⁶ <https://eresearch.qmu.ac.uk/bitstream/handle/20.500.12289/4556/Defining-Consumer-Ombudsmen-Report-2016.pdf;jsessionid=4568D05E11A2E6A2B78A689F215FE0C6?sequence=1>

⁶⁷ <https://www.financial-ombudsman.org.uk/files/287580/Annual-Report-and-Accounts-for-the-year-ended-31-March-2020.pdf>

- The FOS's 2018/2019, 2019/2020 and 2020/2021 complaints data analysis⁶⁸. These are excel sheets

UK FOS data includes PPI claims, a large ongoing systemic claim and contributes to the FOS funding requirement.

FOS data is shown as an apportioned amount of 2019/2020 and 2020/2021 data. This is because the ombuds of reference is the OBSI and the OBSI year goes to 31 October whereas the UK's FOS goes to the end of March. Investment data (investment and pensions) used in the report is drawn from the following analysis:

2018 to 2019	Insurance based	2020 to 2021	Insurance based	Investments	2020 to 2021	Insurance based
723	548	502	343	Bonds and non-deposit savings plans total	1412	546
376		222		Derivatives total	727	
2910	2910	2259	2259	Endowments total	1042	1042
1618		883		ISAs and PEPs total	2268	
2987	2987	2754	2754	Life and critical illness insurance total	3613	3613
335		257		Mainstream investments total	518	
848		485		Mixed investment portfolios total	809	
147		153		Non-mainstream investments total	503	
1069		629		Stocks and shares total	1400	
9		2		Structured investments total	126	
11022		8146		Investment total	12,418	5201
8035		5392		Investment total ex life and critical illness	8,805	
0.00012		0.00008		Per capita	0.00013	
2018 to 2019	Insurance based	2020 to 2021	Insurance based	Pensions & Annuities		
610	610	552		Conventional annuities	494	494
				Investment linked annuities	49	
3811		2606		SIPP (self invested personal pensions)	3021	
1571		1201		Personal pensions	2431	
798	798	693	693	Occupational pension transfers	1270	1270
76		38		SSAS (small self administered schemes)	296	
187		117		FSAVC (free standing additional voluntary cc)	195	
245		205		Income drawdowns	158	
				QROPS (qualifying recognised overseas pen)	155	155
110		82		SERPS (state earnings related pensions sche)	94	
				Section 32 Plans	61	61
30		22		Pension mortgages	37	37
11		12		EPP (Executive pension plans)	18	18
7449		5528			0	8279
0.00011		0.00008		Per capita	0.0001236	
0.00023		0.00016		Joint	0.00	
				Apportioned incl life and critical illness	17,186	
				Apportioned excl life and critical illness	14,002	

⁶⁸ <https://www.financial-ombudsman.org.uk/data-insight/insight/analysis-annual-complaints-data-2019-20> and <https://www.financial-ombudsman.org.uk/data-insight/annual-complaints-data>

Canada

Canada's data is drawn from the OBSI's, ADRBO's, the GIO's and the OLHI's 2020 annual report. 2019 reports are also referenced for the OBSI and OLHI. Canadian Life and Health Insurance Facts 2018 Edition was also referenced⁶⁹. Terms of reference were also reviewed.

OBSI

Data for the OBSI, with respect to number of cases opened:

Banking cases recorded were those deemed in mandate and not cases opened – this was done to record case load volumes from start to finish. Resolved cases were “final recommendations made.”

Investment case data only provided cases opened and not out of mandate. Resolved cases were those noted as closed. International ECBs tend to provide more information on complaint processing outcomes.

Enquiries included cases opened. No data on referrals back to firms or other ombudsman.

ADRBO

No data provided on expenditures, only fees from member firms. Total complaints were noted as 2282 but only 584 cases were formally opened. During the 2020 reporting period ADRBO had a restrictive approach to determining eligibility and would previously reject a complaint if it felt that it was unlikely that a review would yield a different result. This has since changed to limiting an initial view letter (a rejection) for those clearly out of mandate. ADRBO does not provide compensation data.⁷⁰

GIO

Provided detailed information on enquiries, and complaints referred back to firms as well as referrals to other ombudsman. Out of mandate data was also provided. No information provided on compensation. GIO has three complaint processing stages, informal conciliation, mediation and senior adjudication.

OLHI

There is no enquiry data in annual report. The only reference to enquiries is in a 2014 web document which noted these as being circa 13,000 plus. It is unclear from the report whether the number of complaints stated are actual cases. Resolved case numbers are not provided for either OLHI or GIO. In the 2017/2018 Independent Review⁷¹ it was noted that the majority of cases are rejected before investigation.

P23, “A received complaint first goes to the Dispute Resolution Coordinator, who determines whether or not the complainant has met initially required standards and can be dealt with by OLHI. If so, the file will be forwarded to a Dispute Resolution Officer. If the complaint does not meet basic requirements, the Dispute Resolution Coordinator will recommend that the file be closed forthwith and the complainant informed as to why that has been done. The majority of complaints are closed at this stage..... If basic requirements have been met, the Dispute Resolution Officer contacts both the complainant and the insurer and gathers information from both. After gathering sufficient information, the Dispute Resolution Officer makes a determination as to whether there is or is not a reasonable basis for the complaint. If the

⁶⁹ [https://www.clhia.ca/web/clhia_ip4w_ind_webstation.nsf/resources/Factbook_2/\\$file/2018+FB+EN.pdf](https://www.clhia.ca/web/clhia_ip4w_ind_webstation.nsf/resources/Factbook_2/$file/2018+FB+EN.pdf)

⁷⁰ https://bankingombuds.ca/?page_id=1092&lang=en

⁷¹ <https://olhi.ca/wp-content/uploads/FINAL-file-for-PUBLICATION-EN-3rd-IR-and-OLHIs-response.pdf>

Dispute Resolution Officer concludes that the complaint is without merit, she will recommend that the complaint not be further addressed and that the file be closed and the complainant be so informed. In such cases she must first seek approval from a Deputy Ombudsman or the Executive Director to close the file.”

If this is the case the efficiency of case complaint generation, within the context of a consumer ombudsman, within the OLHI would fall significantly and this would impact the overall Canadian case data (i.e., raising costs per Canadian complaint higher). The high complaint data recorded will affect the complaint cost calculations if the complaint data noted is in fact primarily comprised of rejected cases. The actual complaint assessment process noted in the 2017/2018 independent review would also suggest higher complaint costs for investigations, than those noted in the calculations using the data provided.

It would appear that top line OLHI complaint data matches that of ADRBO and that cases closed without merit before a presumed investigation would mirror the initial view letters of the ADRBO. No detail is provided by OLHI on the cases rejected at each stage, just an initial complaint number (1851 - 2020) and a final investigation number (11-2020).

Internal ombudsman, TD, RBC and Scotia

Data for the internal ombudsman was drawn from the 2020 annual reports. No other internal ombudsman data was available. TD provided an escalation rate for IO complaints as a percentage of complaints at the preceding complaint level and the data was scaled up to provide an estimate of system complaints reaching this preceding level.

IIROC/MFDA/FSRA

It is difficult to assess the validity of IIROC and MFDA complaint data in terms of their ability to reflect actual complaints within the system. IIROC recorded complaints of 1,173 and MFDA of 461 are far too small. No data was found on the FSRA site.

Netherlands KIFID

The Dutch approach is mediation followed by arbitration which is why possibly it has a higher case cost. If no resolution is reached via mediation or arbitration the Arbitration commission will make a decision, which is usually a binding one. Binding is dependent on choice between both consumer and provider as well as on recommended compensation. New complaints were calculated as new complaints less new unsuccessful complaints (4785 less 1820). According to one source, the ombudsman level addresses about 3,000 complaints a year and the arbitration level about six hundred⁷², with a further. The 2020 report noted that mediation and settlement resolved 46% of cases resolved⁷³. The data used for this report does not differentiate between ombuds or arbitration decisions. The ombudsman function is not held specifically by an ombuds but performed by members of the arbitration committee.

Ireland

Irish data is complicated and detailed. Whereas an annual report is only available for 2019 (as of the date of this analysis and hence financial statement data is unavailable) annual complaint data is available for both 2019 and 2020. 2020 complaint data provides actual detail on compensation.

⁷² <https://www.fsm.am/media/1970/6-kifid.pdf>

⁷³ <https://jaarverslag.kifid.nl/wp-content/uploads/2021/04/Kifid-jaarverslag-2020.pdf> and English summary <https://www.kifid.nl/bijna-helft-klachten-opgelost-door-bemiddeling-en-schikking/>

Irish data is complicated by the fact that there are two stages in which cases are rejected for being either out of mandate (ineligible prior to registration and referral) or not within jurisdiction (post mediation and prior to investigation). The legal review prior to investigation is complex and so this data is retained within resolved and new cases - the objective is to capture the impact of complaints, on resources, within the statistical analysis. Complaints deemed out of mandate or ineligible at the start are assumed to have taken up less time and are excluded from new and resolved case data as is the case throughout the analysis – this is done to conform to the wider data analysis.

Within the data analysis noted in this report those cases that are settled early, that are withdrawn during the process are retained within the case counts (new and resolved). This is because cases take up important resources and are an important part of the complaint resolution process itself. Only clear out of mandate cases adjudged at the start of the process are removed from case data.

The Irish Ombudsman data with respect to resolved cases is split into those dealt with via informal process and those dealt with via investigation, as is compensation (2020 data). Additionally resolved cases include those dealt with via registration and referral. New case data is not so adjusted in the FSPO report – therefore the analysis noted in this document deducts registration and referral data to determine new cases. Resolved cases include mediation and investigation but exclude referral and registration and judicial review cases. 2020 Compensation data provided by the FSPO also provides information on various components of compensation; Euro 1,060,000 of which, is compensation that was recommended by the firm. Since the OBSI compensation figures are assumed to include this, we have not made such an adjustment within the Irish data.

Per capita funding, figures 1 and 2 use 2019 complaint data (given the revenue and expenditure restrictions), cost per complaint data uses 2019 complaint data, F4+F5 uses an average of 2019 and 2020 complaint data as does F6 and F8. F7 and F9 use 2019 data to be compatible with 2019 financial data. Systemic data (F9) is from the 2020 data report and relates to financial compensation indirectly awarded to consumers as a result of ombudsman decisions, in this instance specific mortgage contracts.

South Africa

South Africa is in the midst of meaningful change to its ombuds organisations the enactment of Financial Sector Regulation Act, 2017, and in particular chapter 14 regulating Ombuds schemes.

FAIS

FAIS data requires some assessment and is complicated. The following is an explanation provided by the FAIS in its annual report (p10).⁷⁴

When the Office of the FAIS Ombud reports on complaints received and complaints resolved during a specific fiscal year, it reports on firstly, the resolution of those complaints received within the period, in this case 1 April 2019 to 31 March 2020, and then it looks at the overall number of complaints resolved which includes complaints carried over from previous fiscal years

All cases resolved that were within mandate were noted as 5,750, of which 692 were referrals and 2,525 were dismissed – new cases resolved (all complaints received) totalled 8,835, of which 2,467 were referred and 3,745 dismissed. The analysis therefore uses new cases within mandate as 5,750

⁷⁴ <https://faisombud.co.za/wp-content/uploads/2020/12/FAIS-Ombud-Annual-Report-2019-2020-High-Res.pdf>

less 692 referrals and assumes that the 8,835 data incorporates out of mandate into both dismissals and referrals. Therefore, new cases used for the analysis is 5058.

With respect to cases resolved, we use data on page 26 that shows cases resolved within mandate as being 6,172 and referrals of 806. Cases resolved are therefore 5,366. This analysis may or may not be correct.

The annual report noted that most settlements were achieved early in the process – only thirteen of the cases resolved were achieved via a determination, which may explain the low cost but may also be commensurate with the low compensation limit (the compensation limit is under review).

OBS

Formal cases opened and formal cases closed was clear data provided by the annual report⁷⁵ and used. 8,389 referrals were made to financial institutions and 161 vulnerable consumers were identified and addressed in the process.

“Resolved referral matters are considered closed and only those matters where the parties cannot agree on a resolution are opened as formal complaints.”

Insurance Ombudsman

OLTI and OSTI reporting were combined into one Insurance Ombudsman’s report.

OLTI data included 14,198 written requests for assistance of which 6,756 chargeable complaints were received. Of these 4,782 were transfer, but of these transfers 2,888 were finalised. Data used for new cases was chargeable complaints received less transfers finalised fewer mini cases – 3,741. Full cases finalised of 3,624 suggests assumptions used to determine new cases were accurate.

OSTI formal complaints registered totalled 11,095 and closed complaints totalled 10,805. No mention of transfers or out of mandate were noted and the data is assumed to represent actual cases.

Pension funds adjudicator and credit ombuds

No specific issues regarding data.

Singapore - FIDREC

No specific issues regarding data.

Swiss Banking Ombudsman

Lacked specific data on actual compensation and income and expenditures. New dispute resolution regime 2020. Swiss ECB are largely and principally formal mediation.

Norway

The report noted that 8,663 new written complaints were received, and 7,040 cases were closed. Page 9 of the annual report notes that 39% of written enquiries received were not accepted but based this on 8,011 cases received. Page 10 also notes cases rejected cases (312) in the secretariat and the board, which appear similar to the Irish FSPO procedure and which the analysis noted in this document remained.

It is presumed that there are valid reasons for the higher headline figure and therefore deduct the cases not accepted, 3,154, from both the 8,663 and the 7,040 to arrive at net figures and to retain the 312

⁷⁵ https://www.obssa.co.za/wp-content/uploads/2021/05/J27909_BI_OBSSA_Annual-Report-2020_FA-Spreads.pdf

(if these are rejected during the process and involve time and effort then they should be retained as per comments made with respect to the Irish FSPO).

Finland

Finland had total cases of 8,401 in 2019. Of these, 7,445 were advice, 877 were disputes and seventy-nine were other. Advice within this Finnish ECB appears to be much more than just addressing enquiries and an excerpt from the 2019 report⁷⁶ of a case that involves advice is noted below:

“The customer had claimed a death benefit based on the spouse’s personal accident insurance. The cause of death was a sudden allergy reaction after a wasp sting and an immediate cerebral hypoxia. The insurance company had found that this was a case of an infectious disease or illness caused by an insect sting resulting in a death that is not indemnified by the insurance. The FINE expert gave the customer information about the FINE Complaint Boards practice in similar cases where the injury was interpreted as resulting from an accident. Based on them, the expert advised the customer to file a request of reconsideration through the insurance company’s internal adjustment process. Indeed, the insurance company changed its decision, following the good insurance practice which suggests that in unclear situations the policy terms are to be interpreted in the customer’s favour. The customer was pleased and sent the adjusted decision to FINE for information”

The advice process therefore involves resolving disputes. From page 6 of the 2019 annual report: *“it is not just a question of providing information but the advice also may help to prevent unnecessary disputes and to find agreement between the parties involved. Often, the service provider’s decision is fully appropriate and the customer is able to accept it once FINE has provided an expert view on the case at hand”*

The report notes that the advice stage prevented over three hundred disputes from developing.

Of those cases involving disputes, 57% of all disputes were settled before the Complaints Boards (the report takes this to be arbitration) within the Bureau process. The Bureau settles cases “with an established interpretation practice or cases that are otherwise unambiguous in legal terms.”

FINE attributed more efficient advice operations and amicable settlements reached prior to the dispute process helped decrease the overall number of disputes and especially simple disputes that would have otherwise reached the Bureau process. For this reason, the Finnish case will quote total issues as opposed to disputes alone. Only eighteen cases that reached the dispute stage were “dismissed without examination.”

Cases resolved has been set at 877-18. Following a brief search there appears to be no financial data or compensation data immediately available.

Malaysia

Malaysia has two ECBs, one an ombudsman (FOS) the other a dispute resolution provider (SIDREC). Differentiation between enquiries (12,017), new complaints (7,340) and registered eligible disputes (1,285) were noted and the latter taken for complaint data calculation. Mediation and adjudication are used to settle complaints. SIDREC cases are small in number.

Taiwan

The Taiwanese FOI has emerged from a system where complaints were handled by regulators, industry and SROs and is a statutory body, formally instituted in 2012 with a specific objective of

⁷⁶ <https://www.fine.fi/media/julkaisut-2019/fine-annual-report-2019.pdf>

“protecting the interests of financial consumers” and “reinforcing the confidence of financial consumers in financial markets”.

The Taiwan Ombuds took on the helplines of the financial services regulator in 2018. In 2019, 97 of helpline calls resulted in either “advice, responses or case handling⁷⁷”.

New complaint data used combined complaints (8,796), which we assume to be cases resolved through mediation, and ombudsman cases (2,377), which we assume are cases resolved through the ombudsman committee.

With respect to advisory cases:

“The advisory services offered by the FOI are aimed at assisting financial consumers to clarify the direction of their questions and speed up the resolution of their disputes. In this initial advisory stage, financial consumers gain an in-depth understanding of their cases and take the first steps in communicating with the financial services enterprise, setting them on track, with the help of the FOI, to smoothly resolve their disputes”

Clearly advisory cases and the advisory function are important and need to be taken into consideration with respect to operational efficiency. Unlike the Finnish process, which is more involved, it is unclear to what extent the Taiwan process and make-up is similar.

Advice and direction services look to be important in helping consumers resolve cases and hence bodies that have significant advice based and/or registration and referral operations need to be assessed differently.

New Zealand

New Zealand has two ombudsman and two dispute resolution providers.

The Banking Ombudsman (ombudsman)

Will refer complaints that have not gone through IDR to the bank and will confirm with complainant the next steps.

Facilitation is the first step; a go between in negotiations between complainant and bank, other times provide a view on the complaint.

Next step if facilitation fails: a preliminary view (chance to comment) followed by a decision.

For 2019/2020, 4,582 enquiries were received, of which 2,966 were complaints and 144 were disputes. No explanation in the annual report for the difference between a complaint and a dispute were found and a review of the website found no explanation either.

The following was noted in the most recent independent review:

“Complainants contact BOS and someone from the Early Resolution Service will deal with them. This person, in the main, stays with the complainant as the point of contact with BOS. The case may be classified as an enquiry or a complaint. An enquiry can often be dealt with quite quickly – sometimes immediately.

⁷⁷ P3 of 2019 Annual report.

Complaints are typically facilitated using an evaluative model, with suggestions being made as to how the case could be settled with both the bank involved and the complainant.

Cases that are unable to be resolved are escalated to the dispute stage. An investigator, usually new to the case, is appointed. More information is often sought and the investigator may continue to try and facilitate a resolution. If it cannot be resolved, BOS provides the parties with notice of the decision and an opportunity to provide comments or further information. The Ombudsman or the Deputy Ombudsman (Resolution), under a delegated authority, then considers comments or further information provided in response, and makes a final decision. Most of the BOS caseload comprises enquiries and complaints, rather than disputes.”

It is assumed that complaints are those cases addressed prior to the decision process (including preliminary view) and that disputes are those cases that cannot be settled via facilitation. There is no immediately available data for cases considered out of mandate though there is data for “disputes” with respect to outside jurisdiction. As the intent of the analysis is to assess case load for cases that have been through a process, as opposed to rejected at outset, these outside jurisdiction cases that have reached the dispute stage have been included in the data. Cases have therefore been taken as 3,100 for the NZ Banking Ombuds. No differentiation has been found for total resolutions (complaints plus disputes) and so for the sake of any analysis the 3,100 has been used for both new complaints and resolved cases. Differences between the two figures is small and hence should not impact analysis.

The case data (3,100) has been cross referenced with the banking member complaints and compared to escalation rate factors for TD Bank (Canada) and complaint to system data for the UK (9% for 2020 FCA data) that suggests the data and assumptions used for analysis are reasonable.

IFSO (ombudsman)

The IFSO⁷⁸ noted that there were 3,920 complaint enquiries during 2019/2020 and accepted 282 complaints for investigation and closed three hundred. Eight systemic issues were identified. Fifty-nine were settled through negotiation and mediation.

FDRS⁷⁹ (dispute resolution provider)

Notes that there were 306 enquiries, that 90% of the enquiries were all closed or resolved in their “initial phase”. Twenty-eight complaints required formal dispute resolution assistance. Again, we have a different take on enquiries. The “initial phase” could well be the mediation noted in their process (website) followed by investigation by an adjudicator. It is unclear to what extent enquiries were mediated and what percentage were simple enquiries, support with making a complaint to a firm or an actual complaint that can be easily resolved without investigation.

Consumers can make complaints directly to firms or with help from the Financial Dispute Resolution Service.

FSCL⁸⁰

Total disputes 298 were resolved and 383 cases were opened for investigation: total enquiries and complaints 3,422 (768 complaints about FSPs answered, 2654 enquiries). Enquiries and complaints

⁷⁸ <https://s3.ap-southeast-2.amazonaws.com/ifso-files/docs/J000523-IFSO-2020-Annual-Report-A4-FINAL-DIGITAL-full.pdf?mtime=20200911160722&focal=none>

⁷⁹ <https://s3.ap-southeast-2.amazonaws.com/ifso-files/docs/J000523-IFSO-2020-Annual-Report-A4-FINAL-DIGITAL-full.pdf?mtime=20200911160722&focal=none>

⁸⁰ <http://www.fscl.org.nz/2020-annual-report>

are separate from cases opened – some other jurisdictions include cases opened with the enquiry data. Complaints are therefore apparently similar to AFCA’s registration and referral.

“A complaint is where a consumer contacts us about an issue with their financial service provider. Our Early Assistance Team will help refer the complaint back through the financial service provider’s internal complaints process and will keep a watching brief to make sure the complaint is satisfactorily resolved”

Fourteen percent of cases opened required a formal recommendation (p14).

Please note that the fact the FSCL has an early assistance team is important and clearly a draw on resources. Merely assessing case costs is not going to address the value provided by resources allocated.

France

The two French financial services ECBs are embedded within their respective regulators.

AMF

There were 1,479 requests and the number of cases processed and closed were 1,327. Of the 1,479 requested, 518 were out of the ombudsman’s jurisdiction and 161 were referred too early. New cases were therefore calculated as 961.

Cases resolved, excluding out of mandate and minus those referred too early was 1,327-518-161 and minus 4 (subject of legal proceedings) and 5 (referred to another ombudsman). Cases abandoned by the complainant during the process, for example, were retained in the data. Cases resolved data came to 639. 505 opinions were issued and the backlog of unclosed cases rose 50%.

Compensation data, but not financial statement data, was provided in the annual report.

French Insurance Mediator

Data here was clear with referrals to firms and out of mandate clearly noted and calculation provided no apparent problem.

French ASF

Consumer credit, real estate financing, payment services, investments. The French Association of Financial Companies (ASF) represents in France and in Brussels the financing businesses specializing in credit as well as financial and investment services. Limited data availability.

Spain

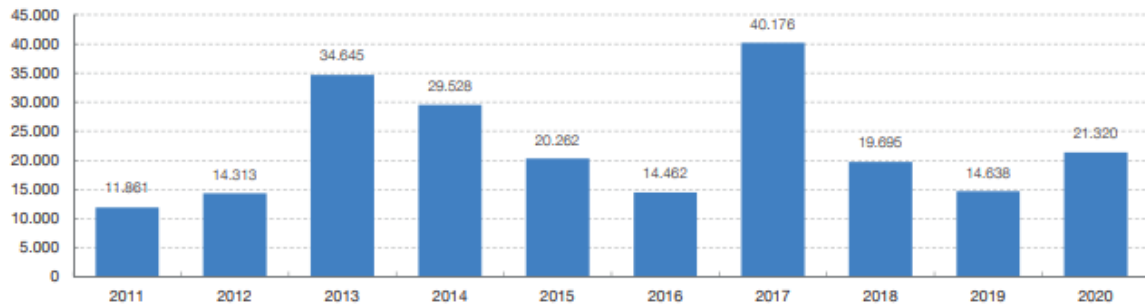
Financial services external complaint framework is embedded within the regulatory framework. Reporting is detailed and extensive and covers both internal complaint data and external complaints handled by complaint divisions embedded within the regulatory bodies. Complaint processing is evolving in Spain.

Spain Bank of Complaints

Bank of Spain’s 2020 annual claims report notes the importance of complaint reporting for the financial education of consumers and for establishing the best standards of conduct. There is no detail on complaints deemed out of mandate but enquiries and complaints are noted separately.

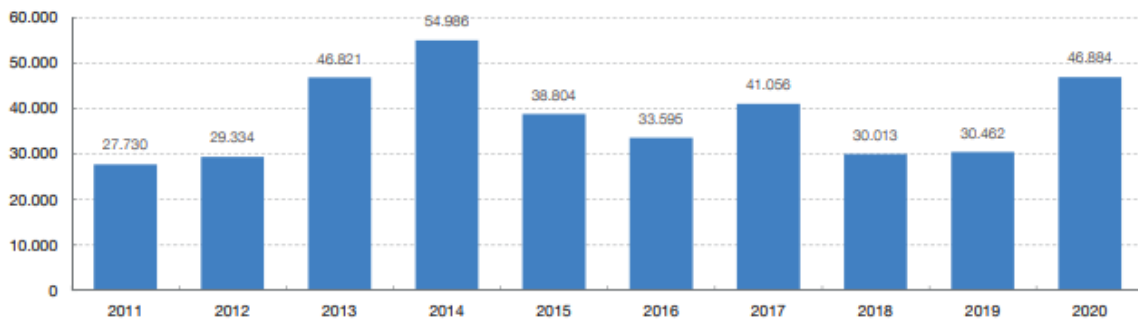
The Bank of Spain annual report provides detailed historical information on complaints and enquiries received:

Gráfico 1.3

RECLAMACIONES PRESENTADAS EN LOS DIEZ ÚLTIMOS AÑOS

FUENTE: Banco de España.

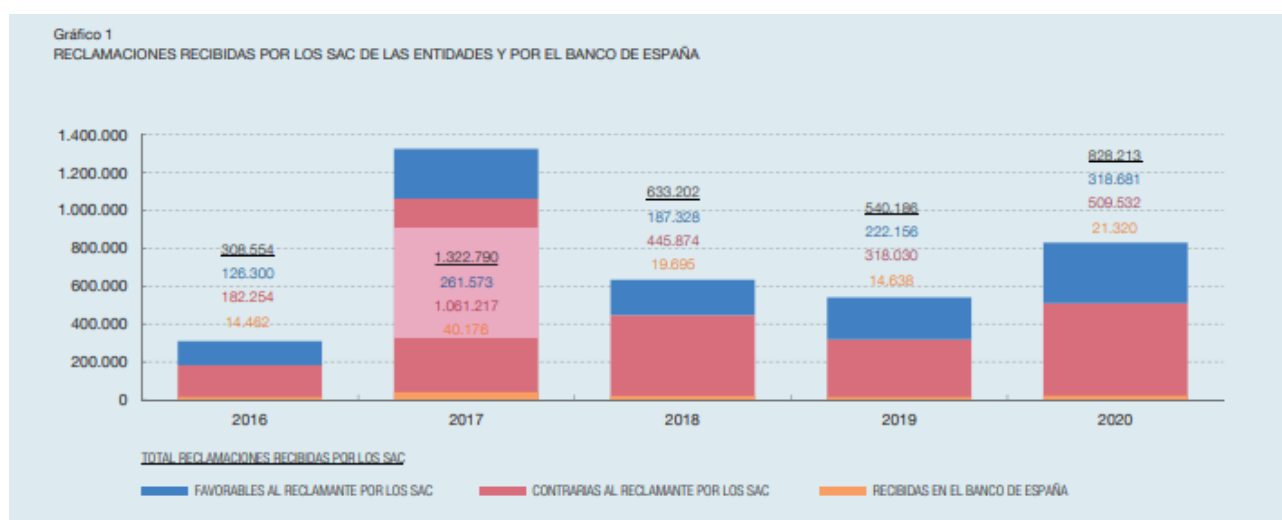
Gráfico 1.4

CONSULTAS PRESENTADAS EN LOS DIEZ ÚLTIMOS AÑOS

FUENTE: Banco de España.

81

Information is also provided on bank internal complaints, quantifying both complaints addressed in favour of the consumer and in favour of the bank:



CNMV

The CNMV is the securities regulator and is responsible for regulation of financial advice. The external complaints function is carried out by the CNMV itself.

Data is taken from the CNMV annual report, primarily the introduction and complaint data (p29 2019 and p31 2020). Complaints not admitted and admitted and processed are clearly noted. It is unclear from the text the extent to which the CNMV complaints division assists complainants, especially with respect to the palpably formal pre-processing stage and “petitions for rectification” and “petitions for pleas.” Report is highly detailed along a large number of dimensions.

Complaints reaching the CNMV complaint level were less than 4% and less than 2% of internal complaint data for 2019 and 2020, respectively. System complaints are estimated as CNMV complaints divided by 4% and 2% respectively for 2019 and 2020.

DGSFP

Insurance and pensions regulator: complaints received for 2020 were 10,002, of which 3725 were not admitted and 206 were noted as “inquiries” (p10, annual report⁸²). Cases resolved were 7,332 (11,057 less cases not admitted, 3,725). Cases settled in favour of the consumer, 26% (p11 of annual report). Total number of complaints filed against insurance companies were noted as 114,525 in 2020 (p50 annual report). Claims settled by insurance companies in favour of consumers was 36.4%. Annual reporting is highly detailed.

Independent Administrative Authority for the Protection of Financial Customers

This was originally set up with an objective which included the ability to impose binding decisions. Internal dispute resolution provided by customer ombudsman are already binding on the company in Spain⁸³, apparently. It will work with the existing complaint bodies but provides a single window to the complaints’ process⁸⁴. A work currently in progress.

Italy

Italian external complaint bodies are embedded within the regulatory framework.

⁸² <http://www.dgsfp.mineco.es/es/Publicaciones/DocumentosPublicaciones/memoria%20del%20servicio%20de%20reclamaciones%202020.pdf>

⁸³ <https://www.toprankedlegal.com/three-legislative-challenges-for-claims-handling-in-the-future/>

⁸⁴ <https://segurosnews.com/news/las-decisiones-del-nuevo-supervisor-de-clientes-de-seguros-y-finanzas-seran-vinculantes-hasta-50-000-euros>

ABF

Banking complaints are managed by the Bank of Italy via the Financial Banking Arbitrator (autonomous and independent of the BoI), referred to in English translations as the Banking and Financial Ombudsman. The 2020 annual report noted 30,918 complaints received and 27,441 decisions of which 74% were in the complainants' favour. New powers have recently been accorded to the ABF. The word inadmissible in Italian is "inammissibili" and is used in the 2020 annual report. A search using this term did not produce a high-level inadmissible figure to adjust for complaints received and decisions made.

Internal dispute resolution has 60 days to address the issue before moving to the ABF (15 days for payment services).

Evolution of complaint processing is also important in interpreting data and making comparisons. Recent agreements for cooperation between the ABF and the FCA/ACF are a good example:

"Over the past ten years, the Ombudsman has often exchanged views with other out-of-court dispute resolution systems involved in financial matters. On the national front, there is an intense and ongoing cooperation between the ABF and the Financial Dispute Arbitrator (ACF), operating since 2017 at the National Commission for Companies and the Stock Exchange (Consob). On 19 March 2020, the Bank of Italy and Consob signed a memorandum of understanding aimed at regulating forms of cooperation between the ABF and the ACF. In order to guarantee a higher and more effective level of client protection, the protocol promotes the establishment of coordination and information exchange mechanisms between the two systems on issues of common interest and on information and financial education initiatives for the public.

With reference to the forthcoming establishment of the Insurance Arbitrator at the Italian Institute for Insurance Supervision (IVASS), the Bank of Italy has collaborated in drawing up the regulatory framework and in implementing the supporting IT procedure. Specific forms of collaboration will be identified in the future"⁸⁵

Each territorial panel made up of chair and two members selected by BoI, one by financial intermediaries, one by consumer associations. Panels are supported by BoI Secretariat (146 staff as of 2019 AR) as well as by BoI IT, Money Laundering and Consumer protection Directorates. Decisions of ombudsman informs regulatory and control functions.

ACF

Set up by Consob the securities regulator in 2016. Board/arbitration panel membership, Consob appoint chair and two members with further two members selected from industry and consumer associations, respectively. Ten alternate similarly selected. Complaints submitted in 2020 were 1772, of which 238 were deemed inadmissible (p4⁸⁶). ACF does not conduct investigations per se and bases its decisions only on documentation provided by the firm and the complainant.

<https://www.acf.consob.it/documents/20184/0/Brochure+ACF++Ottobre+2021/44582f8c-ea32-46fd-81ed-f2c418c57ede>

⁸⁵ The Banking and Financial Ombudsman Annual Report – Abridged Version (2019) file:///D:/Users/atamr/Downloads/en-report-ABF-2019.pdf

⁸⁶ <https://www.acf.consob.it/documents/20184/0/Relazione+ACF+2020/cd18fb78-9efd-41fd-8844-e936d9dfbcd8>

IVASS

The Insurance Supervisory Authority

“After examining the complaint received, IVASS usually forwards a copy to the undertaking concerned, requiring it to provide the necessary clarification as well as an exhaustive and prompt reply to the complainant, using a clear and simple language. If the undertaking satisfies the complainant's requests or if the reply is exhaustive and satisfactory and no irregularities are found, the complaint procedure is considered to be closed and no further communication is required. If, on the contrary, the answer is incomplete or incorrect, IVASS takes further action vis-à-vis the undertaking. After completing the investigation, IVASS notifies its outcome within 90 days of acquiring the elements necessary for the evaluation. Where a breach of the obligation to insure is reported, the deadlines for handling complaints by IVASS shall be reduced by half.”⁸⁷

⁸⁷ https://www.ivass.it/consumatori/reclami/guida_reclami_en.pdf