

The New National Financial Ombud Scheme: Comments on the Regulatory Framework

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SUMMARY

The Financial Sector Regulation Act 9 of 2017 created the foundation for the establishment of a new ombud scheme structure, with the Ombud Council (OC) providing the oversight function as part of the new structure. The National Financial Ombud Scheme (NFO) was established on 1 March 2024, amalgamating most of the predecessor ombud schemes, although the Ombud for Financial Services Providers (FAIS Ombud) and the Pension Funds Adjudicator (PFA) remain operational. The establishment of the NFO resolves some of the fragmentation that was evident in the ombud-scheme system operating in the financial sector. The NFO Rules include the essential elements to allow the NFO to operate effectively. However, the NFO Rules are lacking in detail. The assumption is that this allows for flexibility to allow processes to change if the implementation of such rules proves ineffective. This article provides an analysis of the NFO Rules to determine their legal efficacy. The conclusion is that it makes sense to allow for some flexibility and not include the detail in the NFO Rules. Nevertheless, there must be consistency in how ombud schemes resolve complaints. This article suggests such consistency should be found in having core values (or principles) that all ombud schemes in the financial sector must follow when they develop their rules, decide to amend existing rules and implement rules as part of the dispute-resolution process. Consistency is arguably achieved if all ombud schemes adopt the same core values (or principles) for dispute-resolution processes.

1 INTRODUCTION

Ombud schemes play an important role in fairly resolving disputes between financial customers and financial institutions. Over the past decade, a number of changes have occurred to the structure of and regulatory framework for ombud schemes that operate in the South African financial

sector.¹ The most recent was the establishment of the National Financial Ombud Scheme (NFO) on 1 March 2024.² The Financial Sector Regulation Act (FSR Act)³ provided the legislative foundation for the establishment of the NFO. This involved establishing the Ombud Council (OC) and the Financial Services Tribunal (FST) to oversee South African financial-sector ombud schemes. The OC has recognised the NFO as an industry ombud scheme, which included approving the governing rules for the NFO.⁴

Ombud schemes, including in the financial sector, are responsible for external complaint resolution (ECR). Previously, South African financial customers were unable to lodge complaints concerning a financial product or financial service with a single ombud scheme. However, the NFO replaced most of the ECR ombud schemes that were previously operational in the financial sector, although certain of the predecessor statutory ombud schemes (namely, the Ombud for Financial Services Providers (FAIS Ombud) and the Pension Funds Adjudicator (PFA))⁵ remain operational for the moment. Financial customers can therefore lodge complaints with the NFO, the FAIS Ombud and the PFA, depending on the jurisdiction of each ombud scheme. This contribution excludes a discussion of the internal complaint resolution (ICR) structure in the financial sector, apart from mentioning that the Draft Conduct of Financial Institutions Bill (CoFI Bill)⁶ and the Conduct Standard 3 of 2020 (Banks) (hereafter the “Conduct

¹ See National Treasury “A Known and Trusted Ombud System for All: Consultation Policy Document” (September 2017). A copy is available from https://www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf (accessed 2024-06-19). This document contained a summary of the legislative steps taken towards reform and provided recommendations for further reform. See also Koekemoer “An Analysis of Aspects of the Proposed Reform of the Financial Consumer Complaint Resolution Mechanisms in the South African Banking Sector” 2021 *Obiter* 336–351.

² National Financial Ombud Scheme “Media Release: Consumers Come Out Tops With Formation of New One-Stop Ombud Scheme” (1 March 2024) <https://nfosa.co.za/media-release-29-02-2024/> (accessed 2024-03-27).

³ 9 of 2017 (FSR Act).

⁴ Ombud Council “NFO Governing Rules: Scheme Rules” (23 February 2024) <https://www.ombudcouncil.org.za/national-financial-ombud-scheme/> (accessed 2025-07-21).

⁵ The author was not part of the reform discussion and could not locate a document explaining, first, the reasoning behind retaining these two ombud schemes, and further, whether this would be a temporary or permanent arrangement.

⁶ The first draft of the CoFI Bill was published for comment during 2018. See National Treasury: Finance Standing Committee “Conduct of Financial Institutions (COFI) Bill 2018-Draft” <https://pmg.org.za/call-for-comment/784/> (accessed 2020-05-22). The second draft of the COFI Bill was published in September 2020. See National Treasury “Second Draft Conduct of Financial Institutions Bill, 2020: Publication for Public Comment” (29 September 2020) http://www.treasury.gov.za/legislation/GovernmentNotices/43741_29-09_NatTreasury.pdf (accessed 2024-06-24). It is expected that the CoFI Bill will soon become an Act.

Standard for Banks”)⁷ informs the structure and operation of ICRs, specifically in the banking sector.⁸

The discussion in this contribution is novel as it is the first academic discussion of the regulatory framework for the newly established NFO. This contribution first examines the provisions in legislation applicable to the NFO, namely the FSR Act, and secondly analyses certain provisions of the NFO instruments, which are its rules and memorandum of incorporation. Specific criticism had been levelled against the ombud-scheme structure previously operational in the financial sector.⁹ This contribution repeats some of the criticism in an effort to establish whether establishing the NFO has addressed all, or at least most, of such criticism. The contribution concludes by examining whether the new structure should also attract additional criticism.

2 THE NATIONAL FINANCIAL OMBUD SCHEME

2.1 Predecessor schemes and background to the establishment of the NFO

Ideally, a complaint from a financial consumer should be resolved through the ICR complaint mechanism, but realistically, this does not always happen. For this reason, ECR is essential to ensure the fair treatment of financial customers by allowing them to receive adequate redress. Two categories of ombud schemes operate in the financial sector, namely voluntary ombud schemes and statutory ombud schemes. The Financial Services Ombud Schemes (FSOS) Act (repealed)¹⁰ was responsible for regulating voluntary ombud schemes, and to some extent, it also applied to statutory ombud schemes.¹¹

The Ombudsman for Banking Services (OBS) was the most influential voluntary ombud scheme previously operational in the banking sector it adjudicated complaints against members of the Banking Association of South Africa (BASA). The OBS was established in terms of section 11 of the FSOS Act, and the FSOS Council was responsible for overseeing the OBS and other voluntary ombud schemes. The OBS was funded through subscription levies payable by BASA members.

⁷ Financial Sector Conduct Authority “FSCA Conduct Standard 3 of 2020 (BANKS)” (3 July 2020). A copy is available from <https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Notices.aspx> (accessed 2024-06-24).

⁸ See Pesci and Koekemoer “The FSCA Conduct Standard for Banks as a Means to Reform the Internal Financial Consumer Complaint Resolution Mechanisms of South African Banks” 2023 *Obiter* 254–270. See also Koekemoer 2021 *Obiter* 336–351.

⁹ See also Koekemoer 2021 *Obiter* 346–347.

¹⁰ 37 of 2004 (FSOS Act). The whole Act was repealed with effect from 31 May 2021 by Schedule 4 of the FSR Act.

¹¹ See Koekemoer 2021 *Obiter* 336–351 for a general discussion or outline of the dispute resolution framework (internal and external) for the banking sector before the NFO became operational.

Statutory ombud schemes in the financial sector that existed before 1 March 2024 included: (1) the FAIS Ombud regulated by the provisions of the Financial Advisory and Intermediaries Services Act (FAIS Act);¹² the Rules on Proceedings of the Office of the Ombud for Financial Services Providers (FAIS Ombud Rules);¹³ and the Financial Services Providers Code;¹⁴ (2) the PFA regulated by the Pension Funds Act;¹⁵ and (3) the Registrar of the Council for Medical Aid Schemes, regulated by the Medical Schemes Act.¹⁶ Previously, the Financial Stability Board and, thereafter, the Financial Sector Conduct Authority (FSCA) funded the operation of statutory ombud schemes.¹⁷

In 2021, the World Bank Group, mandated by the National Treasury and the FSCA, reviewed the South African financial ombud-scheme system.¹⁸ The outcome was published in June 2021 in a report titled “South Africa: Financial Ombud System Diagnostic”.¹⁹ The National Treasury decided to implement the World Bank recommendation, specifically for the consolidation of the ombud system into one ombud scheme, culminating in the establishment of the NFO. From 1 March 2024, some of the above ombud schemes, referred to as predecessor schemes in the NFO Rules, ceased to exist. Of the statutory ombud schemes mentioned above, only the FAIS Ombud and the PFA now remain operational alongside the NFO. Financial customers can now approach the NFO to hear complaints concerning a financial product or financial service, unless that complaint falls under the exclusive jurisdiction of either the PFA or the FAIS Ombud. The OC has approved the NFO governing rules, also confirming that these rules, contained in the NFO Memorandum of Incorporation and the Rules of the NFO Scheme, will assist in establishing a resolution framework that promotes the fair treatment and protection of financial consumers.²⁰ It is submitted that even though the NFO still has characteristics of a voluntary ombud scheme, as financial institutions are only bound if they contractually agree to abide by the NFO Rules, the best description of its nature with reference to the applicable legislative structure is that of an industry ombud scheme as defined in the FSR Act, and this is the classification also used in this article. An industry ombud scheme is an arrangement that includes one or more financial institutions, where the aim is “to facilitate mediation and

¹² 37 of 2002 (FAIS Act).

¹³ Issued by the Financial Services Board. See GN 81 of 2003 in GG 25299 of 2003-08-08.

¹⁴ See FAIS Ombud “Mandate: FAIS Act” (date unknown) <https://faisombud.co.za/about-us/mandate/> (accessed 2024-06-24).

¹⁵ 24 of 1956.

¹⁶ 131 of 1998.

¹⁷ The Johannesburg Stock Exchange Ombud is also overseen by the OC. See Ombud Council “Financial Ombud Schemes That the Ombud Council Oversees” (date unknown) <https://www.ombudcouncil.org.za/ombud-schemes/> (accessed 2024-06-20). The author excludes this ombud scheme in this discussion concerning financial institutions.

¹⁸ Ombud Council “Explanatory Note: Background to the Establishment of the National Financial Ombud Scheme South Africa” (February 2024) <https://www.ombudcouncil.org.za/2024/02/23/recognition-of-the-national-financial-ombud-scheme-south-africa-as-an-industry-ombud-scheme/> (accessed 2024-06-18).

¹⁹ *Ibid.*

²⁰ *Ibid.* The approval took place in terms of s 214 of the FSR Act.

resolution of complaints” that occur between financial institutions that are members of an ombud scheme and their financial customers, where the complaint relates to financial products and services.²¹

2 2 Financial Sector Regulation Act 9 of 2017

Two bodies were established to oversee the operation of all industry ombud schemes that form part of the financial sector. This included the OC and the FST, the latter mainly as the review body.

According to section 7(1)(c) of the FSR Act, one objective of the Act is to guarantee the “fair treatment and protection” of financial customers. This objective is realised by achieving the fundamental principles of “access, effectiveness, independence, transparency and fairness”.²² The OC was established by section 175 of the FSR Act. It is a statutory body, and must fulfil certain functions to achieve its objective as set out in section 176 of the FSR Act.²³ These functions, contained in section 177, include: (1) recognising industry ombud schemes, which the OC did in relation to the NFO; (2) promoting public awareness of ombud schemes, which links to the OC’s educational obligation; (3) implementing measures to promote consumer access to ombud schemes;²⁴ (4) making available a certain type of information about ombud schemes;²⁵ (5) choosing which ombud scheme should hear a complaint where there is an intersection in the jurisdiction of the different ombud schemes; (6) continuous assessment of whether ombud schemes adhere to financial-sector laws; and (7) supporting financial inclusion through the ombud system.

The OC can issue two types of instruments as guidance for how ombud schemes must operate. The first instrument is the OC Rules,²⁶ and the second instrument is a directive.²⁷ A directive would direct an ombud scheme to adopt measures to avoid contravening a financial-sector law. The OC Rules aim to guarantee that financial customers can access “affordable and effective, independent and fair alternative dispute resolution processes” to complain about financial institutions that provide financial services and products.²⁸ The OC Rules may deal with specific matters, including: (1) the governing rules for ombud schemes; (2) in relation to ombud-scheme governance, rules about the composition of its members and the operation, role and responsibilities of its governing bodies and ombud-scheme

²¹ S 1 of the FSR Act.

²² These fundamental principles form part of the objective of the OC in terms of s 176 of the FSR Act.

²³ See also s 177(3) of the FSR Act, which states that the OC may do anything reasonably necessary to achieve its objective.

²⁴ S 209 envisages that the OC would establish centres where, among other things, financial consumers are educated on which ombud scheme can hear a complaint.

²⁵ This includes educating consumers on the categories of complaint that each ombud scheme can entertain.

²⁶ The purpose behind the OC rules is to achieve the OC’s objectives. See s 201(1) of the FSR Act. At the time of writing, the OC rules had not been published.

²⁷ S 202(1) of the FSR Act.

²⁸ S 201(1) of the FSR Act.

substructures; (3) qualifications and experience of the ombud, including what qualifies as being “fit and proper” to hold office”; (4) the definition of and type of complaint a specific ombud scheme may deal with; (5) dispute-resolution processes; and (6) matters that another Act requires to be regulated by the OC Rules.²⁹

Specific provisions of the FSR Act will also position the OC to assist the financial-sector regulators (namely, the FSCA and the Prudential Authority) in identifying recurring trends that become evident through financial customer complaints received. Such trends allow the regulators to identify potential risks to the stability of the financial sector. First, the OC must notify the financial-sector regulators when the repeated conduct of a financial institution is causing financial-customer complaints.³⁰ Moreover, all ombud schemes annually report to the OC,³¹ and the OC then reports to the financial-sector regulators on the performance of the ombud schemes. In addition to the annual reports received, the financial-sector regulators may at any time request additional information from either the OC or an ombud scheme, which allows the regulators to identify recurring trends of non-compliance conduct by financial institutions.

Section 219 of the FSR Act established the FST, which has mainly a review function. The Tribunal can re-evaluate decisions and omissions to take decisions by certain parties.³² These parties include a financial-sector regulator, an authorised financial-services provider, a statutory ombud and a market infrastructure. An important consideration here is whether the NFO is a statutory ombud, as, according to the FSR Act, the FST would not be able to review any of its decisions if it were not one. The FST may also investigate decisions taken either by an authorised financial-services provider (as defined under the FAIS Act) or review a decision made by a market infrastructure (as defined in section 105 of the Financial Markets Act).³³

2 3 NFO instruments

Two instruments regulate the operation of the NFO directly, namely the Memorandum of Incorporation (MOI) for the National Financial Ombud Scheme South Africa, a non-profit company, and the NFO Rules. Essentially, a financial institution is bound to the NFO Rules because it contractually agrees to be bound to the NFO Rules. Even though the NFO scheme is legislated, the NFO Rules do not have the status of a regulatory instrument under the FSR Act,³⁴ so the question is then whether a breach of the NFO Rules amounts to a breach of a financial law or merely a breach of contract? It is submitted that the latter is the more likely answer. Accordingly,

²⁹ S 201(2) of the FSR Act.

³⁰ S 184(d) and (e) of the FSR Act.

³¹ S 217(1) of the FSR Act.

³² The type of decision the FST may review is defined in s 218 of the FSR Act.

³³ 19 of 2012.

³⁴ Ombud Council *Consultation Report: Governing Rules of the National Financial Ombud Scheme South Africa* (February 2024) 6.

the NFO Rules are not regarded as subordinate legislation,³⁵ and this is regardless of whether or not the OC has approved the rules.

According to the MOI, the NFO was established mainly to: (1) conduct the business of an industry ombud scheme as recognised in terms of section 194 of the FSR Act; (2) receive, investigate and resolve complaints against participants in accordance with the NFO Rules;³⁶ (3) protect and promote financial-customer rights with reference to financial institutions and financial products and services;³⁷ (4) improve the quality of complaint handling in collaboration with the financial sector, regulators and financial customers; and (5) raise awareness of the NFO's existence and role, which includes disseminating educational information about financial services and financial products.³⁸ The powers of the NFO, as a non-profit company, are contained in clause 6 of the MOI. The first power relates to doing what is required to fulfil the object contained in clause 5 of the MOI. Then, the NFO must comply with its reporting duties as determined by the OC and the FSCA. Clause 7 requires that the funds of the non-profit company be used only to fulfil the objectives mentioned above. Moreover, a general reading of clause 8 concerning the rules of the company links to the NFO Rules, which are the rules of the company and which can be amended in line with what the OC requires. Furthermore, there is a separation of duties among the ombuds.³⁹ The appointment of ombuds is discussed in clause 10.4 of the MOI. To further ensure the independence of an ombud, such a person cannot be a director of the non-profit company, have a beneficial interest in the company, or have worked for a financial institution in the past three years.⁴⁰ The NFO Rules are the company rules mentioned in the MOI, and therefore are incorporated into the NFO MOI by reference.⁴¹

The NFO Rules are contractually binding on the participants of the NFO.⁴² The seven principal powers and duties are contained in Rule 3. First, the NFO must, by adhering to specific principles, resolve complaints between financial customers and participants.⁴³ Such resolution must happen in an

³⁵ *Ibid.*

³⁶ A participant is a person who subscribes to the NFO Rules and the NFO subscription procedures, and that provides financial products and financial services in South Africa. See definition of "Participant" in Rule 2 of the NFO Rules.

³⁷ This will relate to a financial service and a financial product as defined in the FSR Act.

³⁸ Cl 5.2 of the MOI of the NFO.

³⁹ This refers to the natural persons appointed to manage the NFO, the NFO Head Ombud being Reana Steyn and the Ombud of the Banking Division being Nerosha Maseti. See National Financial Ombud Scheme "Media Release: Former Lead Banking Ombud Appointed First Head of New National Body" (10 April 2024) <https://nfosa.co.za/former-lead-banking-ombud-appointed-first-head-of-new-national-body/> (accessed 2024-06-19).

⁴⁰ Cl 10.4.4 of the MOI of the NFO.

⁴¹ Rule 1.3 in the Preamble of the NFO Rules also confirms that the Rules and the MOI together form the governing rules for the NFO.

⁴² The list of NFO participants in the banking sector is located on the NFO website at <https://nfosa.co.za/banking/> (accessed 2025-08-28). The term "participants" is used in the NFO and OC instruments, but for consistency purposes and to attribute the meaning linked to financial institutions, this contribution prefers to refer to "financial institutions".

⁴³ The NFO Rules define a participant to be a subscriber to the NFO Rules and its subscription procedures, and that provides one or more financial products and financial services. A

“accessible, effective, efficient, fair (both procedurally and substantially), impartial, independent and timely” manner, while considering the overarching principles of equity.⁴⁴ Furthermore, the NFO must promote and publicise the NFO to financial customers,⁴⁵ and must ensure that it has the appropriate expertise and resources so the ombud scheme can fulfil its duties and activities. The NFO Rules also require the NFO to act with transparency, and it has an obligation to account annually for its activities to the OC. The NFO must also continuously promote the improvement of its services by having its performance independently reviewed. Moreover, the NFO must comply with all the applicable legislation and regulatory requirements that apply to it.

Rule 4 of the NFO Rules concerns the NFO jurisdiction. Generally, the NFO can hear any complaint concerning a financial product or service, unless there is a specific restriction, one being a monetary restriction as set out in the Schedule to the NFO Rules. Another restriction is that, in terms of this rule, the NFO cannot hear a complaint that falls under the jurisdiction of the PFA or the FAIS Ombud, unless these ombud schemes decline to deal with the complaint and agree that the NFO can deal with it. This will be particularly relevant when the complaint relates to a bundled financial product, where it would make more sense for the NFO to hear the complaint as opposed to dividing elements of the complaint between different ombud schemes, as was the practice in the past.

Interestingly, the NFO Rules allow a complaint to be submitted orally.⁴⁶ In addition to oral complaints, the complainant may submit a complaint in writing, either using the online complaint form, sending an email or fax, or by posting the complaint to the NFO. According to Rule 5, the complaint can be submitted “by telephone or other electronic means or in person”. Rule 5 also states that any complainant automatically agrees to the NFO Rules as soon as they submit a complaint. The NFO Rules allow for a complaint to be submitted in any of the official languages, although this researcher wonders whether this is practically achievable.

The NFO Rules provide overarching principles relating to the complaint-resolution process under Rule 7, and the process is accordingly not described in detail. Generally, parties are provided with sufficient opportunity to present evidence and also make submissions to the NFO, which includes oral submissions when the NFO considers it appropriate. As with predecessor schemes, the NFO only hears a complaint after remedies available under ICR mechanisms have been exhausted by the financial customer. Furthermore, in relation to the criteria the NFO must use for decision-making, the NFO is not bound by its previous decisions, but must determine disputes considering what is equitable, fair and reasonable, after considering applicable law. Accordingly, the NFO is not bound by, but may consider: (1) procedural and administrative fairness in relation to the

financial product is defined in s 2 of the FSR Act, and a financial service is defined in s 3(1)(a) of the FSR Act, but excludes the activity mentioned in s 3(1)(a)(ii) of the FSR Act.

⁴⁴ Rule 3.1.1 of the NFO Rules.

⁴⁵ This places an educational duty on the NFO.

⁴⁶ Rule 5 relates to how a complaint must be submitted to the NFO.

complainant; (2) previous rulings of the NFO or predecessor schemes;⁴⁷ (3) relevant industry practice; and (4) applicable industry codes, an example of which, it is submitted, would be the Banking Code of Good Practice.

According to Rule 9, the NFO can either make a recommendation, dismiss a complaint or make a ruling. The parties must agree to a recommendation before it can be implemented, and to the matter being finalised after the parties have accepted the recommendation. Where either party does not accept the recommendation or does not comply with the recommendation, the NFO will issue a ruling, also setting out the reasons for its decision. The financial institution has six months to comply with the ruling. Where a party challenges the ruling, the NFO can reconsider the complaint and issue a new ruling. Where a party does not accept the ruling, they have a right of appeal in terms of Rule 10 of the NFO Rules. For an appeal, the NFO establishes an appeal tribunal, which is made up of three members who are retired judges, appointed by the NFO Board for a period of three years, which is similar to the process followed by the predecessor scheme, the OBS. Non-compliance with a ruling may be reported to the NFO Board, the FSCA, the National Credit Regulator or the OC. In addition, the NFO can publish the fact of non-compliance,⁴⁸ which it is submitted incorporates an element of “name-and-shame” for a contravening financial institution. However, before such publication happens, the financial institution is afforded 10 days in which to make representations on why the non-compliance should not be published. BASA raised the publication option as a concern in its comment on the draft rules, as publication could hold reputational risk for a financial institution.⁴⁹ However, the OC response was that a serious contravention of a financial institution’s obligation to comply with the NFO Rules also amounts to a serious contravention of section 215 of the FSR Act.⁵⁰ According to the OC, it is in the public interest for such contraventions to be publicised, unless there are compelling reasons provided for non-compliance.⁵¹ In any event, it is submitted that a financial institution is provided with an opportunity to make out a case why publication must not take place before any such publication takes place. Thus, it can be argued that the financial institution has an opportunity to prevent reputational damage from resulting before publication occurs. The OC is of the opinion that the financial institution’s reputational risk in this regard is best managed by complying with its obligations to the NFO.⁵²

The NFO may also dismiss a complaint, relying on the following grounds: (1) the complainant lacks “a reasonable prospect of succeeding”; (2) the complaint took place in a “dishonest, frivolous, vexatious, abusive or unreasonable manner”; (3) it is more appropriate for a court to deal with the complaint; (4) the complaint relates mainly to investment performance,

⁴⁷ Rule 15 of the NFO Rules also confirms that decisions of the NFO, the predecessor schemes or the Appeal Tribunal do not establish legal precedent.

⁴⁸ Rule 11.1.3 of the NFO Rules.

⁴⁹ Ombud Council *Consultation Report: Governing Rules of the National Financial Ombud Scheme South Africa* 15.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

relying mostly on the legitimate exercise of a financial institution's commercial judgment; (5) it is unlikely that the complainant will suffer either financial loss or material inconvenience; or (6) the complaint involves another party who has not consented to submission of the complaint.⁵³

Certain duties of the NFO will assist with the transparency of its operations. First, the NFO must publish an annual report, setting out its activities during that reporting period.⁵⁴ Also, the NFO must annually publish statistical information that refers to the number of complaints submitted, how each complaint was handled, how many were closed and what the outcomes were.⁵⁵ It is submitted that such statistical information will probably be included in the annual report. The NFO must also publish the rulings made against a financial institution, including a summary of the facts, the reason for the decision and the identity of the financial institution, unless such application could divulge the identity of the complainant, in which case consent is first required before publication can take place.⁵⁶ The NFO must also publish any information that the OC requests it to publish.⁵⁷ Rule 19 places a further obligation on the NFO to report to the FSCA, the NCR and the OC on any systemic issue that affects financial customers in general, and which issue has been identified as a result of complaints received by the NFO.⁵⁸ The NFO can also engage with a financial institution regarding systemic issues identified.⁵⁹

Financial institutions contribute to the NFO operational costs, and the NFO Board decides on the funding model – that is, whether there is an annual contribution or a case-by-case contribution.⁶⁰ The OC has clarified that this is not a fee payable when an individual case is heard, but relates more to case fees that will be calculated according to the number of complaints received against the financial institution. This case-by-case fee will be levied along with an annual base fee that the financial institution must pay to the NFO.⁶¹

The rule dealing with educating financial customers is worded in general terms. Rule 23 merely says that the NFO may contribute to educating financial customers on how to use the services of financial institutions effectively. Rule 23 makes no mention of educating financial customers about the existence and operation of the NFO. Rule 23 does not mention an obligation on the NFO to educate consumers on its services, but the MOI does mention an educational obligation placed on the NFO. Nevertheless, as there is an obligation placed on the OC to educate financial customers about the ombud schemes available to them, it makes sense that the NFO

⁵³ Rule 9.2.1 of the NFO Rules.

⁵⁴ Rule 14.1 of the NFO Rules.

⁵⁵ Rule 14.2 of the NFO Rules.

⁵⁶ Rule 14.3 of the NFO Rules.

⁵⁷ Rule 14.5 of the NFO Rules.

⁵⁸ Rule 19.1 of the NFO Rules.

⁵⁹ Rule 19.2 of the NFO Rules.

⁶⁰ Rule 22.1 of the NFO Rules.

⁶¹ Ombud Council *Consultation Report: Governing Rules of the National Financial Ombud Scheme South Africa* 16.

must do what it is there for – namely, to resolve financial customer complaints effectively.

Schedule A to the NFO Rules sets out the monetary limit for complaints. For example, for banking complaints, including about credit, the NFO can only hear a complaint if the claim amount does not exceed R5 million. Also, a complainant must either be a natural person or a small business, meaning that the complainant can include a juristic person, trust or partnership, as long as the turnover in the last financial year was less than R10 million.

There is a lack of detail on exact time frames and detailed complaint procedures in the NFO Rules. In response to a comment from BASA concerning this lack of detail, it was said that this allows the NFO reasonable flexibility regarding time frames and its detailed processes. However, the NFO can adopt appropriate administrative procedures and time frames consistent with its rules.⁶² The complaint process is noted on the NFO website, and the electronic complaint submission is user-friendly.⁶³ The complaint process is explained on the NFO website, but there are some uncertainties concerning this process. For example, the website indicates that the complainant will receive an acknowledgement of receipt, but there is no time given by which the NFO must acknowledge receipt of the complaint. Furthermore, a financial institution must provide a written response to the complaint within 21 working days, but the starting day for counting this is not mentioned. Also, the website says that the 21 days does not apply if the complaint was previously lodged with the financial institution, but there is no mention of whether the financial institution must provide a quicker response if such a complaint was lodged before and also by when that response must be forthcoming. Although there is a flow chart explaining the complaint process, a financial customer is likely to be left wanting to know how to navigate this chart.

Finally, there is mention of fundamental principles, or core values, with which the NFO must comply when resolving a complaint in terms of the NFO Rules. However, guidance on which fundamental principles would form the foundation of the NFO procedures can also be taken from the core values of the NFO that are published on its website, which include: (1) effectiveness; (2) independence; (3) accessibility; (4) fairness; (5) efficiency; and (6) openness.⁶⁴ These values will arguably provide a benchmark on how the NFO proceeds to adapt its dispute-resolution procedures, also in coordination with the OC, especially after the OC Rules are published. It is not uncommon for ombud schemes to rely on such principles as a

⁶² Ombud Council *Consultation Report: Governing Rules of the National Financial Ombud Scheme South Africa* 11.

⁶³ A possible practical issue could be that only documents up to a size of 5MB can be submitted in support of the complaint.

⁶⁴ The author submits that transparency, as opposed to openness, could be a better choice as a core value, thus following the same wording already included in the FSR Act and other instruments related to dispute resolution. The NFO Rules themselves contain a reference to transparency.

benchmark, while allowing flexibility in deciding the details of the dispute-resolution process.⁶⁵

3 ISSUES TO BE RESOLVED

Reference has been made to the World Bank Group report, in which a key issue was the fragmentation of the previous South African ombud-scheme structure. With the new ECR framework, fragmentation has been reduced, albeit not completely removed.⁶⁶ When the National Treasury embarked on its investigation into reforming the South African ombud scheme structure, it also identified other issues with the predecessor structure in its report “A Known and Trusted Ombud System for All”.⁶⁷ These issues are repeated below, followed by a comment on whether having the new ombud structure has resolved these issues. This section concludes by mentioning some new issues that have arisen with the introduction of the NFO.

Previously, a lack of consistency in the standards and/or requirements concerning dispute-resolution processes was raised as an issue.⁶⁸ Having the NFO as a single ombud scheme resolves this issue for the most part. However, we still have the FAIS Ombud and the PFA having different rules when compared to the NFO. One example is the question of where to lodge an appeal: the PFA requires appeals to go to the High Court; the FAIS Ombud requires that the FSCA establish a board of appeal; and the NFO requires three retired judges to be appointed by the board of directors, as was the case with the predecessor scheme, the OBS. Arguably, some consistency could be achieved if the OC Rules prescribed specific standards for ombud schemes, but the reality is that there will not be complete standardisation of standards and/or requirements concerning dispute-resolution processes where separate ombud schemes operate in the financial sector. The best compromise could be for these ombud schemes at least to implement the same core values, so that while the individual standards remain flexible, the rules for each ombud scheme are prepared and interpreted in a consistent manner by considering the same core values.

The second issue was that no single standard existed to measure the performance of different ombud schemes.⁶⁹ Currently, the OC must measure the performance of the PFA, the FAIS Ombud and the NFO. Thus, at least

⁶⁵ See, for example, guidance from other jurisdictions, one example being Australia. See Australian Government: the Treasury “Key Practices for Industry-Based Customer Dispute Resolution” (February 2015) https://treasury.gov.au/sites/default/files/2019-03/key_pract_ind_cust_dispute_resol.pdf (accessed 2024-06-19). See further Koekemoer “Recommending Key Principles for a Reformed South African Financial Ombud Scheme Framework” 2025 *THRHR* 234–250 for a discussion of what should be included as core principles South African financial ombud scheme must incorporate as part of its operation.

⁶⁶ The PFA and FAIS Ombud continue to operate. The reason for keeping these predecessor schemes in place was not evident from this researcher’s initial search of the documents published on the NFO structure.

⁶⁷ National Treasury “A Known and Trusted Ombud System for All” (20 September 2017) https://www.treasury.gov.za/twinpeaks/Final%20Twin%20Peaks%20Policy%20Doc_A%20known%20and%20trusted%20ombuds%20system%20for%20all_September2017.pdf (accessed 2025-07-21) 8–15.

⁶⁸ Koekemoer 2021 *Obiter* 347.

⁶⁹ For discussion of this issue in previous research, see Koekemoer 2021 *Obiter* 346.

there is now one overseeing body assessing the performance of the different ombud schemes. The OC Rules should give guidance on the standard to be used to assess the performance of the different ombud schemes, but this document is not yet available. As illustrated above, there will be differences in the standards or requirements for the three ombud schemes, but this should not be problematic if measuring the performances takes place in a logical manner. The mandate of each ombud scheme is different, and perhaps in measuring each, there should be some flexibility allowed. At the same time, there must be a common approach in assessing whether each ombud scheme is implementing certain standard core values, or fundamental principles – not only in its rules, but also in whether it is considering the principles when implementing such rules.⁷⁰

Another issue relates to a possible overlap in the jurisdiction of different ombud schemes.⁷¹ Indeed, there is a potential overlap in the jurisdictions of the NFO, the FAIS Ombud and the PFA. It is possible for the FAIS Ombud and the PFA to agree that the NFO may hear a matter that would ordinarily fall within the jurisdiction of these two ombud schemes, and this is especially relevant when a complaint concerns a bundled product. Previously, in the case of a bundled product, the complaint was divided, and each ombud heard that part of the complaint; thus, a single complaint was heard by multiple ombud schemes.⁷²

The next issue relates to consistency in financial-sector reporting⁷³ – first, in relation to format, and further concerning the frequency of reporting. The current obligation allows for ad hoc requests for information to be made by the OC, but the main question is whether this is enough to allow recurring complaints that could cause a systemic event in the financial sector to be identified; logic suggests that it is not. Nevertheless, the OC is responsible for fostering a collaborative culture between the ombud schemes, and if past experience is anything to go by, although ombud schemes probably only report annually, there has been regular information-sharing taking place between them that should assist the financial regulators to identify, in time, any recurring events taking place in the financial sector that could disrupt the stability of the financial sector. Linked to this issue are two sub-issues: the need for standardisation of the collection of data,⁷⁴ and the lack of feedback to regulators,⁷⁵ which it is hoped is also now resolved.

⁷⁰ See the discussion in Koekemoer 2025 *THRHR* 234-250.

⁷¹ See Koekemoer 2021 *Obiter* 347.

⁷² National Treasury https://www.treasury.gov.za/twinpeaks/Final%20Twin%20Peaks%20Policy%20Doc_A%20known%20and%20trusted%20ombuds%20system%20for%20all%20September2017.pdf 11.

⁷³ See Koekemoer 2021 *Obiter* 347.

⁷⁴ Van Zyl "Codes of Conduct for the Financial Services Industry" 2006 17 *Stell LR* 339-340.

⁷⁵ FinMark Trust *Landscape for Consumer Recourse in South Africa's Financial Services Sector* (2007) 26. A copy was available from http://www.finmark.org.za/documents/R_consumerrecourse.pdf (accessed 2020-04-21). However, this document is no longer available from this link, and a copy may be requested from the author.

Previously, there was no statutory obligation to educate financial consumers.⁷⁶ It is again submitted that two functions of the OC would resolve this issue. This includes improving public awareness of ombud schemes and publicising information concerning ombud schemes on a larger scale. The author's comment remains that the OC must include an educational obligation in the OC Rules; the educational obligation may be delegated to ombud schemes, but it is preferred that this obligation be delegated to financial institutions. There is also an educational duty placed on the FSCA, which, it is again submitted, could include educating financial customers on the ombud schemes operational in the financial sector. It remains the author's opinion that it is preferable that this duty also be delegated to financial institutions through the FSCA conduct standards.⁷⁷ Perhaps the educational duty should be placed on financial institutions, which have adequate resources to be able to educate their own financial customers in this regard. Indeed, in the predecessor ombud-scheme system, there was low awareness of and access to ombud schemes.⁷⁸ Development of trust in the NFO would improve this. However, a properly resourced and well-structured effort is required to allow most financial customers to know what the NFO can do for them. In summary, it is submitted that the educational duty should rest with the OC and that the OC Rules and FSCA conduct standards must include a clear obligation on financial institutions to educate financial customers about their right to approach the NFO.

As mentioned before, another issue with the predecessor system was the absence of an effective referral process when a complaint was directed to the wrong ombud scheme.⁷⁹ Again, having an amalgamated ombud scheme mostly resolves this issue, but the issue remains in relation to the FAIS Ombud and the PFA. When writing this article, only the person heading the Banking Department of the NFO had been appointed, but as the NFO continues to develop its operational structure, the appointment of people heading the long-term insurance and short-term insurance departments will also assist to prepare a clear operational structure for the NFO, and also indicate how referral to the PFA and FAIS Ombud, and referral between departments, could occur.

As a concluding remark, it is worth mentioning some new issues resulting from the creation of the NFO. First, neither the NFO Rules nor the MOI gives a clear outline of the dispute-resolution process and time frames attached to each step. Understandably, the idea is to allow for flexibility so that the NFO need not amend its rules each time a process changes. However, this does cause uncertainty, and it is submitted that the content on the NFO website is simply not clear enough for the financial customer to follow. Furthermore, as mentioned above, standardisation of core principles (or values) across different ombud schemes would go a long way towards ensuring consistency

⁷⁶ See Koekemoer 2021 *Obiter* 347.

⁷⁷ *Ibid.*

⁷⁸ National Treasury https://www.treasury.gov.za/twinpeaks/Final_Twin_Peaks_Policy_Doc_A_known_and_trusted_ombuds_system_for_all_September2017.pdf 9.

⁷⁹ National Treasury https://www.treasury.gov.za/twinpeaks/Final_Twin_Peaks_Policy_Doc_A_known_and_trusted_ombuds_system_for_all_September2017.pdf 11. See also Koekemoer 2021 *Obiter* 347.

in the rules and operation of different ombud schemes, while allowing each ombud scheme to decide on the “detail” of how it will achieve the core principle.⁸⁰

The assumption is that there is a single point of entry for all complaints submitted to the NFO. It does make sense that there be a coordinated point when a decision is made as to which of the NFO departments should receive a complaint, so that the financial customer does not have to figure out to which ombud scheme to complain. However, logically, there is the potential for a bottleneck to be created at this stage if persons manning the call centre are not adequately staffed and trained to quickly identify which department must receive the complaint. It appears that when a department receives a complaint, they also do a “jurisdictional check”, which may again create the possibility that the matter is referred back to the call centre to reassign the complaint to another department, thus causing a delay in the financial customer receiving timely redress. However, South Africa is following international best practice in having a single ombud scheme to hear all complaints from financial customers, which means that there is a wealth of academic knowledge available for the NFO to build on and implement as part of its operational structure.

4 FINAL REMARKS

Establishing the NFO is a step in the right direction towards having effective complaint-resolution processes in the South African financial sector. Having a single ombud scheme makes it easier for a financial customer to navigate where to submit a complaint. The author can only speculate on why the PFA and the FAIS Ombud have been kept separate from the NFO structure. As with all new structures, only time will tell how effectively it will operate, and much of the success will depend on how well resourced it is, both financially and intellectually, and whether financial customers have the confidence to submit complaints to the NFO, which confidence must be earned.⁸¹ Confidence in the NFO can only be achieved if the NFO proves itself to financial customers as an ombud scheme that stays true to its core values and ensures that customers are treated fairly.

⁸⁰ See Koekemoer 2025 *THRHR* 234–250 for recommendations on which key principles would be fundamental.

⁸¹ The aim of this article is to provide a synopsis of the NFO framework and is not to comment on its actual operation. For comment on the NOFO's operation in 2024/2025, see the NFO Annual Report 2024 (19 June) <https://nfosa.co.za/docs/nfo-annual-report-2024/>.