

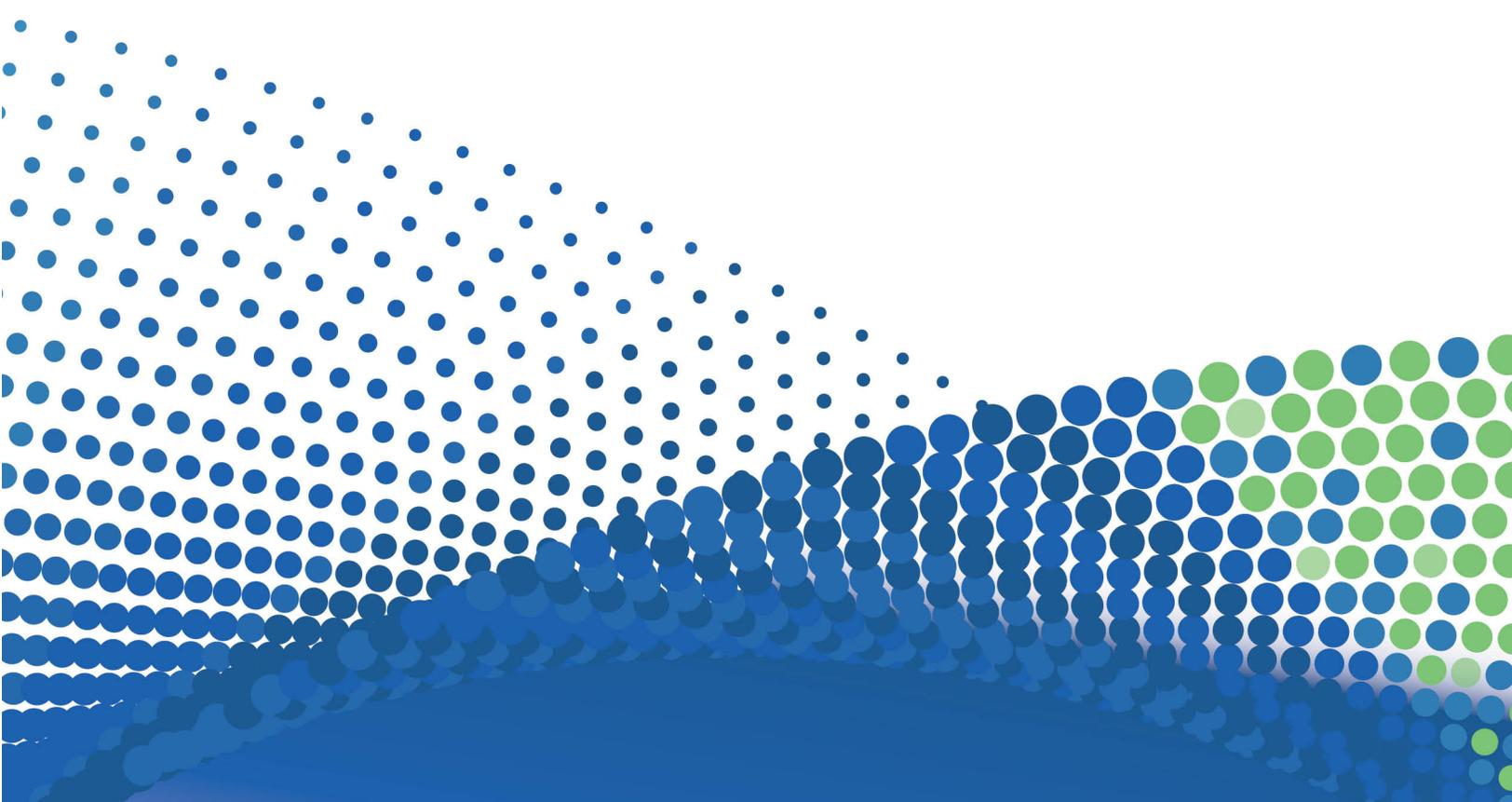


Financial Consumer
Agency of Canada

Agence de la consommation
en matière financière du Canada

The Operations of External Complaints Bodies

INDUSTRY REVIEW



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1 Executive summary

External complaints bodies (ECBs) deal with consumer complaints about banking services and products, and are an important element of the financial consumer protections put in place by the federal government. ECBs are required to operate and handle consumer complaints in a manner that is timely, accessible, accountable, impartial and independent, transparent and effective.

The Financial Consumer Agency of Canada (FCAC or the Agency) oversees ECBs' compliance with market conduct obligations. These obligations are set out in legislation, regulations, and guidelines, and are intended to provide consumers with access to a fair and impartial process for resolving complaints when banks cannot do so internally. Effective external dispute resolution services promote trust and confidence in financial institutions, contributing to the stability of the financial system.

Canadian banks are required to be members of one of two ECBs approved by the Minister of Finance: the ADR Chambers Banking Ombuds Office (ADRBO) or the Ombudsman for Banking Services and Investments (OBSI).¹ Consumers have the right to bring disputes to the ECB chosen by their bank when the bank is not able to resolve the complaint to the consumer's satisfaction in a timely manner. FCAC estimates that consumers brought over 5 million complaints to banks in 2018. Most complaints are handled by banks' internal complaint handling procedures (CHPs). The ECBs investigated just over 500 complaints in 2018 and these tend to be the most complex and difficult cases.

In response to a request from the Minister of Finance, FCAC conducted a review of banks' complaint handling and the effectiveness of ECBs. The review took place between November 2018 and June 2019. This report presents the findings of FCAC's review of ECBs against their market conduct obligations, and it considers international best practices for external dispute resolution and the views of consumers and consumer groups. The report on banks' complaint handling is provided separately.

FCAC found that, while the ECBs meet most of the requirements, there are deficiencies. The Agency has identified areas where ECBs could improve their policies, procedures, and complaint handling practices. FCAC will use the findings of this review to work with ECBs to address the issues and implement enhancements.

FCAC will also oversee a third-party evaluation of ECBs' operations in 2020. The Agency will use this opportunity to have the third party look more closely at certain aspects of the ECBs' operations, such as their governance and organizational structures.

In addition, FCAC's review has validated some of the broader concerns raised about the multiple-ECB model by consumers and consumer groups. The multiple-ECB model is not

¹ The obligation to be a member of an ECB applies to banks, authorized foreign banks, and federal credit unions.

consistent with international standards. It introduces inefficiencies and increases the complexity of the external dispute resolution system for consumers. FCAC also has concerns about how allowing banks to choose the ECB negatively affects consumers' perceptions of the fairness and impartiality of the system. Finally, the Agency questions whether the one-sided competition between ECBs for member banks is accruing benefits to consumers.

1.1 Background

The Minister of Finance called on FCAC to review the operations of ECBs after consumers, consumer groups, parliamentarians and other stakeholders raised concerns in fall 2018. Questions focused on the ECBs' timeliness, accessibility, accountability, independence, transparency and effectiveness. Consumer representatives also argued that the problems with the ECBs' operations are structural and result from Canada's unique multiple-ECB framework, which allows banks to choose among more than one approved ECB.

When it created a multiple-provider framework, the government recognized the need to hold approved ECBs accountable for meeting consistent standards. These standards are set out in legislation, regulations and FCAC's [CG-13: Application guide for external complaints bodies](#).²

1.2 Review approach

The purpose of this review is to take a closer look at whether ECBs are carrying out their functions in a manner consistent with their obligations and to identify areas for improvement. This is FCAC's first detailed and comprehensive review of ECBs since their approval in 2015.

FCAC conducted its review of ADRBO and OBSI between November 2018 and June 2019 concurrently with its review of banks' procedures for handling complaints. To prepare this report, the Agency reviewed the ECBs' policies and procedures, analyzed complaint and investigation files, interviewed employees, engaged with stakeholders, and examined the regulatory frameworks for external dispute resolution in other jurisdictions.

This report presents the findings of an industry review, which FCAC uses to gather information from regulated entities on consumer protection issues, emerging market trends, or general matters related to the financial services sector.³ The review was not a supervisory exam, nor was its purpose to identify compliance breaches or to compare the ECBs with each other. Rather, its purpose was to evaluate each of them against their market conduct obligations and best practices for external dispute resolution. In some cases, out of necessity, the resulting observations reflect the different approaches taken by each ECB.

FCAC acknowledges that this review is subject to potential limitations, including that it was conducted under time constraints and the findings reflect only what the Agency observed

² See [Complaints \(Banks, Authorized Foreign Banks and External Complaints Bodies\) Regulations \(SOR/2013-48\)](#) and [FCAC Guidelines](#).

³ See FCAC [Supervision Framework](#).

during the review period. The report does not reflect any improvements that ECBs may have implemented since spring 2019.

1.3 Key findings

1.3.1 Timeliness

ECBs are expected to resolve complaints efficiently. The regulations impose two specific obligations in this respect. First, if it will not open an investigation because the complaint falls outside of its mandate, the ECB must provide the consumer with an explanation within 30 days. Second, it must provide the consumer with a final recommendation concerning the resolution of their complaint within 120 days of opening the investigation. They may exceed 120 days in exceptional circumstances. However, FCAC expects ECBs to strive to resolve most complaints more quickly.

In general, FCAC found that the ECBs take a long time to handle complaints. While ADRBO and OBSI resolve most complaints within the required timeframes, there is considerable room to improve the process. From the time a consumer first submits a complaint to the ECB, FCAC found that it took ADRBO 156 days and OBSI 112 days to propose final recommendations. In a large number of complaint files reviewed by FCAC (78%), consumers expressed frustration at the length of time it took. There are ways to make the process more efficient, such as by improving the transfer of information about complaints from banks to ECBs. This is a shared responsibility.

1.3.2 Accessibility

FCAC expects ECBs to ensure that consumers have easy access to their complaint-handling services. They are required to provide services in both official languages at no cost to consumers, and to allow consumers to communicate in writing, by phone, by fax or electronically. Broadly, FCAC expects ECBs to provide consumers with information about their procedures in language that is clear, simple and not misleading.

The Agency found that OBSI meets the requirements for accessibility, and in some areas exceeds expectations because it has adopted international best practices for external dispute resolution services. For example, it provides consumers with a reasonable level of assistance when it comes to submitting a complaint, understanding their rights and navigating the process.

ADRBO largely meets the requirements, but FCAC has concerns about some of its specific policies and procedures that may reduce its accessibility to consumers. Specifically, ADRBO's initial view process—and its procedures for accepting complaints that banks have been unable to resolve within 90 days—are not consistent with the Agency's expectations for accessibility.

In general, FCAC observed opportunities to make both ECBs more accessible. Too many consumers appear to drop their complaints rather than escalating them to an ECB when they are not satisfied with the resolution proposed by the highest level in their bank's internal

process. FCAC will clarify its expectations about accessibility and require both banks and ECBs to do more to inform consumers about their right to escalate complaints.

1.3.3 Accountability

ECBs are required to demonstrate accountability by consulting with member banks and complainants annually and by reporting publicly on the results. In addition, they are expected to monitor their operations and self-report potential non-compliance issues and complaints made against them. The purpose of these requirements is to encourage ECBs to monitor and review their operations continuously in order to look for opportunities to improve and enhance their procedures for dealing with complaints.

OBSI meets and exceeds FCAC's expectations for consulting with complainants. While ADRBO consults annually with member banks and complainants, the Agency did not find evidence that it uses these consultations to improve its operations.

Both ECBs fall short of FCAC's expectations for monitoring, identifying and self-reporting potential non-compliance with market conduct obligations. ADRBO is not meeting the Agency's expectations for reporting complaints lodged against it by consumers.

1.3.4 Impartiality and independence

FCAC expects ECBs to implement robust policies and procedures for maintaining the impartiality and independence of their investigators, investigations and recommendations. This is particularly important in Canada, where there are multiple ECBs and where banks, rather than consumers, can choose them. When ECBs compete for member banks, there is a risk they will design their operations to appeal to banks rather than consumers. ECBs need strong policies and procedures to demonstrate impartiality and independence to FCAC and the public.

ADRBO and OBSI have implemented some of the policies and procedures necessary to meet FCAC's expectations, but there is room for improvement. Both have conflict of interest policies to safeguard investigators' independence; OBSI's code of conduct is detailed and comprehensive. However, both should reinforce investigators' attestations with mandatory training and employee evaluations.

ADRBO's procedures for ensuring that it conducts investigations in an impartial and independent manner are neither adequately detailed or sufficiently comprehensive. Both ECBs could improve their policies and procedures for protecting the independence of final recommendations.

1.3.5 Transparency

FCAC expects ECBs to make information available to the public about their services, activities and operations, such as their terms of reference (ToRs), member banks, fees and complaint data. Open and transparent ECB operations promote confidence and trust.

ADRBO and OBSI both meet the requirements for transparency. OBSI demonstrates a significant organizational commitment to transparency. For example, it periodically publishes reports on issues that affect vulnerable consumer groups or emerging issues. In a representative survey conducted for FCAC, 15% of Canadians said they had heard of OBSI, while just 5% were aware of ADRBO. Only 4% of Canadians recognized both; 83% had not heard of either.

1.3.6 Effectiveness

FCAC expects ECBs to demonstrate their effectiveness by making consumers and complaint resolution the focus of their operations. FCAC does not measure their effectiveness by the number of complaints they resolve in favour of consumers. Rather, it expects ECBs to investigate and make recommendations in a manner that is appropriate to the nature and circumstances of each complaint. They should also provide training to ensure investigators readily understand and follow their policies and procedures.

OBSI demonstrates a strong commitment to effective complaint resolution. It has largely implemented the policies and procedures needed to meet the requirements for effectiveness. Still, the Agency identified several areas where OBSI could improve.

ADRBO is not meeting expectations for effectiveness. More specifically, FCAC has concerns regarding its initial view process, training program and procedures for investigations and recommendations.

Neither organization meets FCAC's expectations for identifying and reporting issues that have the potential to affect a large number of consumers.

2 Review of external complaints bodies' operations

2.1 Objective

The Financial Consumer Agency of Canada (FCAC) assessed the operations of external complaints bodies (ECBs) to determine whether they address consumer complaints in a manner that is accessible, accountable, impartial and independent of member banks. The Agency also looked at whether ECBs are transparent, effective and timely in their operations.

2.2 Scope and methodology

The ECBs currently approved by the Minister of Finance are the Ombudsman for Banking Services and Investments (OBSI) and ADR Chambers Banking Ombuds Office (ADRBO). FCAC assessed them against the consumer provisions⁴ and regulations⁵ in the [Bank Act](#) and two applicable sets of guidelines: [CG-12 Internal dispute resolution](#) and [CG-13 Application guide for external complaints bodies](#).⁶

⁴ Sections 455 and 573 of the [Bank Act](#).

⁵ [Complaints \(Banks, Authorized Foreign Banks and External Complaints Bodies\) Regulations \(SOR/2013-48\)](#).

⁶ See [FCAC Guidelines](#).

In addition to reviewing ECBs' adherence to these market conduct obligations, FCAC also assessed whether they had implemented the policies and procedures necessary to promote compliance, meet regulatory expectations and operate in a manner consistent with international best practices for external dispute resolution.

The review comprised:

- a desk review of policies and procedures
- an analysis of complaint case files
- on-site interviews
- a review of international best practices
- consumer engagement and stakeholder consultations

2.2.1 Desk review

The desk review of ECB policies and procedures examined:

- standard operating procedures
- terms of reference
- job mandates and job aids
- reimbursement guides
- investigation manuals
- training modules
- service level agreements
- quality assurance processes
- compliance programs
- external third-party reviews

2.2.2 Complaint review

FCAC selected stratified random samples of complaints handled by the ECBs from November 1, 2016 to October 31, 2018. The Agency reviewed 100 completed complaint investigation and resolution files for compliance with timeliness standards and to evaluate reporting and record-keeping practices. FCAC also performed a more detailed analysis of 50 files for compliance with market conduct obligations and adherence to internal procedures.

2.2.3 On-site interviews

FCAC conducted on-site interviews over the course of three weeks. This involved speaking to approximately 30 ECB employees, with a focus on those in customer-facing roles, such as investigators and intake officers. FCAC also interviewed senior management.

2.2.4 Review of international practices

FCAC examined the regulatory framework for external dispute resolution in comparable jurisdictions: Australia, Ireland, the Netherlands, the United Kingdom and the United States. The Agency also considered the recommendations and principles for external dispute resolution

developed by the World Bank, the Organisation for Economic Co-operation and Development (OECD)/G20 Task Force on Financial Consumer Protection, and the International Network for Financial Services Ombudsman Schemes.

2.2.5 Consumer engagement and stakeholder consultations

FCAC engaged individual complainants, consumer groups and representatives, and other key stakeholders (such as provincial regulators) to learn about their views, experiences and concerns. FCAC also contracted Environics to conduct a quantitative and representative public opinion research survey of 5,000 Canadians who have an account or credit card with a bank.⁷

2.2.6 Limitations

This is FCAC's first detailed and comprehensive review of ECBs since their approval in 2015. The Agency acknowledges that the review is subject to several potential limitations.

First, the review was constrained by the amount of time available. FCAC completed its review of eight regulated entities in six months. Opportunities to request further documentation and information when questions arose were limited.

Second, the complaint files in the sample reviewed were selected using a stratified random approach rather than a probabilistic methodology. Therefore, there is the potential for sampling bias in the complaint file review data.

Finally, this is a cross-sectional review whose findings reflect only what FCAC found between November 2018 and June 2019. Any improvements that ECBs may have implemented since spring 2019 will not be reflected in this report.

2.3 Brief description of the external complaints bodies' processes

The main function of ECBs is to investigate and recommend resolutions to consumer complaints that banks have been unable to resolve to the satisfaction of consumers. Each bank is required to be a member of an approved ECB and to provide consumers with clear information about their right to escalate complaints to an ECB. A consumer has the right to bring a complaint to an ECB when they are not satisfied with the resolution proposed by their bank's designated senior complaints officer (SCO)⁸ or when the bank is unable to propose a resolution within 90 days from the time the complaint is first escalated to the second level of the bank's CHP.

When an ECB receives a complaint, it must first determine whether it falls inside its terms of reference (ToRs). The ToRs outline the ECB's mandate, describing its principal powers and duties under the *Bank Act* as well as its process for receiving, investigating and resolving

⁷ The survey results are considered accurate $\pm 1.4\%$, 19 times out of 20.

⁸ Banks are required to designate an officer who holds the most senior position responsible for dealing with complaints. Most banks refer to this person as the "Ombudsman" or "Ombuds," but this term is avoided in this report when referring to a bank employee, as it could mislead consumers into believing that the SCO is separate or independent from the bank.

consumer complaints against member banks. For example, the ToRs explain that ECBs do not investigate complaints concerning a bank's policy of charging fees for certain services—or the amount of those fees—but that they will investigate if a consumer alleges that a bank failed to follow its procedures and charged fees in error. If it is determined that a complaint falls outside the ECB's mandate and will not be investigated further, the ECB has 30 days to provide the consumer with an explanation.

Before the ECB can investigate complaints that are determined to be within its mandate, the consumer must be informed of any limitations that the ECB process may impose on their right to take the dispute to court. ECBs require consumers to provide consent by signing a terms and conditions (T&C) agreement. The T&C agreement explains the process and sets out the rights and responsibilities of both consumers and ECBs. It also explains how the ECB process may affect the time limit on taking the complaint to court, and includes a prohibition on using information produced by the ECB in court.

ECBs assign complaints to investigators after completing the intake process. The ECB has 120 days to provide the consumer with a final recommendation once it has acquired all of the information it needs to carry out the investigation from banks, consumers and relevant third parties. ECBs are required to implement policies and procedures to safeguard the independence of investigators and to ensure the investigation process and final recommendations are appropriate to the circumstances of the complaint. The ECBs' final recommendations are set out in a final report or final letter, which also describes the consumer's complaint, the bank's position and the key findings of the ECB's investigation.

The final recommendations issued by ECBs are non-binding for consumers and banks. However, there has not been an instance to date where a bank has refused to comply with the ECB's final recommendation concerning a complaint about banking products and services.

In the review, FCAC observed that both ECBs recommended some reimbursement for consumers in roughly a third of the complaints they investigated. In approximately half of those cases (12% to 15% of investigated complaints), both ECBs found against the bank and recommended that the consumer be reimbursed for the full amount sought. In the other half (15% to 20%), both ECBs recommended that consumers received only a portion of what they were seeking, or arranged for a re-extension of what the bank's designated SCO had offered.

When ECBs recommend reimbursement, it tends to be for financial losses that can be directly tied to actions the bank took or failed to take. Less frequently, ECBs recommend that banks restore access to bank products or services, such as a chequing account, or that banks take steps to repair the consumer's credit bureau report. ECBs will also consider how banks may have harmed consumers in other ways—for example, opportunity costs, forgone interest, lost wages or inconvenience. However, recommendations for these forms of damages are rare.

It is important to note that ECBs do not necessarily have to resolve large numbers of complaints in favour of consumers to execute their main function well. FCAC does not measure the

effectiveness of ECBs by the number of times they recommend reimbursement. The Agency expects ECBs to conduct thorough and impartial investigations, and to make final recommendations that are appropriate to the nature and circumstances of the complaint. When ECBs provide consumers with access to a process where their complaints receive an independent and impartial review in a manner consistent with the standards set out in the regulations and guidelines, it contributes to public confidence and trust in financial institutions and the stability of the financial system.

3 Timeliness

FCAC expects ECBs to resolve complaints efficiently. Regulations set out the standards for timeliness and impose two obligations on ECBs. First, when the ECB determines that it will not open an investigation because the consumer's complaint falls outside of its ToRs, it must inform the consumer and provide an explanation within 30 days of the date it received the complaint. Second, ECBs must provide the consumer with a final recommendation concerning their complaint within 120 days of the date when it determined it had the information needed to carry out the investigation. While ECBs may occasionally exceed 120 days, they should only do so in exceptional circumstances.

The ECBs investigate and provide recommendations for most complaints in a manner consistent with the obligations for timeliness set out in the regulations. However, FCAC expects ECBs to deal with complaints more quickly than these maximum timelines. The review identified opportunities to make the process more efficient.

In general, FCAC found that the ECBs take a long time to handle complaints and that there is considerable room to improve the process. Most of the time, a consumer who brings a complaint to an ECB has already endured a lengthy resolution process with their bank.⁹ FCAC observed consumers expressing fatigue and frustration with how long it took to resolve their complaints in about 78% (39 of 50) of the ECB files reviewed.

From the time a consumer first submits a complaint to the ECB, FCAC found that it took ADRBO 156 days and OBSI 112 days to propose final recommendations.¹⁰ FCAC found that most delays stemmed from inefficient processes for gathering information from banks and consumers. There are two main reasons why ADRBO takes a long time to handle complaints: it takes a long time to decide whether a complaint falls inside its ToRs after gathering the information to make

⁹ For example, at the six largest banks, about 88 to 207 days go by from the time a bank's Level 2 receives a complaint and the date its designated SCO sends the consumer a final resolution letter, as reported in FCAC's industry review of banks' procedures for handling complaints.

¹⁰ The OBSI timelines analysis is based on a sample of 50 complaints. The analysis of ADRBO's timeliness is based on a sample of 40 complaints because it provided incomplete records or did not open full investigations into the other 10. As discussed in Section 4.2, ADRBO's initial view process means that it does not fully investigate all of the complaints that are found to be within its ToRs.

this determination; and it takes approximately 30 days to finalize its recommendations after concluding its investigation.

3.1 30-day timeline

When an ECB determines that a complaint is outside of its ToRs, it is required to provide the consumer with a written explanation within 30 days of receiving the complaint. In practice, this means the ECB has 30 days to complete the intake process, determine whether the complaint falls within its mandate and warrants a full investigation, and advise the consumer. FCAC expects ECBs to start the 30-day clock on the date the consumer submits the complaint. But neither ECB appears to consider a complaint received until it has gathered the information needed to determine whether the complaint falls inside its ToRs. Both take a significant amount of time to gather this information.

FCAC did not observe an instance of OBSI exceeding the 30-day requirement for letting consumers know whether a complaint was within its mandate and providing an explanation. However, the Agency observed ADRBO frequently exceeding the 30-day standard for determining whether complaints fell within its ToRs.

In fact, FCAC found that it takes ADRBO an average of 45 days to make its determination from the time a consumer first submitted a complaint. The main problem appears to be an inefficient process for determining whether a complaint is within the ECB's mandate and warrants a full investigation (after it has gathered the information required to make this decision). ADRBO takes an average of 21 days to compile the information it needs to render its decision; it then takes another 24 days to make the decision and provide an explanation to the consumer.

In all of the cases FCAC reviewed where ADRBO took more than 30 days to determine whether a complaint was inside its ToRs, it opened a full investigation into the complaint. This means ADRBO is technically meeting its timeliness requirements, as the consumers did not require out-of-mandate explanations. However, ADRBO's conduct is not consistent with FCAC's expectations for efficient and timely complaint handling.

3.2 120-day timeline

ADRBO and OBSI largely complete their investigations and provide consumers with final recommendations in a manner consistent with the 120-day standard for timeliness set out in the regulations. OBSI exceeded 120 days in 6% of the investigations reviewed by FCAC, for an average of 18 days in excess of the timeliness standard, while ADRBO exceeded 120 days in 4% of cases reviewed, for an average of 40 days in excess of the timeliness standard.

ECBs are not required to start the 120-day clock until they have assembled all of the information they consider necessary to investigate a complaint. To account for the time ECBs spend gathering information from banks and consumers, FCAC assessed how long it took ECBs to provide consumers with recommendations from the time the consumer was first notified that the complaint was considered in mandate and would be investigated. FCAC found that

ADRBO took an average of 111 days to complete its investigations and provide consumers with final recommendations, while OBSI took an average of 86 days. However, FCAC could not always determine precisely when ADRBO investigators finished gathering information and started the 120-day clock because records of key milestones were missing from two-thirds of the complaint files submitted.

This means that, from the consumer's perspective, ECBs take significantly longer to resolve complaints than is suggested by the numbers they report publicly each year. In 2018, OBSI reported that it completed 417 full investigations in an average of 53 days; ADRBO reported that it completed 94 investigations in an average of 54 days. However, these numbers do not include the amount of time the ECBs spent gathering the information they needed to start the investigations. As noted earlier, ADRBO takes a significant amount of time to finalize its recommendations, and does not appear to include this time in the statistics it presents in its annual reports.

The lengthy delays before beginning investigations appear to be caused mainly by inefficient transfers of information from banks to the ECBs. FCAC found that it takes OBSI approximately 25 days and ADRBO 27 days to assemble the required information. Banks do not appear to send comprehensive information about complaints in response to initial requests from the ECBs. FCAC observed ECBs making a number of follow-up requests in an effort to acquire all of the relevant information. The banks also made technical errors—for example, transferring information to the wrong ECB or to incorrect email addresses.

FCAC found that the main reason it takes ADRBO a long time to resolve complaints is its extended process for finalizing recommendations. When they complete an investigation, ADRBO investigators provide the Deputy Ombuds with a draft report that sets out a summary of the consumer's complaint, the bank's position, the investigator's findings and the proposed recommendation for resolving the dispute. The Deputy Ombuds reviews the draft reports and provides them to the party against whom it is finding for a review and comment period that can last up to 14 days. Next, the party in whose favour ADRBO is finding receives the draft report and recommendation and also has 14 days to review and comment. If the bank or consumer does not agree with elements of the draft report (including the proposed recommendation) and submits new evidence or asks for changes, this can lead to further delays. Based on the records that ADRBO provided for this review, FCAC estimates that it takes ADRBO an average of 30 days after concluding an investigation to provide consumers with a final recommendation.

4 Accessibility

FCAC expects ECBs to ensure that their complaint-handling services are easily accessible. More specifically, ECBs are required to provide services in both official languages at no cost to consumers, and to allow consumers to communicate in writing, by phone, by fax or electronically. ECBs are also required to provide consumers with information about their procedures for handling complaints in language that is clear, simple and not misleading. More

broadly, FCAC expects ECBs to adopt best practices for external dispute resolution by making their services fully accessible to consumers, recognizing that most consumers are not familiar with the process of bringing a complaint to an ECB.

FCAC found that OBSI meets the requirements for accessibility and exceeds expectations by adopting a number of best practices for external dispute resolution. For example, it demonstrates a commitment to providing consumers with a reasonable amount of assistance with the process to ensure accessibility: OBSI employees will help consumers articulate a complaint and retrieve relevant documentation.

ADRBO largely meets the requirements, but FCAC has concerns about its initial view process. In addition, FCAC found that there are opportunities for ADRBO to improve its procedures for accepting complaints that banks have not resolved in 90 days and for providing consumers with plain language information about their procedures for dealing with complaints.

In general, FCAC believes it is possible for the ECBs to enhance the accessibility of their processes. The significant levels of attrition observed during the complaint escalation process between banks and the ECBs suggest room for improvement. In the survey conducted for FCAC, about two-thirds (68%) of consumers chose not to escalate a complaint to an ECB after they were not satisfied with the resolution offered by the bank's SCO.

It is important to point out that FCAC found that banks need to do more to meet their obligations to inform consumers about their right to take complaints to an ECB. FCAC has identified opportunities to improve its guidelines with respect to accessibility.

4.1 Clear and accessible communications

OBSI meets the requirements for communicating with consumers and goes well beyond the basic requirements for offering services in both official languages. It offers its services to Canadians in 170 languages at no charge. ADRBO meets most of the requirements, but should improve the information it provides to consumers to ensure it is clear, simple and not misleading.

Both ADRBO and OBSI rely on T&C agreements to explain their processes and acquire consent to handle consumers' complaints. OBSI's agreement is written in accessible language. It begins with and devotes the most space to helping consumers understand their rights and responsibilities. For example, it clearly explains how escalating a complaint to an ECB may affect the consumer's ability to bring their complaint against the bank to court.

ADRBO's T&C agreement contains legal jargon, is principally about its own rights and responsibilities, and contains statements that omit some of its obligations (and which may be misleading as a result). ADRBO instructs consumers to seek legal advice if they do not understand any aspect of the agreement. This is contrary to FCAC's expectation that ECBs will provide information to consumers in clear and simple language. FCAC expects the ECBs to make their services fully accessible to consumers who choose not to go to a lawyer.

4.2 Initial view process

ADRBO's initial view process appears to reduce its accessibility. The initial view occurs after the first stages of the intake process, but before complaints are assigned for full investigation. OBSI's intake does not include a similar process. In 2018, 3,308 consumers contacted OBSI about banks. These contacts led to 415 full investigations (12.5% of initial contacts). In the same year, 1,318 consumers contacted ADRBO about banks, leading to 94 full investigations (7.1% of initial contacts).

According to their publicly reported statistics, OBSI is about 75% more likely than ADRBO to open a full investigation when contacted by a consumer. To be clear, a large number of contacts received by ECBs are not complaints; many are questions, inquiries or comments. As well, both ECBs assert that they help consumers who bring them issues or questions that fall outside the scope of their ToRs. Nonetheless, OBSI responds to considerably more inquiries from consumers by opening full investigations.

Before ADRBO will conduct an initial view process, it requires the consumer to complete a complaint submission form, sign the T&C agreement, and provide either the final letter or a 90-day letter from the bank's designated SCO.¹¹ The Deputy Ombuds then performs an initial view by reviewing the submitted material to determine whether the complaint falls inside ADRBO's ToRs and how likely the ECB is to reach the same conclusion as the bank's SCO. If ADRBO determines that the complaint falls outside of its ToRs, or that it is highly unlikely to make a different recommendation than the one proposed by the bank, the Deputy Ombuds will draft an initial view letter explaining why it will not open a full investigation. The Ombuds and another senior ADRBO employee will review the letter before it goes out.

In practice, there are two fundamental problems with these procedures. First, ADRBO is required to provide consumers with access to its services in some circumstances when banks have not yet reached a final decision. As set out in FCAC's CG-12 guideline, when banks fail to provide the consumer with a final decision within 90 days from the time the consumer first escalated the complaint to the bank's second level, the consumer has the right to bring the complaint to the ECB. However, because ADRBO's initial view process depends on evaluating the bank's final decision, the process is incompatible with consumers' right to escalate a complaint when the bank fails to reach a decision in 90 days.

Second, ADRBO does not adequately define how it determines whether it is "highly unlikely" to reach a different position than the bank. ADRBO has not defined the concept in its procedures. FCAC also found that ADRBO relies almost exclusively on the consumer's submission and the evidence and arguments in the final letter from the bank's designated SCO. None of the initial view decisions reviewed by FCAC demonstrated that ADRBO had undertaken further research. Relying too heavily on the final letter from the bank's designated SCO may undermine the

¹¹ ADRBO discusses its initial view process on p. 8 of its 2018 annual report.

impartiality of ADRBO's initial view process. In summary, FCAC is concerned that the way ADRBO's initial view process works in practice is contrary to the purpose of ECBs, which is to provide consumers with access to an independent and impartial review of their complaints.

4.3 The 90-day letter process

FCAC guidelines clearly state that consumers have the right to escalate a complaint to an ECB if the bank's designated SCO is unable to resolve it to their satisfaction, or if 90 days have passed since the consumer first escalated the complaint. This is consistent with international best practices, which generally provide banks with a timeline for resolving complaints internally before consumers have the right to escalate them to an external dispute resolution service.

OBSI clearly communicates that consumers have the right to file a complaint if the bank has not resolved their issue within 90 days from the date it was escalated there. It is clear in OBSI's ToRs—and in other public information about its processes—that consumers do not have to wait for the bank to provide a final response before they can bring their complaint to OBSI, as long as 90 days have passed. FCAC found no instance of OBSI refusing to accept a complaint when the consumer explained that the bank had not offered a resolution in 90 days. During the on-site exam, OBSI employees demonstrated awareness of consumers' right to bring them these complaints.

ADRBO has not implemented the policies and procedures required to ensure consumers can reliably escalate a complaint when a bank fails to reach a decision in 90 days. Instead, its procedures indicate that it will only accept and review complaints from consumers who can produce a 90-day letter, or a final letter, from their bank's designated SCO. During the on-site exam, ADRBO employees told FCAC that they could not accept a complaint unless the consumer could provide a 90-day or final letter.

FCAC found that ADRBO should improve its intake process for handling complaints that banks have not resolved within 90 days. In reviewing banks' CHPs, FCAC observed that banks do not reliably provide consumers with letters confirming that the 90-day mark has been reached and advising them of their right to escalate their complaint to an ECB. To ensure consumers can exercise their right to escalate complaints after 90 days, ADRBO needs to address this issue and accept other forms of evidence indicating that the bank has failed to reach a decision in the required timeline.

4.4 Active investigations: international best practices for accessibility

The World Bank, the OECD/G20 Task Force on Financial Consumer Protection, and the International Network for Financial Services Ombudsman Schemes recommend that ECBs implement procedures to support active investigations of consumer complaints.¹² An active

¹² See, for example, Thomas, David and Francis Frizon. (2012). *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*. Washington: World Bank.
siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombudsmen_Vol1_Fundamentals.pdf

investigation involves asking the consumer questions during the intake process, helping them articulate their complaint, and helping them understand their rights and responsibilities. During active investigations, ECBs use their expertise in financial services to identify relevant documentation and request evidence from consumers and banks; they do not limit the investigation to what consumers and banks choose to submit. The practice of conducting active investigations is central to the purpose of ECBs, which is to promote confidence and trust in the financial system by providing consumers with access to a fair hearing.

Implementing procedures for active investigations helps ECBs perform their core function in an effective, accessible and timely manner. ECBs must be independent and impartial, and cannot be perceived to advocate for either consumers or banks. Consumers should be able to access the resolution services of an ECB at no cost—in other words, they should not need to acquire legal representation. However, the average consumer is unlikely to know how to navigate the process of bringing a complaint to an ECB without some assistance. Consumers are often frustrated and upset by the time they reach the ECB; their initial complaint may not contain well-formed arguments, strong evidence or realistic demands. This puts consumers at a distinct disadvantage unless the ECB has implemented the policies and procedures to ensure their investigators are active during the investigation process.

FCAC found that OBSI has implemented policies and procedures to help consumers escalate complaints. OBSI is committed to ensuring consumers have access to its services without requiring legal representation (although nothing prevents them from acquiring legal representation if they so choose). OBSI trains its employees to listen to consumers with empathy, help them articulate their complaints, and guide them through the process, such as by helping them identify and gather relevant documents.

ADRBO has not implemented the policies and procedures necessary to ensure its investigators and intake officers actively support and guide consumers through the investigation process.

5 Accountability

FCAC's expectations for accountability are set out in guidance. These expectations are meant to encourage ECBs to continuously monitor and review their operations and identify opportunities for improvement. ECBs are expected to consult annually with member banks and complainants about their performance, report the findings to the FCAC Commissioner, and publish the results in their annual reports.

FCAC also expects ECBs to implement policies and procedures for monitoring and detecting potential non-compliance with its regulatory obligations and for promptly self-reporting compliance issues and certain complaints against them. FCAC has provided the ECBs with guidance to ensure they can reliably identify reportable complaints and distinguish isolated non-compliance instances from systemic issues. Finally, every five years, ECBs must have their functions and performance evaluated. These evaluations must be conducted by third parties

and follow ToRs established in consultation with the FCAC Commissioner. The ECBs will undergo their first five-year evaluations in 2020.

OBSI meets and exceeds FCAC's expectations for consulting with complainants, consumer groups and other stakeholders. ADRBO's consultations with complainants meet the requirements, but the process appears to be proforma; ADRBO needs to improve the way it addresses complainants' concerns and how it reports on these consultations to FCAC.

Both ECBs fall short of FCAC's expectations for monitoring, identifying and self-reporting potential non-compliance with their market conduct obligations. ADRBO is not meeting FCAC expectations for reporting complaints lodged against it.

5.1 Consultations with member banks and complainants

The review demonstrated that ADRBO and OBSI consult with member banks and complainants. They survey member banks annually to ask about, for example, timeliness and whether ECB employees seem to have adequate knowledge of the banks' policies and applicable regulations. FCAC observed that both of the ECBs meet with their member banks at least twice a year. They appear to have direct access to the banks' designated SCOs, but do not generally meet with senior management from the banks' business lines or oversight functions.

Although the ECBs are not required to consult staff in specific areas of member banks, it is beneficial for two reasons. First, it is possible for conflicts of interest to arise between an ECB and a bank's designated SCO. For example, FCAC observed that SCO employees' performances can be evaluated negatively when complaints are escalated to ECBs, particularly when the ECB overturns SCO decisions. Second, it can be helpful for ECBs to consult more widely with member banks because typically they are investigating the conduct of staff who work in the lines of business and they need strong knowledge of the bank's products, policies and procedures.

The ECBs also survey complainants about whether they find the ECBs' processes easy to follow and their final recommendations clear. The ECBs report these results to FCAC and share the aggregate statistics on complainant feedback in their annual public reports.

OBSI consults openly and widely with consumers and consumer representatives. For example, it has implemented an advisory council to ensure consumers and investors can provide input on its governance and operations, complementing the feedback it receives regularly from industry, regulators and government. OBSI is also transparent and thorough in its consultations with complainants and banks. It publishes consultation frameworks, stakeholder feedback and its plans to address the findings of the consultations on its website in clear language. FCAC also found that OBSI is transparent with regulators about the issues identified during consultations and about its plans to improve operations to better serve consumers and banks.

ADRBO surveys banks and complainants and provides FCAC with aggregate statistics, but it does not appear to use the surveys to identify areas for improvement. Nor does ADRBO regularly

perform additional consultations with consumers or consumer representatives. While ADRBO meets the requirement to consult with members and complainants, there is little evidence that it is using consultations to promote accountability, identify ways to better serve consumers, or make operational improvements.

5.2 Reporting compliance issues and complaints

FCAC expects ECBs to implement policies and procedures for monitoring, identifying and reporting non-compliance with their obligations, when it appears that the issues may not be isolated. ECBs are also required to report consumer complaints about their operations to FCAC when the complaints are relevant to one of the ECB's market conduct obligations. FCAC's expectations for ECBs to self-report compliance issues and complaints are set out in guidance.¹³ When ECBs do not meet these expectations, it can be more difficult for FCAC to supervise their operations. There is also the potential for ECBs to become complacent and fail to identify and address non-compliance risks.

FCAC found that both of the ECBs would be challenged to demonstrate that they can effectively monitor, identify and report potential non-compliance issues in a manner consistent with regulatory expectations. Since 2015, neither OBSI nor ADRBO has self-reported any systemic or non-isolated issues of non-compliance to FCAC. The control environment remains relatively informal at both ECBs. ADRBO has implemented a compliance policy and designated an employee responsible for oversight, but there is room for improvement and FCAC does not consider it an effective program for monitoring compliance. OBSI has not implemented a formal compliance program.

ECBs are also required to report complaints against them from consumers to FCAC quarterly, when those complaints are relevant to an ECB's market conduct obligations, such as the requirement to conduct an impartial investigation or to provide a final recommendation within 120 days. The ECBs provide the complaints to FCAC in an aggregate manner, but are required to investigate and address each one. If the consumer's complaint against the ECB raises a non-compliance issue that is potentially systemic or non-isolated in nature, the ECB is required to report it as a compliance issue to FCAC for further investigation.

OBSI meets its obligation to report complaints against it from consumers. FCAC observed room to strengthen OBSI's procedures for assessing whether reportable complaints raise a potentially systemic issue regarding its compliance with market conduct obligations.

ADRBO is not meeting FCAC's expectations for self-reporting complaints against it by consumers. ADRBO self-reports very few complaints. However, in the comprehensive review of ADRBO's complaint files, FCAC observed a significant number of issues raised by consumers about a perceived lack of timeliness, impartiality and accessibility. To meet FCAC's expectations, ADRBO needs to strengthen its procedures for receiving, investigating and reporting complaints

¹³ See [Mandatory reporting guide for external complaints bodies](#).

made against it by consumers. Finally, ADRBO has not implemented adequate procedures for assessing complaints made against it to determine whether they raise a systemic compliance issue and then reporting it to FCAC.

6 Impartiality and independence

Robust policies and procedures for maintaining the impartiality and independence of investigators, investigations and final recommendations are critical to the integrity of the ECB system. This is particularly important in the Canadian context, where there are multiple approved ECBs and where the banks, rather than consumers, choose them. The World Bank has argued that allowing banks to choose among multiple external dispute resolution bodies poses severe risks to their impartiality.¹⁴ For example, there is a risk that banks may elect to be members of the ECB that has a reputation for being less rigorous in its investigations. In other words, when ECBs compete for member banks, there is a risk they will design their operations to appeal to banks rather than to consumers.

The consumer groups FCAC consulted with during the review shared the World Bank's concerns with the multiple-ECB model. Even if an ECB's impartiality is not called into question, a lack of robust policies and procedures can lead to the perception of bias and undermine confidence in ECBs. FCAC expects ECBs to meet the requirements and demonstrate independence and impartiality to FCAC and the public.

ADRBO and OBSI have implemented some of the policies and procedures necessary to meet FCAC's expectations for impartiality and independence, but there is room for improvement. To be clear, FCAC found no evidence to suggest that the ECBs are not independent from member banks or complainants. The Agency did observe opportunities to improve and enhance the policies and procedures for safeguarding the independence and impartiality of investigators, investigations and final recommendations. FCAC believes these improvements are necessary to address the perception of bias or a lack of independence and to promote consumer confidence in the independence and impartiality of ECBs.

Both ADRBO and OBSI have policies to maintain the independence of investigators, such as conflict of interest policies. However, they appear to rely heavily on employee attestations. FCAC identified opportunities to improve procedures for safeguarding the independence of investigators, such as enhancements to training and performance management programs. In general, ADRBO's procedures for conducting investigations are not well developed.

Finally, FCAC observed room for both ECBs to improve their policies and procedures for protecting the independence of final recommendations.

¹⁴ Thomas, David and Francis Frizon. (2012). *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*. Washington: World Bank.

6.1 Investigators

FCAC expects ECBs to implement policies to ensure their investigators have no previous involvement with the cases assigned to them and no personal or pecuniary interest in their outcomes. At a minimum, investigators should not be compensated or evaluated for their performance based on the outcome of any particular case, or receive monetary incentives for certain outcomes.

ADRBO has implemented bank-specific conflict of interest policies to promote investigator independence. Investigators are required to sign the policies—attesting to an absence of conflicts with a bank—before they review a consumer’s complaint. Although the policies are detailed, they are relatively limited in scope. These attestations are limited in the sense that they do not address conflicts (real or perceived) with consumers. Finally, the policy for assessing potential conflicts that are not specifically addressed in the attestation is not clear. ADRBO investigators are also required to attest to a code of conduct, which addresses some of these shortcomings in the bank-specific conflict of interest policies, but the code is not adequately detailed or comprehensive.

OBSI’s conflict of interest policy is comprehensive. It covers the requirements to maintain independence from banks and complainants and to avoid actual and perceived conflicts of interest. OBSI’s conflict of interest policy is set out in its code of conduct, which employees must attest to annually. In addition, the code of conduct explains what employees should do when they are not sure whether a relationship or behaviour could constitute a conflict or perception of bias. Furthermore, while OBSI looks for employees with experience in financial services, it has implemented a two-year cooling off period during which its investigators are not permitted to handle complaints from former employers.

FCAC observed what it considers to be an overreliance on attestations to maintain the independence of investigators. The FCAC guideline indicates that ECBs should use performance management (or employee evaluations) and training to reinforce and support conflict of interest policies. OBSI has implemented performance management and training programs. However, FCAC believes OBSI could do more to demonstrate how it specifically addresses independence and impartiality in its training material and performance management. As discussed in more detail in Section 8 (Effectiveness), ADRBO’s policies and procedures for training do not meet FCAC’s expectations. FCAC found that ADRBO does not have adequate procedures for supporting its investigators’ independence through training and employee evaluations.

6.2 Investigations

FCAC expects ECBs to implement well-developed policies and procedures for investigations to ensure complaints are handled impartially. During the review, FCAC found that OBSI’s investigation protocols are well-developed and detailed. For example, its complaint-handling protocol provides guidelines for interviewing bank employees and consumers—such as when

they should be interviewed, why it is important, and how to establish the credibility of interviewees. It references a series of more specific manuals with instructions and best practices for how to investigate specific categories of complaints, such as those regarding banking fees, debit card fraud and mortgage loans.

ADRBO does not provide its investigators with detailed instructions or guidelines. The investigators' manual submitted by ADRBO has not been updated since 2015. ADRBO's investigation manual devotes less than one page to explaining how to conduct investigations. Large portions of the manual concern administrative procedures, such as hiring and onboarding protocols (replicating material covered in ADRBO's office manual). The investigation manual's appendices do provide some examples of final recommendations. These are useful guides for drafting final reports, but contain insufficient direction for carrying out investigations.

FCAC observed opportunities for the ECBs to strengthen their record-keeping and retention practices in the interest of enhancing their ability to demonstrate that they conduct investigations independently and impartially. Documents and information (e.g., bank files, disclosures, agreements and contracts, or notes from interviews with complainants and bank employees) were missing from more than 80% of the 50 complaint files that FCAC subjected to a comprehensive review (20 of 25 OBSI complaint files and 22 of 25 ADRBO files). The ECBs were given clear instructions to provide FCAC with all of the information necessary to assess whether complaints are handled in a manner that adheres to internal procedures and regulatory obligations. Therefore, FCAC considered documents to be missing when the information contained in them was referenced by investigators but not provided to FCAC. Without seeing these documents, FCAC reviewers could not assess whether the information was handled appropriately.

Finally, FCAC did not find evidence that the funding model of either ECB compromised the independence or impartiality of its investigations. Some consumer groups have raised concerns about ADRBOs' funding model, suggesting it compromises investigators' impartiality and independence. Both ECBs fund their operations by assessing member banks. OBSI calculates assessments based on the size of the bank and the total number and complexity of complaint investigations opened for member banks during the previous year. ADRBO assesses members' annual administrative charges based on the number of files investigated, then charges members an hourly investigation rate of \$290. FCAC found that the funding models of both ECBs are consistent with international good practices and similar to external dispute resolution services in other jurisdictions.

6.3 The recommendations made by external complaints bodies

FCAC expects ECBs to implement policies and procedures to demonstrate that their recommendations are impartial and unbiased. At a minimum, investigators should adhere to these policies and procedures and be solely responsible for their recommendations. While FCAC expects management to provide oversight, ECBs should be able to demonstrate how they

prevent senior management and other employees from interfering with or inappropriately changing the recommendations.

To ensure senior management oversight is appropriate, ECBs should implement policies and procedures that define the roles and responsibilities of senior management and employees who investigate complaints and make recommendations. ECBs should implement sound record-keeping practices to ensure that information considered material to the final recommendation is retained in the complaint file. Moreover, they should produce and retain careful records of discussions about the recommendations between investigators, supervisors, senior management, complainants and banks, as well as records of any significant changes to recommendations.

Robust policies and procedures for finalizing recommendations are particularly important because ECBs do not have the authority to issue binding recommendations. Consumer groups and consumers informed FCAC that they believed ECBs recommended fewer and lower reimbursements because they lacked the authority to impose arbitration on banks. Furthermore, the World Bank recommends that governments grant ECBs the authority to impose binding arbitration on banks (but not on consumers) once the ECBs have matured and developed robust policies and procedures. This is because, when ECBs lack the authority to impose settlements on banks, there is a risk they will reduce the reimbursements they recommend—or be more reluctant to find in favour of consumers—in the interest of getting agreement from banks.¹⁵

During the review, FCAC observed opportunities to strengthen the policies and procedures for recommendations. Both ECBs should develop and implement policies that outline the roles and responsibilities of senior management and investigators with respect to recommendations. In nearly half of the complaint files subjected to a comprehensive review (11 of 25 OBSI files and 12 of 25 ADRBO files), FCAC could not determine conclusively whether the recommendation was impartial, largely because information material to the recommendation (e.g., loan agreements, interview notes) was not submitted.

In addition, FCAC did not receive complete information about revisions made to investigators' recommendations as a result of manager oversight or bank comments. FCAC recognizes that the ECBs may have this information in their case management systems; however, the Agency was clear about the information required for the review. FCAC believes that ECBs should strengthen their record-keeping and retention procedures so they are in a position to provide comprehensive complaint files upon request for the purpose of demonstrating impartial recommendations.

¹⁵ World Bank. (2017). *Good Practices for Financial Consumer Protection*. Washington: State Secretariat for Economic Affairs SECO, pp. 49–52. <https://openknowledge.worldbank.org/handle/10986/28996>.

7 Transparency

When ECBs commit to raising public awareness of their services and operating in an open and transparent manner, it promotes public confidence and trust in the financial system. These efforts reassure Canadians that there is an independent and impartial system for resolving disputes when they are unable to reach a satisfactory resolution through their bank's internal CHPs.

FCAC expects the ECBs to make information about their operations—for example, about their ToRs, procedural rules, membership, fees and funding, and complaint data—available to the public. In addition, the Agency expects them to support the public disclosure of complaint information by implementing sound record-keeping and retention standards. International standard-setting bodies, such as the World Bank, recommend requiring external dispute resolution services to make information widely available through all communication channels. Transparency about ECB operations promotes awareness among consumers who have been unable to resolve disputes with banks. Importantly, FCAC also expects banks to increase public awareness of ECBs.

The main difference between transparency and accessibility is that ECBs are expected to be transparent to the public, and not only to those who are trying to resolve a dispute with a bank. These transparency standards are meant to ensure that Canadians can bank confidently, knowing there is a system in place to help them resolve disputes if issues arise. In contrast, accessibility standards ensure that consumers who have exhausted their bank's internal processes have access to independent and impartial external dispute resolution services. In other words, it is possible for ECBs to be transparent, but not adequately accessible—such as by meeting the requirement to publish annual reports on their activities, but creating unreasonable burdens for consumers who have a right to bring them a complaint.

ADRBO and OBSI both meet the requirements for transparency. In particular, OBSI demonstrated a significant organizational commitment to making information available to the public about the complaints it receives and its procedures for handling them. In the representative survey conducted for FCAC, 15% of Canadians said they had heard of OBSI, while just 5% were aware of ADRBO. Only 4% of Canadians recognized both; 83% had not heard of either.

7.1 Annual public reports

The ECBs are required to submit an annual report to the FCAC Commissioner and make it available to the public. Both choose to fulfill this requirement by publishing annual reports on their websites. The reports are important vehicles for promoting transparency.

OBSI's annual report contains significant disclosure about its operations, including: details about the demographic characteristics of the consumers who have brought complaints to them over the previous year; data concerning the amounts by which consumers were reimbursed; a

clear explanation of why the majority of consumers' inquiries are not investigated as complaints; and a clear comparison of "expedited" versus normal investigation processes.

OBSI also demonstrates best practices for transparency by publishing case studies about complaints. These strengthen financial literacy, explain how consumers can protect themselves against certain practices, and publicize information on how OBSI can help consumers resolve disputes. Furthermore, OBSI publishes periodic reports that address vulnerable consumers' concerns and emerging consumer protection issues. For example, OBSI recently published its *Seniors Report* (2019) to raise awareness of seniors' issues with financial services providers.

One challenge of having multiple ECBs is that data about complaints are fragmented and more difficult to use in research. For example, OBSI reports its recommendations as "resolved to the satisfaction of the consumer" whenever a consumer receives financial or non-financial compensation, even if the consumer receives only a small portion of what they asked for or if OBSI merely re-extended the bank's original offer. ADRBO reports separately on the number of recommendations for partial compensation or for situations where it finds mainly in favour of banks.

FCAC prefers more detailed reporting on recommendations and will clarify its expectations. However, given the differences in the ECBs' policies and procedures, some inconsistencies will likely remain.

8 Effectiveness

ECBs must demonstrate a strong commitment to effectiveness to promote and support public confidence in their work. FCAC expects ECBs to achieve this by making consumers and complaint resolution the main focus of their operations.

The Agency does not measure ECBs' effectiveness according to the number of times they recommend reimbursement. However, it does expect them to demonstrate an organizational commitment to effectiveness by implementing robust procedures to investigate complaints and recommend suitable resolutions. They should also invest in training their investigators to ensure they understand and can follow their procedures and adhere to market conduct obligations. Finally, ECBs are required to implement procedures for identifying systemic issues and reporting them to FCAC for investigation.

The review found that OBSI demonstrates a focus on consumers and a strong commitment to effectively resolving complaints. It has largely implemented the policies and procedures necessary to meet the requirements for effectiveness. Nevertheless, there are several areas where OBSI could improve.

ADRBO is not meeting FCAC's expectations in terms of implementing the policies and procedures necessary to demonstrate an organizational commitment to effectiveness. Specifically, FCAC has concerns about the initial view process because it means that some

complaints that are in ADRBO's mandate are not fully investigated. ADRBO has not implemented a mandatory training program, nor is it doing enough to ensure investigators understand and can follow its policies and procedures.

FCAC found that both of the ECBs could enhance their policies and procedures for investigating and making recommendations for complaints about non-financial harms, and that neither has implemented the policies and procedures needed to meet FCAC's expectations for identifying and reporting systemic issues.

8.1 Policies and procedures for effective complaint resolution

FCAC expects ECBs to demonstrate an organizational commitment to resolving consumer complaints by implementing effective procedures for conducting investigations and issuing final recommendations. To be clear, effectiveness is not measured by the number of complaints whose outcomes favour consumers. FCAC considers ECBs effective when they implement policies and procedures that lead to investigations and recommendations that are appropriate to the nature and circumstances of each complaint.

OBSI demonstrates a strong organizational commitment to the effective resolution of consumer complaints. Still, FCAC noted some opportunities for improvement.

As discussed earlier, OBSI has implemented detailed procedures to guide employees through the investigation of consumer complaints. OBSI has developed reimbursement guidelines and it publishes detailed case studies. These tools help investigators to be consistent in their recommendations and give member banks a clear idea about what to expect from OBSI's final recommendations.

In addition, FCAC recognizes OBSI's expedited investigation process as the appropriate way to ensure that complaints of a more routine and straightforward nature are resolved more efficiently. When OBSI determines that a complaint falls within its ToRs and is more straightforward than others, it expedites the complaint. OBSI considers expedited investigations to be full investigations, but it issues the resulting recommendations about 30% more quickly.

Furthermore, OBSI has a formal reconsideration process that serves as an important control for ensuring its investigations adhere to its policies and procedures. When a consumer believes OBSI has erred or failed to adhere to its procedures in handling a complaint, they can request a reconsideration. OBSI has several senior investigators who lead these. The process ensures that they do not reconsider an investigation that was conducted by someone who reports directly to them. The senior investigator does not conduct a second investigation; rather, they assess whether the original investigation adhered to OBSI's procedures. This typically involves interviewing the original investigator, supervisor and manager.

FCAC found opportunities for OBSI to strengthen its procedures for drafting the final letters or reports that communicate its recommendations for resolving complaints. Final letters are an

important mechanism for explaining the outcomes of investigations to consumers and setting out the reasons for the recommendations. Comprehensive final letters should clearly explain the complaint, the bank's position, the outcome of the investigation, the ECB's recommendation, and the next steps and options available to consumers. FCAC found that a significant number of OBSI's final letters are very brief, noncomprehensive, and omit important information about next steps, such as those involved in its reconsideration process.

ADRBO is not meeting FCAC's expectations in terms of implementing the policies and procedures necessary to demonstrate an organizational commitment to effectiveness. As discussed previously, it does not have adequate policies and procedures for investigators to follow. As a result, FCAC observed a significant number of inconsistencies in its investigators' approach to their work. ADRBO has not developed reimbursement guidelines or case studies to promote appropriate and consistent final recommendations. As discussed above, it provides investigators with samples of final recommendation letters, but is overly reliant on investigators' professional judgment and management oversight to ensure recommendations align with the nature of the complaint.

ADRBO should also further develop its procedures for mediation to ensure it uses this approach consistently and appropriately. In its annual report, ADRBO describes itself as an expert in mediation and settlement. This may give consumers the impression that mediation is its preferred or default option for resolving complaints. During the review, ADRBO asserted that it uses mediation to resolve 10% of cases; however, it appeared to be leaving decisions concerning how and when to use mediation up to investigators' discretion. FCAC agrees that mediation can be useful for expediting complaint resolution in some cases, such as when banks and consumers agree on the facts of the case. However, the Agency expects the ECBs' procedures to make it clear that mediation is used only when it is well suited to the nature and circumstances of the complaint.

ADRBO does not have a formal procedure for taking a second look and reviewing an investigation when the consumer believes it may have made errors or failed to adhere to its process. Consumers who believe ADRBO erred in its investigation can resubmit their complaints, but the ECB does not have a process for reconsidering whether its investigator adhered to procedures. Instead, ADRBO's Deputy Ombuds may take another look. ADRBO indicated that this situation was rare, and the Deputy Ombuds had not taken another look at any of the complaint files reviewed by FCAC.

FCAC also has concerns that the policies and procedures supporting ADRBO's initial view process are underdeveloped, preventing it from handling complaints consistently and appropriately. As discussed under accessibility in Section 4.2, when complaints fall inside of its ToRs, ADRBO's procedures require it to determine the likelihood that it will reach a conclusion that differs from the bank's decision before it opens a full investigation. However, ADRBO's procedures for this are not well-developed. Based on its review of complaint files, FCAC is not

confident that ADRBO adequately investigates the complaints it deals with through the initial view process, particularly when those complaints are covered by its ToRs.

Finally, FCAC found that both ADRBO and OBSI should more clearly explain their approach to non-financial harm in their internal procedures and public-facing material, such as ToRs and annual reports. Both ECBs indicate in their ToRs that they will recommend that banks compensate consumers or take other actions—such as repairing a credit bureau report—if they find that the bank caused the consumer to suffer non-financial harm or damages. However, compared with their approach to repairing financial losses, the Agency observed more inconsistencies in the ECBs’ approach to repairing non-financial damages.

FCAC recognizes the significant challenges associated with addressing consumer complaints about non-financial harms, such as stress, inconvenience, opportunity costs or reputational damage. However, the Agency believes that consumers should receive more information from the ECBs before they agree to an investigation of their complaint. This would help ensure that consumers are confident about the process. The World Bank recommends that ECBs make it clear whether, and under what circumstances, compensation may be offered to cover non-financial damages and harms.¹⁶ At a minimum, consumers should not have to wait until the ECB produces a final recommendation to receive a clear explanation of how it resolves such complaints.

8.2 Training

ECBs are required to provide training to ensure employees understand and follow their policies and procedures for dealing with complaints. Training is also important because ECB employees need technical expertise in retail banking and knowledge of applicable market conduct obligations to understand the issues and explain the process to consumers. FCAC found that ADRBO and OBSI have relatively detailed orientation schedules. For example, both require employees to read office manuals and job aids about their policies and procedures.

Nonetheless, both struggled to explain and demonstrate how they make sure employees understand and follow their procedures for dealing with complaints. In many cases, training material did not appear to be current, and it was unclear who was responsible for ensuring its continued relevance and accuracy. Both ECBs struggled to demonstrate how they oversee the completion of training and the effectiveness of training materials. This was particularly evident at ADRBO.

OBSI appears to rely mainly on hiring experienced and knowledgeable employees who learn about complaint handling on the job. During on-site interviews, OBSI pointed to a brief onboarding process and explained that new employees have the opportunity to be mentored by and job shadow more experienced employees. OBSI aims to recruit candidates with

¹⁶ See, for example, Thomas, David and Francis Frizon. (2012). *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*. Washington: World Bank.

knowledge of and experience in financial services, applicable market conduct obligations and dispute resolution. It also prioritizes professional development courses in areas such as emotional intelligence to help employees handle conversations with frustrated or upset consumers.

ADRBO has not implemented a mandatory training program, and its training falls short of FCAC's expectations. ADRBO provided the Agency with an orientation schedule and training material, including videos; however, none of the ADRBO investigators interviewed by FCAC were required to take any training. ADRBO appears to rely mainly on hiring skilled legal professionals who can learn on the job. During the on-site exam, ADRBO explained that its recruitment of independent contractors allows it to attract people with superior knowledge and experience in alternative dispute resolution. ADRBO has contracts with retired judges and well-regarded lawyers who may not want to work full time for an ECB, but will do so on a contract basis. It is particularly important for ADRBO to strengthen its mandatory training program, because it does not look for experience in the financial services industry when hiring investigators.

Furthermore, ADRBO's organizational structure presents obstacles to training and supervising investigators. Using independent contractors who work remotely makes it difficult to provide new hires with opportunities to job shadow or be mentored by experienced investigators. ADRBO's orientation schedule indicates that the Deputy Ombuds will work closely with new investigators looking into their first complaints to ensure their work meets the Deputy's standards. However, FCAC observed significant inconsistencies between investigators in terms of the quality and comprehensiveness of their complaint investigation files. This suggests that ADRBO's training regime requires improvement.

8.3 Systemic issues at banks

When an ECB detects a systemic issue at a bank in the course of handling a complaint, it is required to report the issue to the FCAC Commissioner without delay and leave the investigation of it to the Agency. Systemic issues are those with the potential to negatively affect a number of consumers. Prompt reporting of systemic issues is important and supports FCAC's work in overseeing banks' market conduct.

During the review, FCAC found that both ECBs are falling short of FCAC's expectations for reporting systemic issues. While they do report systemic issues on occasion—roughly one a year—they report far fewer systemic issues than their counterparts in comparable jurisdictions, such as Australia.¹⁷ ADRBO and OBSI appear to rely too heavily on the volume of complaints as the primary indicator of systemic issues. They deal with too few complaints to be able to identify trends based on the number of certain types they receive quarter-over-quarter or year-

¹⁷ The Australian Financial Complaints Authority (AFCA) identified 85 systemic issues in its first six months of operation (November 2018 to April 2019), according to its first bi-annual report. See AFCA. (May 2019). *Six month report*. Melbourne. www.afca.org.au/news/statistics/six-month-report/.

over-year. As previous industry reviews conducted by FCAC have shown, the volume of complaints about a specific issue is not always a sound measure of the risk to consumers.

9 Conclusion

FCAC's supervision work will address the main deficiencies and opportunities for improvement in the ECBs' operations. This work will enhance their services to consumers. More specifically, FCAC will oversee improvements to the ECBs policies and procedures for:

- resolving complaints more quickly and efficiently whenever possible
- improving ECBs' accessibility, such as when consumers require a reasonable amount of help with the process or when banks fail to resolve a complaint within 90 days
- meeting FCAC's expectations for reporting complaints, non-isolated compliance issues, and systemic issues at banks
- using consultations with member banks and consumers to cultivate a culture of continuous improvement
- safeguarding the impartiality and independence of investigators, investigations and recommendations
- enhancing transparency and public awareness of ECBs to promote consumer trust and confidence
- improving effectiveness by strengthening processes to ensure investigations and recommendations are appropriate to the nature and circumstances of each complaint
- improving the training provided to investigators to ensure they have adequate knowledge of banks' policies, products and services and applicable market conduct obligations

FCAC will provide further guidance on its expectations to ECBs in the coming months.

The Agency looks forward to the findings of the first mandatory five-year evaluation of ECBs, which will be conducted by a third party in 2020. FCAC will use this opportunity to have the third party look more closely at certain aspects of the ECBs' operations, such as their governance and organizational structures.

In addition, during this review FCAC identified broader issues related to the structure of the multiple-ECB model. As highlighted in Section 6 on impartiality and independence, the multiple-ECB model is not consistent with international standards, particularly where banks—rather than consumers—choose the ECB. This model can have a negative affect on consumers' perceptions of the fairness and impartiality of external dispute resolution. This has the potential to undermine one the principal purposes of effective complaint handling, which is to enhance consumers' trust and confidence in the financial system.

FCAC also has concerns about whether the competition between ECBs for member banks is benefitting consumers. FCAC notes that only 2 of the large six banks have elected to be

members of the ECB that compares most favourably to international best practices, such as promoting accessibility by conducting active investigations (see Section 4.4).

Finally, the Agency is also concerned about the additional complexity and inefficiencies introduced by the multiple-ECB model. The challenge of raising consumers' awareness about their right to escalate a complaint is compounded when there are multiple external dispute resolvers. ECBs are challenged to make the required investments in processes and operations, given the relatively small number of complaint investigations they undertake on an annual basis. Regulatory supervision is more complicated and resource intensive when there are multiple ECBs that have adopted different practices, as operational differences can disguise compliance issues.