

Agenda

OBSI Meeting with Consumer Groups

November 30, 2023

Time: 2:00pm – 4:00 pm

Location:

Zoom Video Conference

DIAL-IN DETAILS:

See Email Invitation

OBSI Presenters:

Sarah Bradley, Ombudsman & CEO

Grace McSorley, Deputy Ombudsman

Mark Wright, Director, Communications
& Stakeholder Relations

Mark Wright – Welcome

- Agenda
 - o Sixth month update – Sarah Bradley
 - o Governance update – Mark Wright
 - o Recent case updates – Grace McSorley
 - o Fundamentals of loss calculation on suitability files – Rob Paddick
 - o General questions
- Introduction of presenters
- Introduction of other OBSI staff and board members attending the call

Sarah Bradley – Key operational highlights from 2023, including our progress to our strategic plan

In 2023, our key defining environmental factors have been largely shaped by two major influences:

- o Continuing exceptionally high demand for our services – in both banking and investments, but most dramatically in the banking sector
- o Active policy/regulatory environment – most notably the single ECB (External Complaints Body) commitment and binding authority for securities

1. Continuing exceptionally high demand:

- In 2023, consumer demand for our services soared - we responded to a record high number of inquiries and opened and closed dramatically more investigations than we did last year – which was our highest volume year on record.
 - **We are experiencing record high inquiry volumes** – last year, approximately 17,000 Canadians reached out to us for assistance and information.
 - o **Our Case Assessment Team did an amazing job responding to these inquiries**, providing information and assistance to those who have reached out to us, making mandate assessments and for complaints that are within our mandate, working with

consumers and firms to make sure we have the information we need to get our investigations started.

- **We also experienced – and continue to experience - record high case volumes** – last year – in the full year - we opened 1153 cases – which was a record high, exceeding the volumes we saw in the Financial Crisis and in the first year of the Pandemic.
 - o This year we opened over 3000 cases – nearly triple the amount of any prior year. Banking cases more than tripled – and investment cases increased more than 40% year over year.
 - o **This has presented a huge challenge to our organization** – and I am proud to say that we have been able to meet this challenge well.
 - o **Our approach to the challenge of such a sudden increase in demand has had two major components:** Efficiency improvements and growth.
- **On the efficiency front** - our investigative teams and analyst teams have been doing a fantastic job investigating these cases.
 - o **We have dramatically improved our productivity and efficiency** – our total cases closed more than doubled from over 1000 last year to over 2100 this year.
 - o **And our per investigator efficiency also increased by over 70%**
 - o **Our time to complete a case has reached all-time lows.**
 - 80% of banking cases were closed in under 60 days – average of 39 days.
 - 77% of investment cases were closed in under 90 days – average of 69 days.
 - o **We have been able to drive this increased productivity through a number of initiatives:**
 - We have streamlined our case management system to ensure that case administration is straightforward for our investigators and managers and built IT tools to assist wherever possible.
 - We have boosted our case guidance and templates for common communications.
 - We developed and deployed our new FastTrack case approach and deployed two dedicated FastTrack teams – ensuring that our investigations are proportionate to the complaints, removing any unnecessary processes and focusing on arriving at a fair outcome as efficiently as possible, while maintaining our investigative and communication quality and our data integrity.
- **Growth:** With increases in demand this significant, efficiency is not the whole solution. We have needed to increase our Case Assessment and Investigative team complements considerably.
 - o To keep up with this growth in demand for our services, we have added 24 staff to our case management and investigative teams.
 - o And we are also planning to grow significantly in 2024 – to address current wait times and also to prepare to serve as Canada’s sole ECB.
 - o This growth has, of course, impacted our expenses and is reflected in increased fees for 2024, primarily for participating banks.
 - o Importantly, however, these increases have also clearly painted the picture of OBSI’s efficiencies of scale and scope.
 - Last year, we closed over 100% more cases than 2022 with a 27% increase in expenses.

- By 2025, when the major banks have returned, we anticipate that we will be closing approximately 400% more cases with only 100% higher expenses, compared to 2022.
- **Where we are experiencing some delays** – is in the *case assignment phase*.
 - In 2023, we experienced a sudden near tripling of our case volumes – despite our efficiency and productivity gains, cases were coming in faster than our investigators can close them.
 - Banking cases are waiting about 3 months for assignment, investment cases about two months.
 - However, as our growth continues and our new teams complete their onboarding and are come up to speed, we are catching up.
 - The wait times for assignment have been holding steady for the past couple of months and should decline throughout 2024 until we are fully caught up and back to our standard performance levels of assigning cases within two weeks by later this year.
- **Case and inquiry volumes have been led by banking, largely due to the important regulatory changes in the bank act that came into force in 2022.** These changes were intended to and in fact have reduced complainant attrition significantly – we are seeing dramatically more cases, and cases are reaching us at an earlier point
- **But investments cases are also at record high levels**

2. Progress to our strategic plan

- OBSI's strategic plan for 2022–2026 contains three interconnected and mutually supporting success pillars and related objectives. Together, these provide a foundation for OBSI to thrive as a resilient, successful organization.
 - Each year, our annual operating plans and key initiatives will align to these pillars, with any necessary adjustments to address new issues.
- **SUCCESS PILLAR #1: PUBLIC ASSISTANCE AND DISPUTE RESOLUTION**
 - OBSI provides information services to assist consumers who reach out to us with a complaint, and we conduct fair, efficient, and effective investigations of disputes between consumers and participating firms.
 - Most notable objective is to explore innovative dispute resolution approaches to drive efficiency and effectiveness – we have done a great deal in this area in 2023, as I have described.
- **SUCCESS PILLAR #2: COMMUNICATION, AWARENESS AND THOUGHT LEADERSHIP**
 - OBSI works to improve awareness and share our expertise and experience to increase trust and strengthen the financial services sector in the public interest.
 - **Ensuring awareness** – search engine optimization work continues – website traffic is up 30% year over year
 - **Thought leadership** – participation in AMF (Autorité des Marchés Financiers) dispute resolution public consultation and CIRO (CANADIAN INVESTMENT REGULATORY ORGANIZATION) arbitration consultation
 - Launch of our Data Cube
 - Launch of our banking case disclosure webpage, as required by recent Bank Act changes.

- SUCCESS PILLAR #3: ORGANIZATIONAL RESILIENCE AND CONTINUOUS IMPROVEMENT
 - o OBSI is efficient and effective and adapts to changes in the financial services sector and our operating environment.
 - Numerous internal improvements, as well as streamlining our **Consumer and firm portals** to enhance user experience.
 - **New Intranet for our staff** – built on the SharePoint system, allowing more seamless communication and access to our knowledge data base

3. Policy and regulatory environment

- Federal:
 - o On October 17, 2023, Canada’s Minister of Finance announced the designation of OBSI to be the sole External Complaint Body (“ECB”) for Canadian Banks, effective November 1, 2024
 - o The legislation required for this model was passed in the Budget Implementation Act in June.
 - o This follows many years of calls for this and many examinations of the issue including the FCAC (Financial Consumer Agency of Canada) ECB report Feb 2020 and the Federal Finance consultation on ECB system last year.
 - o FCAC launched the selection process for the single ECB in May, and the selection review took place throughout the summer and early fall. Our application highlighted:
 - our organizational strengths,
 - our compliance with all ECB requirements,
 - as well as International best practices,
 - the advantages of having one Ombudsman for both banking and securities
 - our commitment to fulfilling this role in the public interest and in the interest of the financial service industry.
 - o We are honoured to have been designated and we look forward to serving as the ECB for all of Canadas banks and their customers. This designation validates our ongoing efforts to provide consumers and firms with an effective process for addressing their disputes and to offer a world-class complaint resolution service that everyone can have confidence in.
 - o We look forward to working with the FCAC, the returning and continuing banks, as well as the Canadian Bankers Association and other stakeholders to ensure a smooth transition.
- Provincial:
 - o On the securities policy front, we have also seen important advancement.
 - o CSA committed in 2022 to developing a proposal for comment that contemplates providing OBSI with binding authority, which regulators said that they planned to publish for public comment this year.
 - The binding authority working group has been active for over a year working on details of the proposed framework that was published today
 - o We were consulted in the development of the framework to help ensure a workable system, but we were not involved in the drafting or decision making.

- We are currently in the process of carefully reviewing and digesting the proposal and we will likely participate in the public comment process once we have developed our position on the framework and the questions posed in the consultation document.
- Fundamentally, however, the framework proposes adding a second step to the current OBSI recommendation process - one that ensures that there will be an objective, unconflicted review of the recommendation made following the investigation and a fair hearing for either or both parties if they object to the recommendation made by the OBSI investigator.
- This is similar to the process found in other ombudservices in comparable countries, such as FOS UK or AFCA in Australia.
- Our understanding is that the comment period is open until the end of February, and we expect and look forward to a very active discussion about the proposed framework and the need for binding authority for OBSI decisions for investor disputes.

2024 outlook

- We expect consumer demand for our services to remain very high, likely at or near 2023 levels.
- We look forward to working with stakeholders to ensure a smooth transition to the single ECB system.
- We look forward to the discussion on the framework for binding authority.
- We will soon be publishing a special report on consumer experience.
- Continued engagement in communications and thought leadership.
- Following through on some of the recommendations in our 2022 external reviews – including the loss calculation consultation.

Mark Wright - Changes to organizational governance

As you may recall – in June -- we announced the changes to our governance.

At the time, the board announced changes to the board structure to balance consumer and industry expertise on the board and to allow the board to better reflect the diversity of industry sectors participating in OBSI's service.

The decision was made to continue to include three designated industry director positions, with industry consulted for potential nominees.

And the number of designated consumer interest directors was increased from one to three, with consumer groups consulted for potential nominees.

A couple of months ago, OBSI's Governance and Human Resources Committee announced it was seeking nominations to fill four expected vacancies in March 2024:

- one Industry Director (vacancy)
- two Consumer Interest Directors (new)

- one additional Community Director (hit 8-year limit)

The process has been led by our Governance and HR Committee – assisted by Odgers Berndtson. We reached out directly to a number of you.

Applications were accepted up to October 20th, 2023.

We want to thank all of you who assisted us in this process.

There was an excellent response and strong list of candidates to consider.

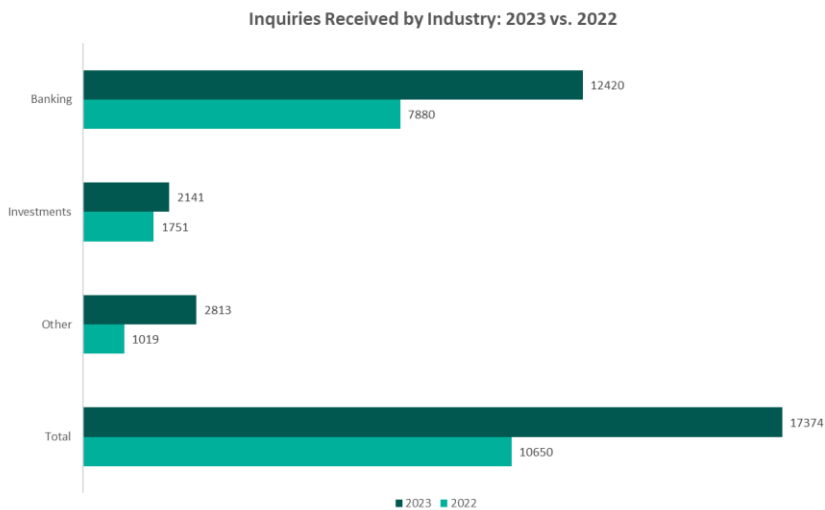
Since then, the Committee has been holding interviews.

We expect to announce the new board members to be announced in early March following our AGM, which will mark an important renewal for our 10-member board.

Recent Case Updates – Grace McSorley

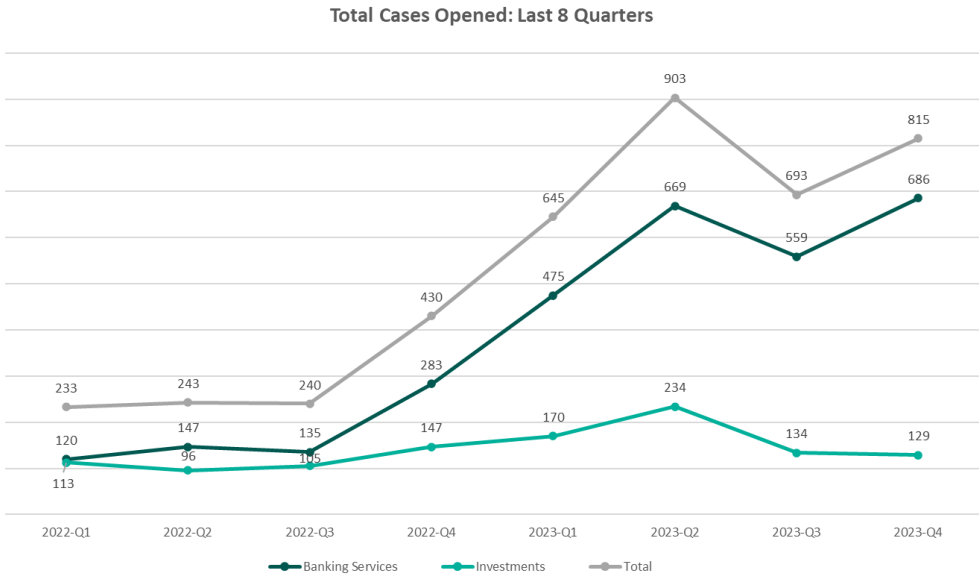
Inquiries by industry – 2023 vs 2022

Consumer inquiries surpassed 2022’s record-setting high, reaching a new all-time high of more than 17,000 in 2023. This was largely driven by banking consumer inquiries that increased by almost 60% to over 12,400. Investment-related inquiries also grew and increased more than 20% to over 2,100.



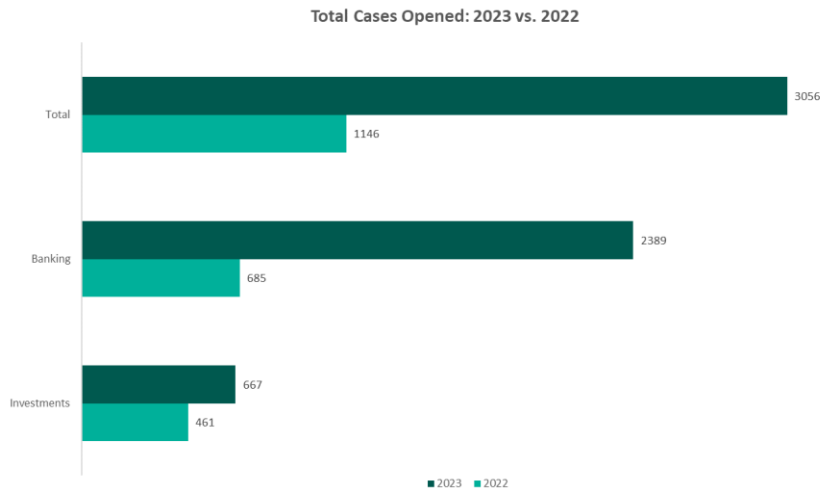
Total cases opened – 2023 Q4

Turning to total cases opened in Q4 – the grey line on the chart shows the combined cases opened for banking and investments. Total opened cases nearly doubled compared to the same quarter last year. The dark green line shows banking cases opened – these were up more than 140% from the same quarter last year. Investment cases opened were down slightly quarter over quarter.



Total cases opened – 2023 vs 2022

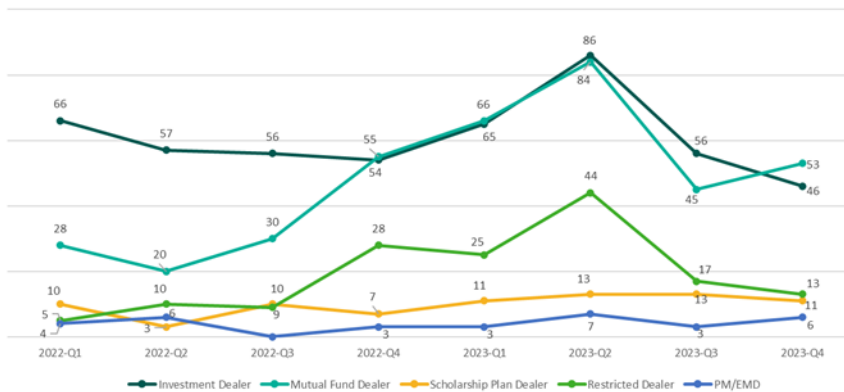
In 2023, total cases opened were up almost three times higher than the previous year, reaching an all-time high of over 3,000 cases. This was largely driven by banking cases that more than tripled year over year with close to 2,400 opened. Investment cases saw a more modest increase of 45% with almost 670 cases.



Investment cases opened by sector 2023 Q4

In the fourth quarter, investment dealer cases opened continued a downward trend from its Q2 high. Mutual fund dealer cases were up in Q4 compared to the previous quarter, but below the highs of recent quarters. Restricted dealer cases decreased year over year and quarter over quarter. Scholarship dealer cases remained flat for 2023 – while PM/EMD cases were double the previous quarter.

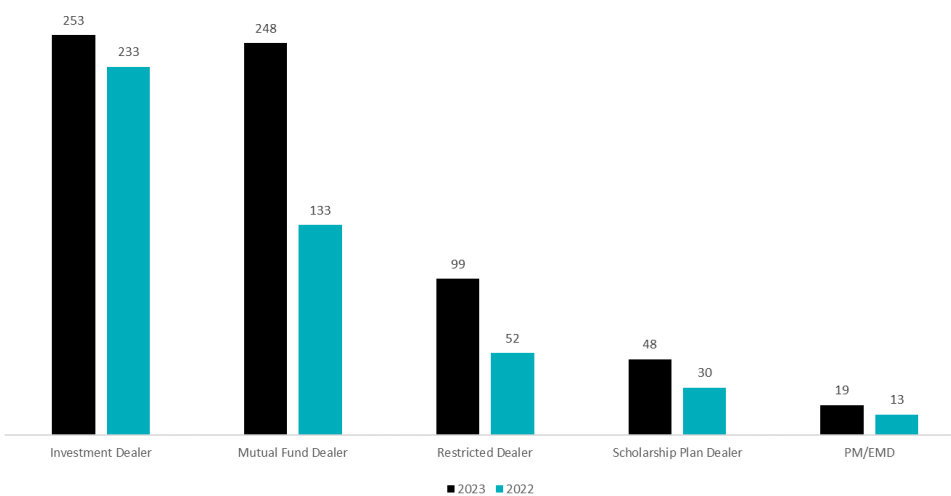
Cases Opened by Investment Sector: Last 8 Quarters



Investment cases opened by sector 2023 vs 2022

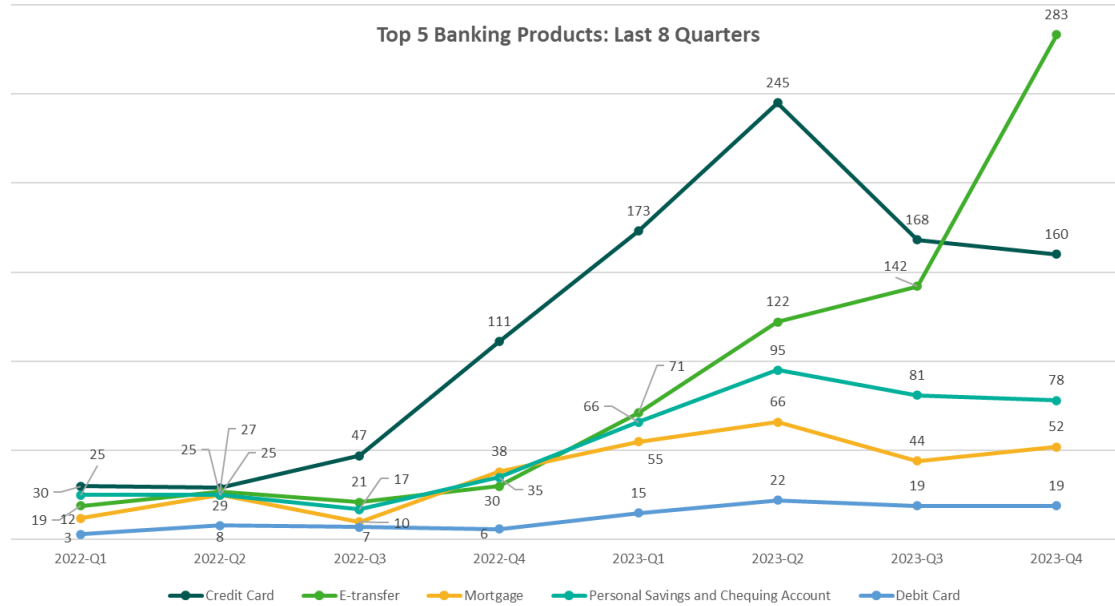
Investment dealer cases remained high year over year. Mutual fund cases were up 86% over 2022. Restricted dealer cases nearly doubled in 2023. Scholarship plan dealer cases increased 60% year over year.

Cases Opened by Investment Sector: 2023 vs. 2022



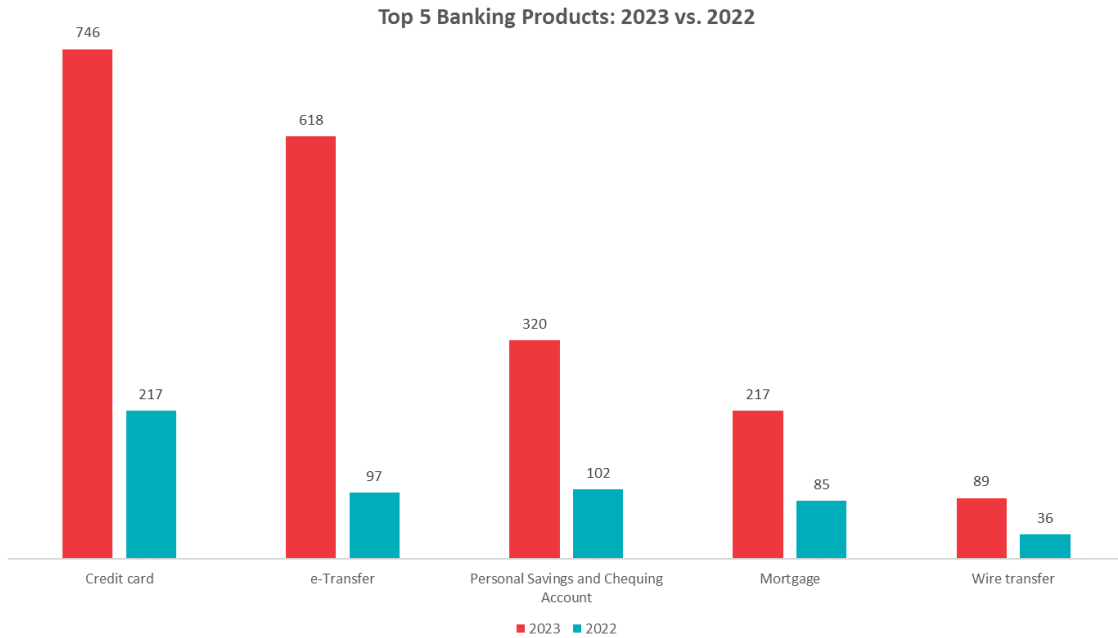
Top 5 banking products 2023 Q4

Turning to banking products, you can see in Q4 E-transfers emerged as the top line in the chart – replacing credit cards as the leading product complaint among banking consumers and reaching an eight-quarter high. Credit cards, the second most common product complained about, declined after the Q2 high of 2023 but remained above levels seen in the same quarter last year. Complaints related to personal savings and chequing accounts began to decline after a steady rise since the latter part of 2022. Mortgages saw growth quarter over quarter and year over year. And debit cards remained flat over the previous quarter but up from the same quarter last year.



Top 5 banking products 2023 vs 2022

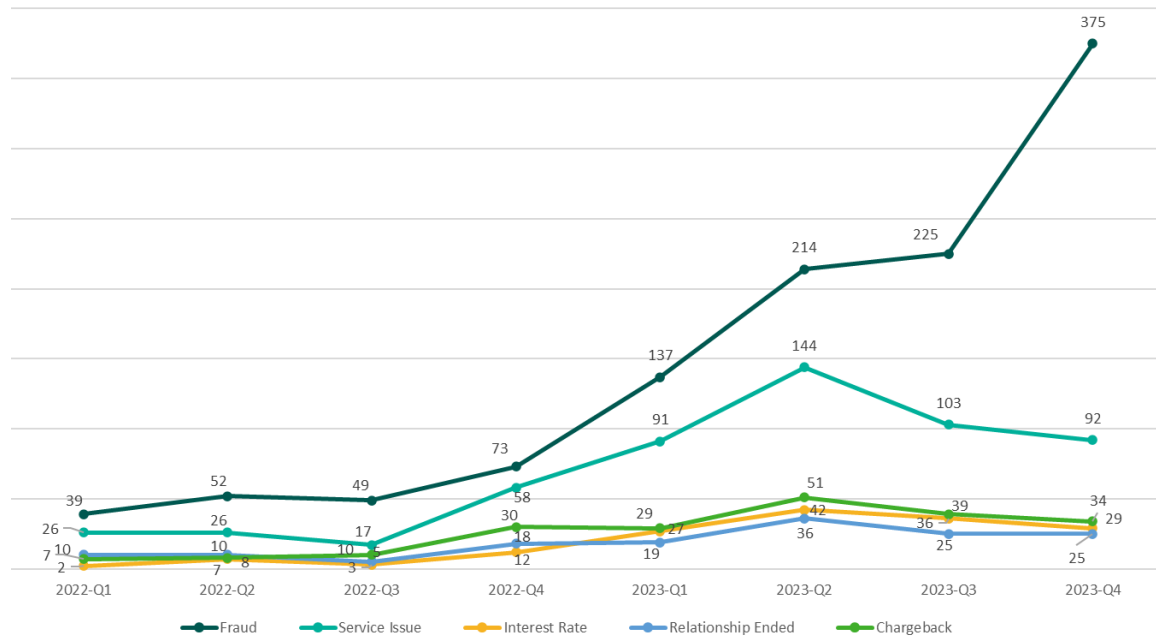
All top five banking products saw record-setting year-over-year increases. Credit card complaints were up over 240%. E-transfer complaints (primarily driven by fraud-related cases) were up over 500%. Complaints related to personal savings and chequing accounts more than tripled. Mortgage complaints and wire transfer complaints more than doubled.



Top 5 banking issues 2023 Q4

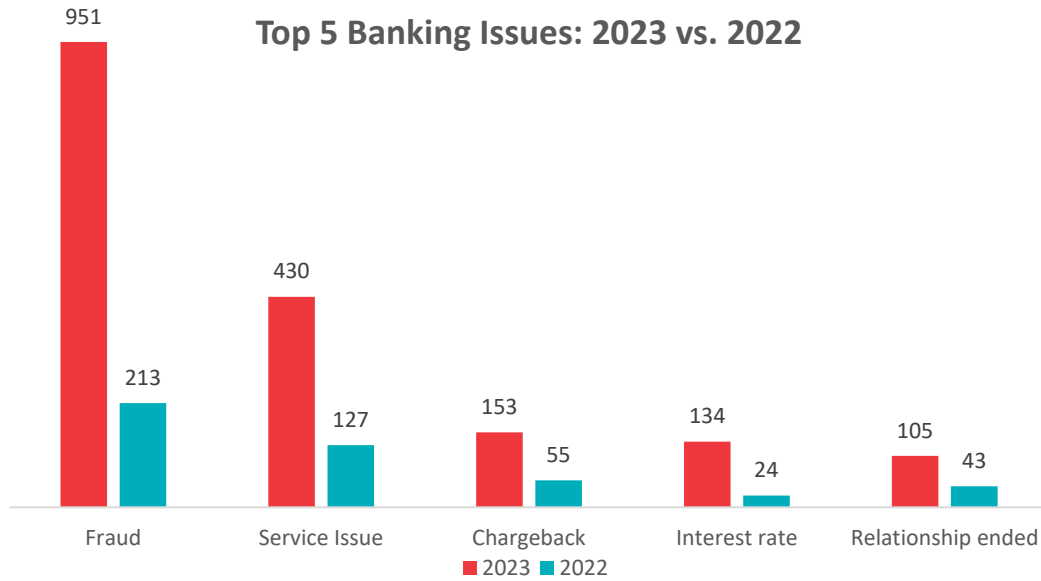
In Q4, Fraud-related complaints – represented by the dark green line – remained the most reported issue among banking consumers. It continued a steady rise that began the same quarter last year, and more than quadrupled year over year. Next are service issue complaints which have continued to trend down. Complaints related to chargebacks and interest rates declined slightly, while and relationship ended remained flat.

Top 5 Banking Issues: Last 8 Quarters



Top 5 banking issues 2023 vs 2022

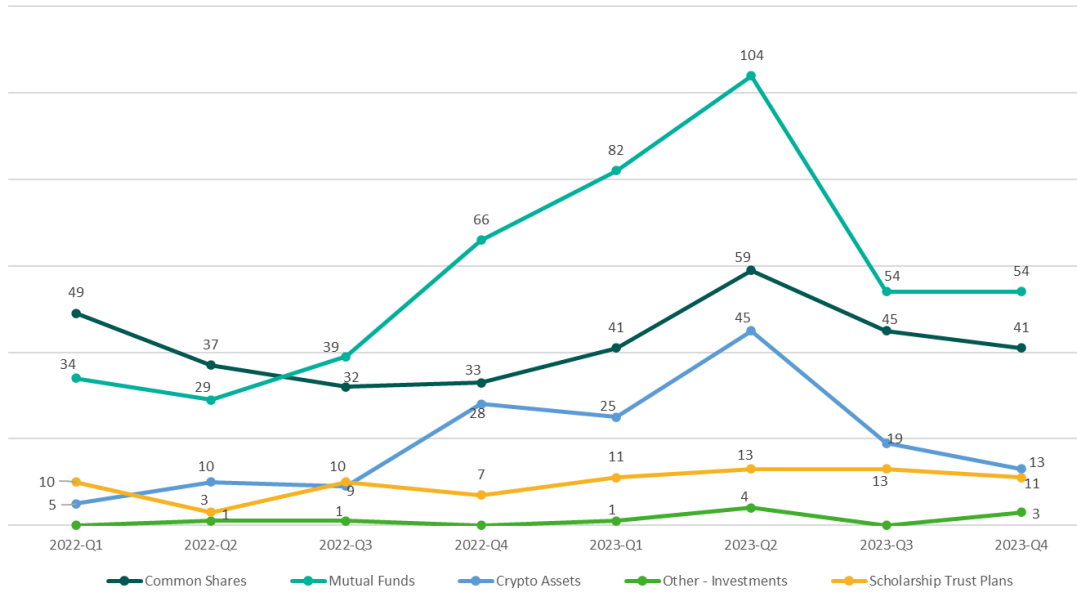
All top five banking issues saw record-setting year-over-year increases. Fraud was the leading issue among banking consumers. Fraud-related complaints more than quadrupled. Service-issue complaints and charge -back complaints both more than tripled. Interest rate complaints more than quadrupled. Relationship ended complaints more than doubled.



Top 5 investment products 2023 Q4

In the fourth quarter, mutual funds remained the top product for concerns, but were flat compared to the previous quarter. Common shares were down slightly from the previous quarter as were complaints related to crypto assets and scholarship trust plans.

Top 5 Investment Products: Last 8 Quarters



Top 5 investment products 2023 vs 2022

All top five investment products saw year-over-year increases. Mutual funds were up 75%. Common shares were up 23%. Crypto asset complaints nearly doubled. Complaints related to scholarship trust plans were up 60%. And complaints related to derivatives more than doubled.

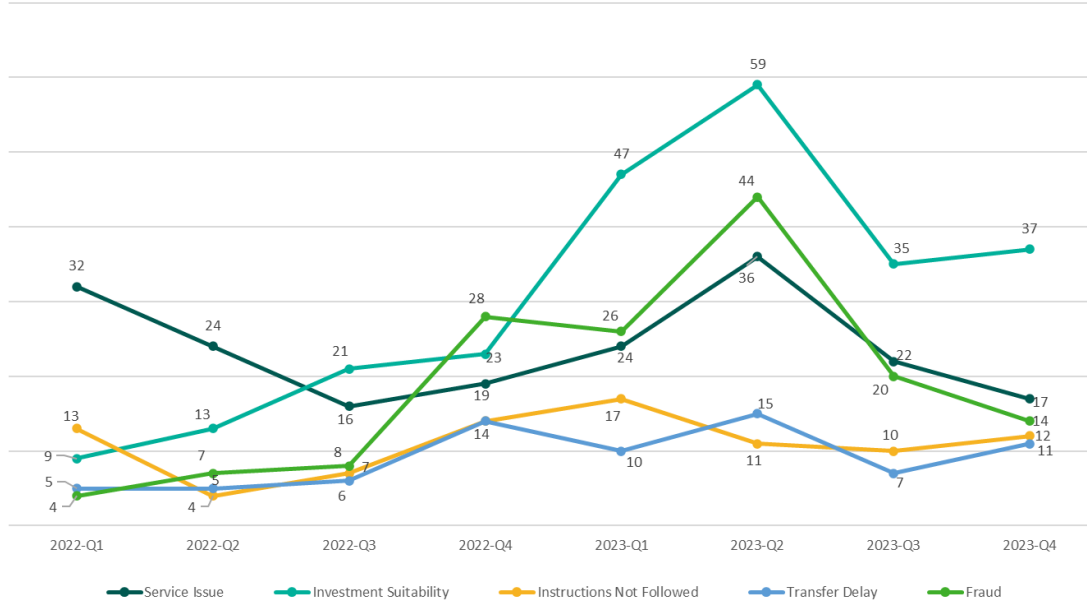
Top 5 Investment Products: 2023 vs. 2022



Top 5 investment issues 2023 Q4

In Q4 Investment suitability continues to be the leading issue for investor complaints, up slightly from the previous quarter. Service issues and fraud both continued a strong downward trend. Instructions not followed were up slightly in the quarter compared to the previous quarter, and transfer delays were up as well.

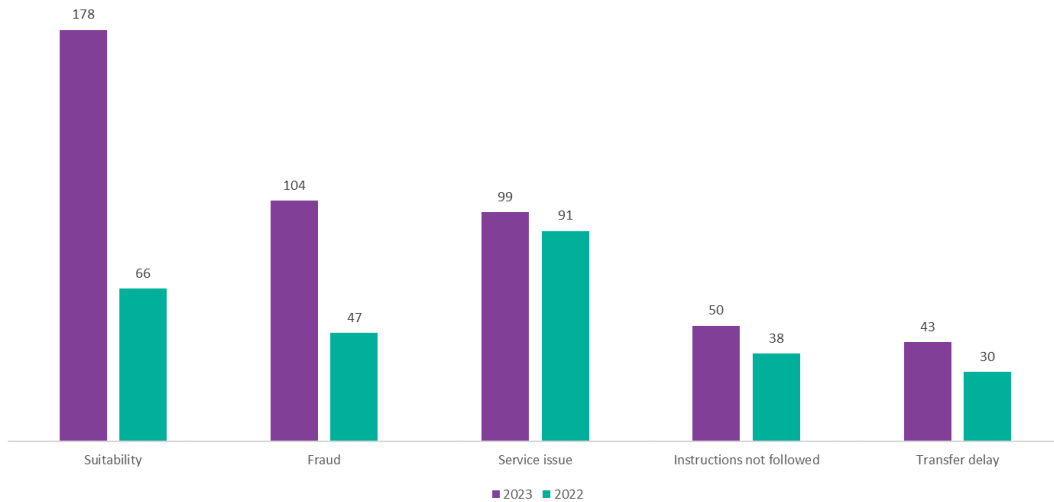
Top 5 Investment Issues: Last 8 Quarters



Top 5 investment issues 2023 vs 2022

Looking at this year versus last year, suitability complaints were up significantly and fraud complaints more than doubled. Service issues were up slightly, while instructions not followed and transfer delays also saw increases over last year.

Top 5 Investment Issues: 2023 vs. 2022



Fundamentals of loss calculation on suitability files – Rob Paddick

Investment loss calculation

Rob Paddick, Deputy Ombudsman
November 27, 2023

OBSI OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS
OSBI OMBUDSMAN DES SERVICES BANCAIRES ET D'INVESTISSEMENT

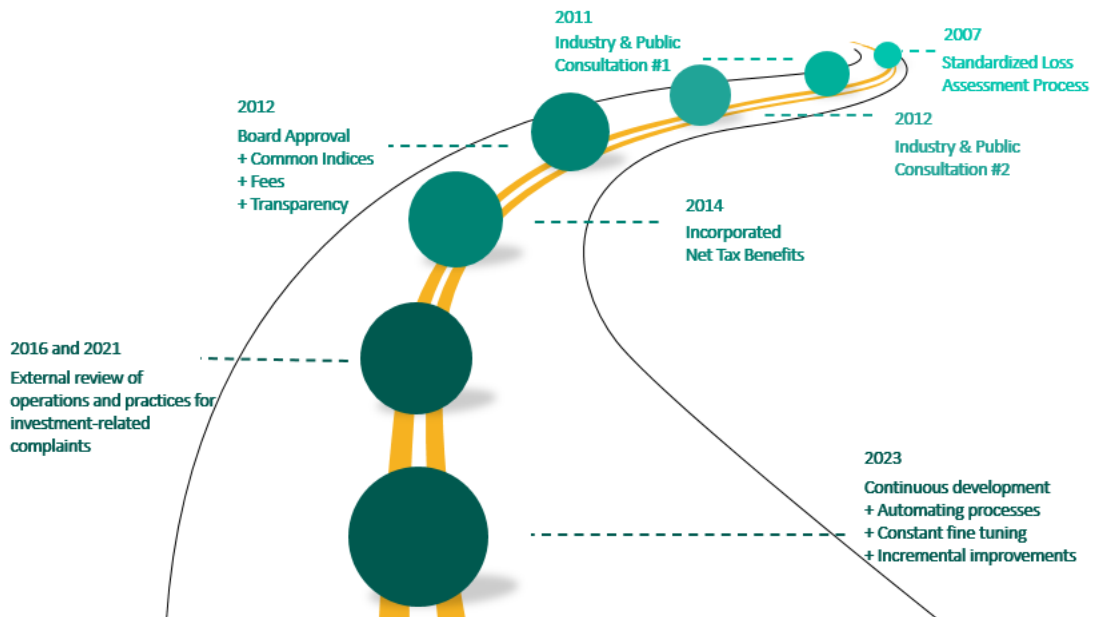
Agenda

- Evolution of OBSI's Loss Calculation Methodology
- Investigation Team Structure
- Process overview for investment suitability cases
- Key points: KYC determination
- Key points: investment analysis and loss calculations
- Key points: client responsibility
- Special circumstances

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Evolution of OBSI's Loss Assessment Methodology



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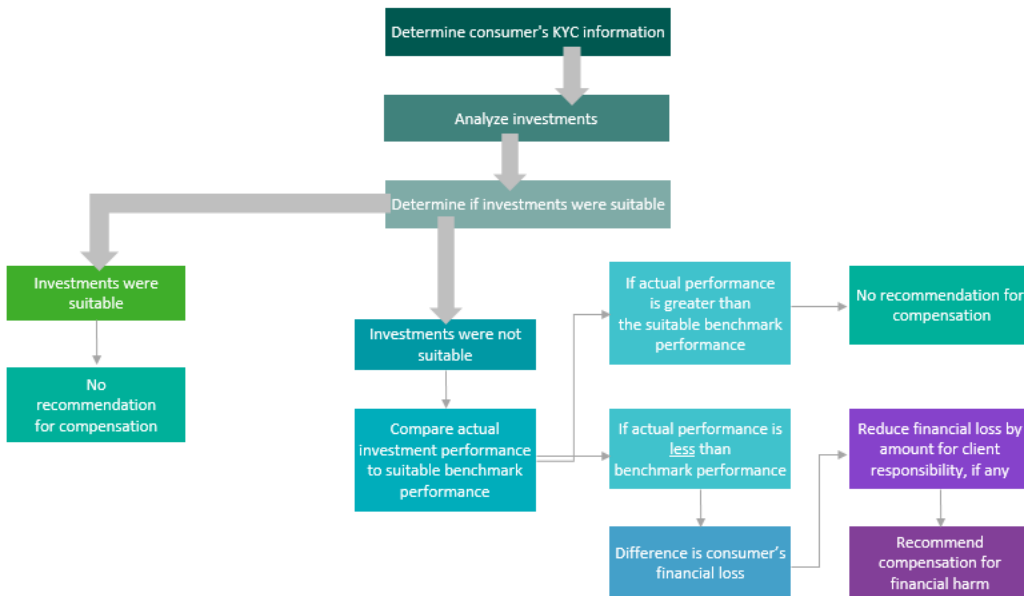
Investigation Team Structure



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Process overview for investment suitability cases



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Example - unsuitable investments but no financial harm

- Medium-risk, growth consumer invested \$500,000 in unsuitable, high-risk securities traded on the Canadian markets
- The unsuitable high-risk securities declined by \$30,000
- Using the S&P TSX Composite Total Return Index as a suitable benchmark, we determine that if the consumer was suitably invested in medium-risk securities, they would have lost \$50,000
- No recommendation for compensation because the consumer did not incur financial harm – that is, the consumer was better off having held the unsuitable investments

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Example – unsuitable investments and financial harm

- Medium-risk, growth consumer invested \$500,000 in unsuitable, high-risk securities traded on the US markets
- The unsuitable high-risk securities declined by \$30,000
- Using the S&P 500 Total Return as a suitable benchmark, we determine that if the consumer was suitably invested in medium-risk securities, they would have made \$10,000
- The consumer's financial loss (before considering client responsibility) is \$40,000 (\$30,000 + \$10,000)

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Key points: KYC determination



- Documents, such as KYC documents, investment policy statements, and financial plans are central to our investigation
- However, consumers often complain that the KYC documents are not accurate, so we will collect and consider additional evidence to determine if the KYC documents reasonably reflect the consumer's actual KYC information at the time in question
- For example, we will consider contemporaneous notes taken by the advisor or the consumer, correspondence exchanged between the consumer and advisor
- When reviewing relevant documents, we will consider when and how they were completed, whether copies were provided to the consumer, and whether the wording on the documents is clear and expressed in terms the consumer is likely to understand

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Key points: investment analysis and loss calculation



- Our analysis and loss calculation process is rigorous yet efficient
- We assess the risk of each security using information that was available at the time it was recommended and at appropriate intervals – we don't use hindsight
- Our loss calculations take into accounts commissions, embedded fees, transaction timing, and dividends/interest paid and reinvested
- We use standardized benchmarks for consistency, but we will use another benchmark or a specific investment if it makes sense in the particular circumstances
- We share our investment analysis and loss calculation with firms, and with consumers when they ask
- Our loss calculation methodology is consistent with the approach taken by courts, and the firms we interact with on a regular basis use a similar approach

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Key points: client responsibility



We consider client responsibility in every case. When determining if the consumer should share responsibility for their losses, we consider:

- the consumer's investment knowledge
- the relationship between the consumer, advisor, and firm: how much did the consumer rely on the advisor and firm
- the information the consumer had about their investments
- the information the consumer provided to the firm in response to reasonable questions

We use two approaches when determining client responsibility:

- Apportionment – did the consumer's actions during the period of time in question contribute to the harm
- Mitigation – did the consumer take reasonable steps to minimize their losses when they found out there was a problem with their investments

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Special circumstances

- We use the above process in the vast majority of our cases
- In certain circumstances we may not use suitable benchmarks in our loss calculations
 - For example, we may just use actual losses when the advisor recommended an unsuitable leverage strategy or just use interest as a benchmark when it cannot be determined how the consumer likely would have invested
- If the investment strategy had a tax focus (e.g. leverage, flow through shares), we will take into account the consumer's tax benefits
- When a consumer holds an unsuitable exempt market product for which the current value is unknown and cannot be determined, we consider the current value of the security to be zero for the purpose of our loss calculation and we recommend the consumer to transfer their interest in the security to the firm

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Roundtable Discussion: Non-Disclosure Agreements

Non-disclosure agreements (NDAs) were placed on the agenda at the suggestion of a meeting participant and all attendees were asked to consider the issue in advance of the meeting. Below is a summary of some of the key points raised:

- OBSI management opened the discussion by describing the role that NDAs play, commenting that they are a normal part of a dispute settlement process.
 - o OBSI is aware that NDAs are relatively common at the conclusion of our process, especially in more contentious, higher value cases.
 - o NDAs are typical in settlements in legal proceedings. If a consumer goes to court, a firm would almost always ask for an NDA in exchange for settlement.
 - o NDAs are reasonable when there is a voluntary settlement for a claim.
 - o OBSI rarely gets involved in the NDA. If we do get involved, it is typically because the consumer believes that the release is unfair or there is something wrong. In those cases, we will answer their questions, but we do not provide legal advice.
 - o The release of one's legal rights and the agreement of non-disclosure are legal questions.
 - o If the consumer asks us if they should sign an NDA, we will not give this advice, but we will explain what it means.
 - o If the consumer has a concern that a release is unfair, we may review it and if we agree, for example, if the release went further than what the claim was about we may reach out to the firm to express our concerns. However, we do not get involved in negotiating releases or NDAs on behalf of consumers.
 - o OBSI has provided public commentary to regulators that if regulators were to provide guidance to firms relating to NDAs and releases, it should include requirements that the NDAs and releases must be reasonable and fair, and limited to the facts and issues at hand.
 - o The use of very broad NDAs – which seems to be the main area of concern that consumer groups are raising – does raise interesting questions about whether there should be limits.
- A couple of consumer groups indicated that OBSI's position was one that was consistent with their views. But raised questions about the need for more information to determine whether this is an issue and if so, how widespread it is.
- There was further discussion about the lack of information available on NDAs and what issues there may be that arise from them. Some asked what regulators might be doing to collect the information and what they are doing to monitor the issue.
- One concern raised was that NDAs may lead to systemic issues being buried.
- A couple of consumer advocates stressed that NDAs have an inherent asymmetry and that it is not a level playing field and, as such, should not be allowed. They stressed that if you wish to improve a system then transparency is an important way to bring that about.
- The point was made that just because a process has existed in the past is not a full justification for its continued use.
- The conversation then moved to question if OBSI had binding authority, and whether NDAs would be appropriate in that context.

- One consumer advocate stressed that, given the lack of information, it is still critical that an NDA should not limit people from complaining to a regulator.
- Another consumer group stressed that NDAs undermine confidence in the settlement system. If it was clear there was a flow of information to the regulator that they could act on if needed, then that would increase trust in the system.
- OBSI management noted that regulators do have a view into complaints volumes and trends. For example, CIRO has access to the METS and ComSet systems firms use to report all serious investor complaints, and FCAC requires the reporting of complaints data from banks, which are required to track complaints and outcomes.
- There was also a comment that the judiciary has recognized that arbitration and NDAs lead to a loss of precedent and that the solution still rests in transparency.