

COMPLAINTS HANDLING PROCESS MANUAL



*OFFICE OF OMBUDSPERSON
FOR FINANCIAL SERVICES*

8 February 2023

INTRODUCTION

The purpose of the Complaints Handling Process Manual is to disclose the approach of the Office of Ombudsperson for Financial Services (the “Office”) in the exercise of its powers for complaints handling. The document must be read together with the powers conferred upon the Office under the Ombudsperson for Financial Services Act (the “Act”).

The idea is to implement an effective and efficient system, aimed at dealing with considerable delays in complaints processing. At the same time, we have explained how we will deal with some specific situations which have become matters of concern to us.

The Manual will serve as an important tool for both the consumer of financial services and the financial services industry.

The Office will only be able to improve the efficiency of its services if there is a collaborative approach from both the consumer of financial services and the financial institutions. In this Manual, we present our expectations at every stage of the process.

This document is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

DELAY

Current situation

The Office of Ombudsperson for Financial Services (the “Office”) has regrettably experienced significant delays in processing and investigating complaints due to circumstances which are outside its control.

We are faced with an unrealistic situation where we are advising complainants on procedures after an average period of 8 months. We understand that this situation is causing frustration and anger amongst complainants.

Our constraints

Since its creation in 2019, the Office has been operating with employees of an administrative cadre only.

Officers from the Financial Services Commission and the Bank of Mauritius were sent on secondment to assist the technical operations of the Office since 2019.

During the period 1 March 2020 to 25 February 2021, there was no appointed Ombudsperson and therefore the operations of the Office were idle, resulting in a massive backlog of 841 cases as at 26 February 2021.

We have a rising number of new complaints each year. As at 30 June 2022, we have a backlog of more than 800 cases. Our key risk was, and remains, availability of resources. We have more work coming in than we have staff to handle it to the timescales, quality and standards to which we aspire.

In addition to the serious lack of resources, we did not obtain funds for the acquisition of essential working tools such as IT Equipment and software.

Further details of our constraints are reported in our Annual Report 2021-2022.

Our proposals

In view of the undue length of time that the Government is taking to provide relevant assistance to this Office, we have, in these Guidelines, taken a considered approach to complaints handling for new and previous cases.

HOW WE WILL HANDLE NEW COMPLAINTS

As from 1 January 2023, new complaints will be prioritised in order to avoid the same delaying treatment to fresh complainants. The process for new complaints is explained in the Guidelines below.

HOW WE WILL HANDLE EXISTING COMPLAINTS

We will continue to process and investigate existing complaints, but we will do so on different timescales. These files will take longer as considerable delay has already occurred, owing to which we have to require fresh information. Some investigations were left pending and our current staff members have to start afresh. In some cases, procedures set under the law were not followed by complainants. We have the duty to advise complainants correctly.

PROCEDURAL REQUIREMENTS

It is important to understand that procedures to make a valid complaint are dictated under the Act. The procedures that we communicate to consumers of financial services are therefore compulsory. We are unfortunately faced with a considerable number of resistance from members of the public, who refuse to comply with procedures. There is a limit to how far we may afford to dedicate time to explain the same procedures. This type of behaviour seriously hinders our operations.

When procedures have not been complied with, we will write to the person and explain the procedures to him/her. If there are difficulties to understand, our Officers will be explaining the

procedures by phone a second time. In addition, the procedures are explained on our website and handed over in flyers.

In cases of persistent calls or emails in relation to procedures, we will issue only one written correspondence and entertain one verbal session for explanations. If procedures are not complied with within 6 months, no file will be created and the matter will be closed at our end.

REQUESTS FOR UPDATES

Many complainants come to us for an update. In view of our serious constraints, it is impossible for us to comply with these requests in addition to our workload. We have a massive number of such requests on a daily basis and most of the time, complainants do not understand that we are unable to accommodate these requests for the sake of efficiency of our operations. Some complainants persistently make the same calls and some attend our Office and refuse to leave. While we do understand the frustration of the complainants, we are unfortunately not in a position to entertain all the demands of the public.

We will apply our “Unacceptable Behaviour Policy” in specific situations. Please consult the Policy on our website.

ADDITIONAL GROUNDS OR ISSUES

We have noted that after submission of a complaint, some complainants keep on sending additional issues or grounds in separate correspondence. Complainants must understand that it will be difficult for us to process a complaint on a segregated basis. If we have already sought representations from the financial institution, it would be unfair to consider additional grounds at a later stage. If we are to request for representations each time a complainant adds a ground, the matter will be considerably delayed. In such situations, we will proceed with the initial complaint only.

UNREASONABLE BEHAVIOUR

We are committed to give full assistance to complainants. We also expect consumers to treat our staff and our service with respect. Occasionally, the behaviour or actions of individuals using our service makes it very difficult for us to deal with their complaints. Sometimes, the actions of individuals become unacceptable because they involve abuse of our staff or our process. When this happens we have to take action to protect our staff. Our Unacceptable Behaviour Policy explains how we will interact with people and approach these situations.

OUR TIME FRAMES

We have committed to a time frame for new cases as from 1 January 2023. We aim to close each case within a period of 3 months. However, our commitment will depend on many factors and may not be achievable at all times.

We look at each case individually. The length of time will vary depending on the complexity of the case and availability of resources. To help us deal with cases promptly, it is important that consumers and financial institutions provide us with information as soon as possible when we ask for it.

PROCESS FOR NEW COMPLAINTS

The process for new complaints is applicable for complaints received as from 1 January 2023.

How to make a valid complaint to us?

- Follow the procedures under Step 1

Mode of submitting a complaint to us

All complaints must be submitted in writing. We do not accept verbal complaints.

Complaints may be submitted:

- Through our complaint forms on our website
- By email
- By post
- By hand delivery

STEP 1 The complainant makes a complaint to us

Our time frame

We aim to look at the complaint within 3 days

We will verify :

- Whether the complaint is properly addressed to us¹;
- whether the complaint is valid, that is, whether all procedural requirements of the law have been met;
- whether it has enough detail and information for us to proceed.

Cases where procedures have not been followed

If the complaint is not a valid one, we will advise the complainant on compulsory procedures:

1. To address a written complaint to the relevant financial institution, in the first instance².

¹ Many times, complainants address their complaints to the Financial Services Commission and not to us. Complaints which are addressed to other institutions cannot be processed.

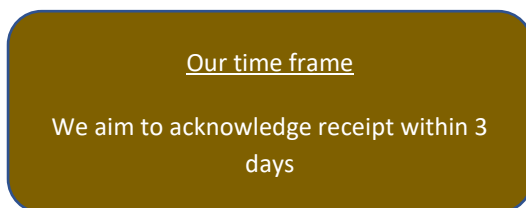
² A template for making a complaint to the financial institution is annexed to the Manual.

2. To address a written complaint to this Office³ after a period of 30 days as from the date of the complaint to the financial institution if no reply has been received from the financial institution or if the reply is not satisfactory.
3. To inform us whether the financial institution replied to the complaint.
4. To state the nature of the complaint and the relief being sought accompanied by relevant documents such as:
 - a) A copy of the complaint made to the relevant financial institution;
 - b) A copy of the reply from the financial institution, if any;
 - c) A copy of the document or terms and conditions which are applicable;
 - d) A copy of National Identity Card or Passport;
 - e) A copy of any other related documents to be relied on.

We will not be able to entertain a complaint:

- a) where it is made more than 6 months from the date of receipt of the decision of the financial institution; and
- b) where the above mentioned procedures are not followed.

Cases where procedures have been followed



A file will be created and the file will be allocated to an officer.

Cases where we are copied in correspondence with the financial institutions

Many prospective complainants start to engage with their financial institutions, and they copy us in exchanges. Complainants thereafter hold the belief that these exchanges amount to a valid complaint and are processed by our Office. This is not the case.

A valid complaint is only processed if the procedures explained above are complied with. Exchanges in which we are copied are not processed.

We have noted that certain financial institutions, in their replies, also tend to copy us. This situation has become extremely problematic for us. Firstly, we have no jurisdiction at this stage and it is irrelevant for us to know the negotiations between the consumer and the financial institution. Secondly, the law specifically provides the financial institution an opportunity to

³ A template for making a complaint to us is annexed to the Manual

redress matters before escalating to us, so that we cannot intervene at this stage. There is also a possibility that the matter is resolved and there is no complaint before us.

We are however inundated with a considerable number of correspondence during the pre-complaint phase and it has become extremely difficult for us to manage this in view of the serious lack of resources. Another difficulty is when the consumer, in such cases, is under the understanding that he should not submit anything as we will be handling the matter automatically.

In such cases, financial institutions should explain to the complainant that the Office should not be copied in exchanges at the pre-complaint stage. Reference to this Manual could be useful so that the complainant understands properly.

Cases where complaints are submitted through other bodies

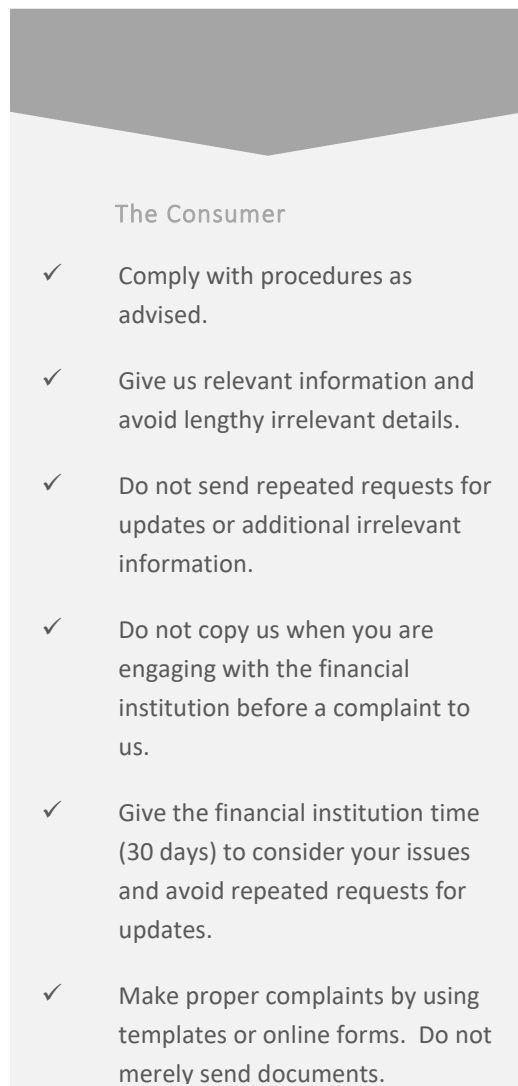
We receive a number of complaints which are addressed to other Ministries, the Citizens Advice Bureau, the Financial Services Commission, the Bank of Mauritius etc.

In accordance with the Ombudsperson for Financial Services Act, we may only entertain complaints made to the Financial Services Commission and the Bank of Mauritius prior to the commencement of the Act, if these complaints have not been determined by either Regulator.

Complaints made to the Financial Services Commission and the Bank of Mauritius post the commencement of the Act, may not be entertained by us.

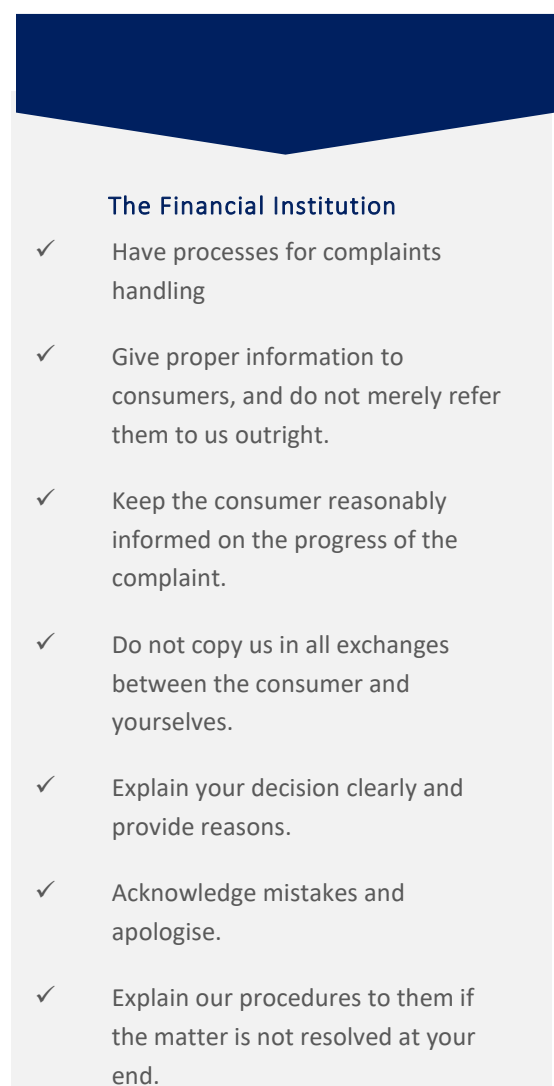
Complaints made through all other institutions may not be entertained at all and will be returned to these institutions.

OUR EXPECTATIONS FOR STEP 1



The Consumer

- ✓ Comply with procedures as advised.
- ✓ Give us relevant information and avoid lengthy irrelevant details.
- ✓ Do not send repeated requests for updates or additional irrelevant information.
- ✓ Do not copy us when you are engaging with the financial institution before a complaint to us.
- ✓ Give the financial institution time (30 days) to consider your issues and avoid repeated requests for updates.
- ✓ Make proper complaints by using templates or online forms. Do not merely send documents.



The Financial Institution

- ✓ Have processes for complaints handling
- ✓ Give proper information to consumers, and do not merely refer them to us outright.
- ✓ Keep the consumer reasonably informed on the progress of the complaint.
- ✓ Do not copy us in all exchanges between the consumer and yourselves.
- ✓ Explain your decision clearly and provide reasons.
- ✓ Acknowledge mistakes and apologise.
- ✓ Explain our procedures to them if the matter is not resolved at your end.

Step 2 Preliminary Assessment

An officer will carry out a preliminary assessment to verify whether the complaint is one:

- which is under our jurisdiction;
- which is against a financial institution licensed by the Financial Services Commission and the Bank of Mauritius⁴;
- in which the complainant has sufficient interest in the subject matter;
- which pertains to a subject matter which is or has been the subject of proceedings before, or has been determined by the Commissioner for the Protection of Borrowers, a Court, a tribunal or an arbitrator.

If the complaint falls into one of the above categories, the complaint will not be entertained and the complainant will be informed accordingly.

Our time frame

We aim to complete the early assessment phase within 1 week of receipt of the complaint

Step 3 Representations from financial institutions

After the Early Assessment phase, representations will be sought from the relevant financial institution.

At this stage, the financial institution would have been already apprised of the complaint as the complainant would have already followed the procedures under Step 1. Since the financial institution would already be aware of or worked on the issues, we will require a reply within **7 days** of our request.

Where a financial institution requests for an extension, it has to provide reasonable reasons. We will consider extending the deadline in exceptional circumstances.

If no representations are received by the deadline and no request for extension made, we will proceed with the investigation.

Deadline to submit representations

7 days

⁴ Sometimes we have to write to the Financial Services Commission for confirmation on the licence status of a financial institution. This may impact our time frame.

OUR EXPECTATIONS FOR STEP 3

The Consumer

- ✓ The consumer has to understand that we need to obtain information from all sides before concluding.

The Financial Institution

- ✓ Respect the time provided to you for a response.
- ✓ Give us detailed information, a complete picture of the situation, address the issues and support your averments with documentary evidence and appropriate references.
- ✓ Make your case properly and defend your stand.
- ✓ In case of further requests for information, answer the questions and avoid blank statements.
- ✓ Tell us whether you are willing to resolve the matter and how you intend to provide redress.
- ✓ When you are making use of provisions of the law, make sure that you are applying the correct provisions.
- ✓ When you rely on a specific clause of a binding document, ensure that the clause supports your averments.

Step 4 Investigation

At this stage, we will make a thorough assessment of the issues involved, the laws applicable and carry out inquiries.

Our investigation may be delayed:

- where we may need information from other Authorities or persons
- where we may need further evidence or information from the complainant or the financial institution.

Our time frame for investigation

3 weeks

Upon completion of the investigation, we will decide whether we need Hearing or we may proceed to the decision stage.

Step 5 Hearing

We will summon parties within a week of completion of investigation.

During the Hearing, parties may be legally represented but this is not necessary.

Parties will be heard and examined. They will be provided with an opportunity to mediate and settle the matter.

Proceedings of the Hearing are kept in writing.

At the end of the Hearing, if a settlement is agreed, we will formalize the settlement in an Agreement.

If no settlement has been reached, a decision will be given within 3 weeks.

Our time frame for a decision

3 weeks

OUR EXPECTATIONS FOR STEP 5

The Consumer

- ✓ Attend the Hearing.
- ✓ Bring all the documents that you wish to rely upon.
- ✓ Respond to questions put to you and avoid lengthy irrelevant details.
- ✓ Come with clean hands and do not hide information.
- ✓ If you have suffered financial loss, be ready to explain the amount lost.

The Financial Institution

- ✓ Send a representative who is sufficiently senior within the organization and who has the capacity to take decisions on behalf of the institution for a settlement.
- ✓ Send a representative who is well versant with the case.
- ✓ Send a representative who can answer questions.
- ✓ Bring all documents that will help support your stand.
- ✓ If you are unable to attend the Hearing, please inform us and request for a postponement.

Step 6 Decision

A written and motivated decision is issued after the completion of an investigation and/or Hearing.

A complaint may be either upheld or rejected.

Complaint upheld

When a complaint is upheld, the Ombudsperson may:

1. issue an Award, directing the Financial Institution to pay a stated amount of compensation to the complainant;
2. give Directives to the Financial Institution;
3. require the financial institution to take a specific step to make things right;
4. require the financial institution to issue an apology.

Complaint rejected

When a complaint is rejected, the Ombudsperson for Financial Services will explain his reasons and the provisions of the law under which the decision has been taken.

Award

An Award may be made where the Ombudsperson is satisfied, after investigating into a complaint, that the complainant has suffered any loss, financial or otherwise.

A decision to make an Award is taken on a case to case basis and largely depends on the merits of the complaint.

Factors considered

In calculating the amount of an Award, we will consider a number of factors which are listed below. However, this is not an exhaustive list and we may consider other relevant factors depending on the nature and circumstances of each case:

- a) the financial loss to the consumer;
- b) the delay taken by the financial institution to tackle the issues since it became aware of them;
- c) the efforts made by the financial institution to remedy the situation;
- d) whether the consumer experienced any distress, hardship, pain and suffering, damage to reputation or other difficulties caused by the dispute.

How do we calculate the amount of the Award?

In cases of monetary losses, we will take into account the actual loss suffered by the complainant.

In cases where the loss is not quantified (cases of distress, hardship, pain, suffering, damage to reputation and other difficulties), we will consider the following non-exhaustive elements:

- a) costs of medical assistance provided or which could have been provided;
- b) loss of professional opportunities;
- c) any other cost which occurred as a result of the dispute;
- d) the degree to which the complainant is responsible for the loss.

Mediation

The Ombudsperson may, at any stage after receipt of a complaint against a financial institution, attempt to settle the dispute by mediation.

If no offer for settlement has been received prior to a Hearing, Mediation will be attempted during a Hearing.

The purpose of a Mediation is to help parties reach a mutually satisfactory settlement of their dispute. A party to a Mediation cannot be compelled to accept an outcome and may refuse to proceed with the Mediation. The Ombudsperson for Financial Services will act as a Mediator and his role is to assist parties in reaching a fair outcome.

Settlement

If at the end of a Mediation session, there is an agreed outcome, parties will be requested to sign a Settlement Agreement before the Ombudsperson for Financial Services.

The Settlement Agreement contains:

- a) an introduction of parties;
- b) a brief background;
- c) the nature of the dispute;
- d) the agreement reached;
- e) provisions on revocation.

The Settlement Agreement does not contain:

- a) details of the dispute;
- b) arguments presented before the Ombudsperson before settlement;
- c) breaches of the law committed by any party; or
- d) admissions made.

Breach of the Settlement

In the event of a breach of the Settlement Agreement, the Agreement shall be revoked by either party by providing written notice and the reasons for revocation.

In the event of a revocation of the Settlement Agreement, the Ombudsperson for Financial Services shall consider the submissions made and evidence adduced by the parties and give a decision, which may include an Award.

No settlement reached

After a Mediation session, if there is no agreed outcome, the Hearing proceeds and a decision is given within 3 weeks.

Step 7 Judicial Review

Any person aggrieved by any decision (including an award) of the Ombudsperson for Financial Services may apply, within 21 days, to the Supreme Court for a judicial review of the decision or award, as the case may be.

When there is a Judicial Review before the Court, the Ombudsperson for Financial Services is a party and may not represent the interests of the consumer. The consumer will have to seek independent legal advice.

The decision of the Court is binding on all parties.

TIMELINE FOR NEW COMPLAINTS

Complaint received

3 days to acknowledge receipt or to issue advice on procedures

Preliminary Assessment

1 week to complete

Representations from financial institutions

Request issued within 3 days from completion of Preliminary Assessment. Financial Institutions will have 7 days to reply

Investigation

3 weeks to complete

Hearing

Issue summons within 1 week of completion of investigation.
Hearing completed within 2 weeks of completion of investigation.

Decision

Issued within 3 weeks from Hearing or completion of investigation

Closure of file:
Approximately 3 months

Annex 1 Template for making a complaint to the financial institution

Date:

The Complaints Coordinator

Name of Financial Institution

Address of Financial Institution

Dear Sir/Madam,

- Explain who you are

Ex: I am Paul Smith of New York Avenue, Quatre Bornes.

- Explain how are you related to the financial institution (For ex, you have an insurance policy, a pension plan, an agreement for financial services).

Ex: I subscribed to a life insurance policy with XYZ Ltd on 01.01.11 for a term of 20 years.

- Make it clear that you are making a complaint. Give details of why you disagree with the financial institution.

Ex: I wish to make a complaint about

- Explain what you expect as a result of your complaint

Ex: Do you want an apology, a service that should have been provided, compensation?

Insert your name and signature

Provide your address and contact details

Annex 2 Template for making a complaint to us

Date:

The Ombudsperson for Financial Services⁵

8th Floor

SICOM Tower

Wall street

Ebene

Dear Sir,

- Give your name and address
- If you are not the complainant, please include a signed authorisation from complainant;

Ex: I am Paul Smith of New York Avenue, Quatre Bornes or I am the (relative) of Paul Smith and I am authorised to act on his behalf.

- If you are a company, include an authorization from the board of directors.
- Provide the name and address of the financial institution against which the complaint is made
- Tell us if you have made a complaint to the financial institution, when you made the complaint, whether the financial institution replied to you.
- Explain how are you related to the financial institution (For ex, you have an insurance policy, a pension plan, an agreement for financial services).

Ex: I subscribed to a life insurance policy with XYZ Ltd on 01.01.11 for a term of 20 years.

- Make it clear that you are making a complaint. Give details of why you disagree with the financial institution.

Ex: I wish to make a complaint about

- Explain what you expect as a result of your complaint

Ex: Do you want an apology, a service that should have been provided, compensation?

Insert your name and signature

Provide your address and contact details

⁵ The complaint must be addressed to the Ombudsperson for Financial Services, otherwise it will not be a valid complaint.