



cameron. ralph. khoury

Independent Review of Ombudsman for Financial Services (OFS)

November 2019

Contents

1.	Introduction	3
2.	Executive Summary	5
3.	Context	7
4.	Independence	9
5.	Fairness and impartiality	12
6.	Accessibility	14
7.	Accountability	23
8.	Transparency	25
9.	Effectiveness	28
10.	OFS's performance against Terms of Reference	33
11.	OFS Terms of Reference	49
12.	Funding structure	57
13.	Stakeholder satisfaction and engagement	67
14.	Summary of Recommendations	70
	Attachment 1 – Scope of the Review	78

1. Introduction

1. OFS is approved by Bank Negara Malaysia as the operator of the Financial Ombudsman Scheme. Changing its name from the Financial Mediation Bureau, it was launched as OFS on 1 October 2016. It operates in accordance with Terms of Reference that set out its jurisdiction, the principles it must observe and its powers.
2. OFS is required by the Financial Services (Financial Ombudsman Scheme) Regulations 2015, the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016 to appoint an independent expert to conduct a qualitative and quantitative assessment of its performance.
3. In July, OFS appointed Cameron Ralph Khoury (CRK), an Australian-based consultancy with particular expertise in external dispute resolution. We have been asked to review OFS with regard to the principles of independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness. The full Scope of the Review is set out in Attachment 1.
4. Our review process has included:
 - Publication of an Issues Paper which elicited 43 submissions from OFS members
 - Review of OFS documents and data
 - 6 day visit to OFS's offices where we had a series of meetings with OFS staff to understand how it carries out its responsibilities
 - One-on-one meetings with 5 of OFS's members
 - Town hall meeting attended by 45 representatives from 38 of the OFS's smaller members (includes multiple representatives from some members)
 - Meetings with key industry associations for OFS members
 - Meeting with Bank Negara Malaysia
 - Meeting with Federation of Malaysian Consumers Associations
 - Meeting with the Chair of the OFS Board
 - Meeting with the Chair of the Board Dispute Resolution Oversight Committee
 - Review of 43 closed dispute files and interviews of 8 past complainants.

5. In undertaking our review, we have also taken into account our experience with ombudsman schemes in other jurisdictions. We have conducted reviews of some 20 ombudsman schemes located in Australia, New Zealand, Canada and United States of America, spanning financial services, telecommunications, energy and water services, legal services, public transport services and internet services.

Acknowledgments

6. The Reviewers would like to acknowledge the openness and great assistance provided by OFS staff and members of the OFS Board and the assistance and contribution to this Report from stakeholder organisations including industry bodies, from FSPs, from Bank Negara Malaysia, and from complainants – all of whom generously offered their time to assist in our understanding.

Structure of report and terminology

7. This report is structured as follows:
 - a. Key themes from our review are summarised in Chapter 2
 - b. The context for OFS is described in Chapter 3
 - c. Our assessment of OFS's effectiveness against the 6 principles in its Terms of Reference are in Chapters 4 to 9 (paragraph a. of our Scope of Review – see Attachment A)
 - d. OFS's dispute resolution processes, capacity and competency of OFS staff and efficiency are discussed in Chapter 10 (paragraphs b., e., f. and g. of our Scope)
 - e. OFS's Terms of Reference including its jurisdiction are reviewed in Chapter 11 (paragraph c. i. and c. iii. of our Scope)
 - f. The OFS funding structure is reviewed at Chapter 12 (paragraph c. ii. of our Scope)
 - g. Stakeholder satisfaction levels and engagement are reviewed in Chapter 13 (paragraph d. of our Scope)
 - h. A listing of all the Recommendations is at Chapter 14.
8. Reference in this report to the OFS's members or FSPs is to the financial services providers who are members of the OFS.

2. Executive Summary

9. Our Review found that the OFS is meeting the six principles that its Terms of Reference require. The OFS operates with independence, fairly and impartially. It provides an accessible service that is accountable and transparent. The OFS is, in our view, an effective ombudsman scheme. This is a significant achievement given that the OFS has been a legislatively-enabled ombudsman scheme for only three years.
10. We think of OFS as now transitioning from an establishment phase into an evolution phase. As is inevitable for a relatively new organisation, there are opportunities for the OFS to build upon its solid establishment foundations to mature its reach and its approach. Our hope is that this Report will help the OFS to plan and implement the next evolutionary phase of its development.
11. It is important that stakeholders, in particular the OFS's members, are aware of the importance of this next stage of evolution. For the OFS to reach its full potential, there will need to be a process of continuous improvement over the coming few years and that will require members' understanding and support.
12. A full list of our recommendations are set out in Chapter 14 of this report. Generally they fall into the following key themes:
 - a. Reach and access to the scheme
 - More targeted awareness building so that the OFS's services are accessed by demographic groups currently under-represented
 - Simpler more flexible application process for complainants
 - Some changes to OFS's Terms of Reference to modestly expand its jurisdiction – including monetary awards and time limits for applying to the OFS
 - b. Fairer and more timely dispute resolution processes
 - More timely front end registration process
 - Better opportunity for complainants to see and respond to the FSP's relevant information
 - Streamlined process for simpler complaints
 - c. Continue building capability

- Senior Case Managers who can develop case managers and assure quality of Recommendations
 - Investment by OFS in a more feature-rich case management system
- d. Stakeholder support and engagement
- Some enhancement of the OFS on-line resources to improve stakeholders' understanding of the OFS's approach
 - More engagement and sharing of information and insights with both members and with consumer representatives
- e. A fairer, more nuanced funding model
- More steps in the case fee scale
 - A modest increase in user-pays in the funding model
- f. Strengthening accountability
- Improved reporting
 - Refining governance
13. We recognise that change will take time. Our view is that a 3 year horizon would provide a sensible period for progressive implementation of the changes that the OFS has already embarked on and the changes that we recommend in this Report.

3. Context

14. The OFS began operating under its current Terms of Reference just 3 years ago. Whilst it built upon its previous life as the Financial Mediation Bureau (FMB) and there has been considerable continuity in its staffing, the OFS, unlike the FMB, has legislative backing and its monetary jurisdiction is higher. In order to adapt to its broader powers and jurisdiction as an ombudsman scheme, the OFS has had to develop new capabilities and processes.
15. OFS has doubled its membership since 2016. As at 31 December 2018, OFS had 202 FSP members. Whilst licensed entities represent only 47% of OFS's membership, these entities' large customer base mean that 97% of OFS registered complaints are about licensees as the following table shows (source OFS 2018 Annual Report).

Category of OFS membership	No. and % of OFS membership	No. of registered complaints
Licensed commercial banks	26 (13%)	172 (22%)
Licensed Islamic banks	18 (9%)	11 (1%)
Licensed insurers	35 (17%)	456 (60%)
Licensed Takaful	15 (8%)	106 (14%)
Prescribed development financial institutions	6 (3%)	6 (1%)
Approved issuers of designated payment instruments	42 (21%)	10 (1%)
Approved insurance/ Takaful brokers	29 (14%)	0
Approved financial advisers/ Islamic financial advisers	31 (15%)	0
	202 (100%)	761 (100%)

16. OFS's Business Plan for 2019 demonstrates a strong focus on organisational development and sustainability to deliver a more efficient and effective, credible

and high quality dispute resolution process. Business Plan initiatives are directed to:

- a. improving timeliness, better monitoring of productivity and complaints in progress
- b. improving quality through staff training and enhanced resources and by introducing peer review processes
- c. developing a positive and productive culture
- d. developing and retaining a capable and engaged workforce
- e. improving IT systems, and
- f. enhancing public awareness and external engagement.

We think that this is all entirely appropriate for this stage of OFS's evolution.

17. In our experience, it can take quite some time for a new ombudsman scheme to fully build capability, confidence in exercising its powers and a level of understanding across members of the scheme about its role, approach and powers. To the extent that this Report makes recommendations to enhance OFS's effectiveness, our recommendations should be seen not as reflecting failings, but as part of the OFS' evolution.

4. Independence

The OFS shall be subject to the oversight of the Board which shall be responsible for ensuring the integrity of the operations and its ability to provide effective and independent services to Eligible Complainants. The OFS' decision making process shall be objective and independent of the Members and Eligible Complainants.

OFS Terms of Reference paragraph 3(1)

Board oversight

18. OFS has a Board of Directors that meets quarterly. The Board is comprised of 10 non-executive Directors. Four are industry representatives. The Chairman and five other Directors are independent and bring judicial expertise, regulatory expertise, expertise from academia and knowledge of consumer issues.
19. As well as detailed briefings from OFS management, the OFS Board has participated in training/ knowledge sharing sessions conducted by Ombudsmen from other jurisdictions. In addition, the Chairman has attended a meeting of the International Network of Financial Services Ombudsman Schemes to build understanding of ombudsman scheme practice in other jurisdictions. We think that this is most worthwhile and would encourage the Board to take up similar opportunities to build other Directors' knowledge of ombudsman scheme practice in other jurisdictions. This does not imply a slavish following of practices elsewhere – rather that the Board will be most effective in its oversight from a position of sound knowledge of ombudsman practices in other environments.

Recommendation 1

The Board should continue to seek out opportunities to build Directors' knowledge of ombudsman scheme practice in other jurisdictions.

20. Four of the directors have been Board directors of the FMB/OFS since 2004. One director joined the Board in 2011. The other five Directors joined the Board in the last few years.
21. It is of course, a principle of good corporate governance that the membership of a board should be regularly refreshed. Consistent with this, OFS's Articles of

Association establish the normal rule that a Director should have a maximum of 3 terms of 3 years per term. This is a sensible policy for a number of reasons, not the least because ombudsman schemes will inevitably be subject to criticism from time to time. While criticism is to be expected and in some ways encouraged, critics of a scheme should not be able to challenge the credibility of its governance. We understand that the OFS Board is intending to progressively refresh the Board in 2020 by replacing 3 long serving Directors. Going forward, we encourage OFS to only permit directors to exceed the normal 3 times 3 year tenure in exceptional circumstances.

Recommendation 2

Unless exceptional circumstances apply, OFS directors should retire at the conclusion of their third term of 3 years (a total of 9 years) on the OFS Board.

22. The Board is provided by OFS management with quality, detailed reporting about the OFS's performance. This includes volumes and categories of enquiries and complaints, numbers and types of cases registered and resolved, the profile of complainants, turnaround time for resolved cases, complaint outcomes, factors contributing to the time to resolve cases, information about aged complaints, sector information, possible systemic and serious misconduct issues reported to Bank Negara Malaysia and so on. This reporting provides the Board with the opportunity to identify issues that warrant more detailed attention.
23. To obtain further insight into the way in which OFS is resolving complaints, the Board Dispute Resolution Oversight Committee undertakes a review of a small sample of Ombudsman decisions at least twice per year. Following this, the Committee Chair meets with the Ombudsmen to discuss any issues. Whilst this is not a detailed review of the complete complaint file, we think that this process is worthwhile.
24. In our view, these processes position the Board to provide appropriate oversight of OFS's operations including OFS's performance against the six principles that OFS is required to operate under.

Independence of decision making process

25. OFS's resolution of complaints is undertaken independently of its Board under the guidance of OFS's two Ombudsman. OFS's Ombudsmen and Case Managers are subject to (and sign) Codes of Practice that reinforce the importance of impartiality.

An Ombudsman or Case Manager is required to disclose any potential conflict of interest that might arise in connection with a complaint they are handling.

26. In our interviews of complainants, some of those who had been unsuccessful in obtaining redress through OFS criticised the OFS for being “too close” to the FSP. This accusation was founded on an impression gained during the mediation conference that the OFS Case Manager was on friendly terms with the FSP’s representative.
27. While we understand that OFS case managers have a code of practice that requires independence, we find that this is a common issue for ombudsman schemes. Inevitably, scheme staff will develop good working relations with FSP staff that they deal with frequently. This relationship can have great advantages and at times may even act to benefit the complainant. However, it is not uncommon for complainants to misinterpret this friendliness. To maintain complainant confidence in the independence of the OFS, we think that OFS staff need to be very careful to avoid creating any appearance of ‘closeness’ with FSP staff.

Recommendation 3

When conducting mediation conferences attended by both the complainant and a representative of the FSP, the OFS Case Manager should be careful not to engage with the FSP representative in a way that might create a perception of bias.

28. The question of apparent independence also impacts the perception of OFS by its FSP members. While they did not identify any particular areas of concern, some OFS members indicated to us the importance to them of OFS being clearly independent of Bank Negara Malaysia.
29. We recognise the critical role that Bank Negara Malaysia has played in supporting the establishment of OFS, including by seconding a senior staff member to be CEO of OFS. We understand that now much of the establishment work is completed, the next CEO is to be recruited by the OFS Board from the market. We think that this will help to underscore the OFS’s organisational independence, as is appropriate for the OFS’s current stage of evolution.
30. While it is important that OFS is seen to be organisationally independent, there is no escaping the important role that Bank Negara Malaysia plays in oversight of the sector and of the OFS, nor the legal obligation on the OFS to report to Bank Negara Malaysia as set out in the Regulations.

5. Fairness and impartiality

- (a) The Ombudsman must ensure that information provided by Members and Eligible Complainants is carefully and objectively considered in reaching a well-reasoned decision, while having regard to the law, regulations, standards and/or guidance issued by Bank Negara Malaysia as well as industry best practices.
- (b) The OFS must ensure that at all times, the Case Manager and Ombudsman handling a Dispute, have no conflict of interest with any of the disputing parties, and provide fair, adequate and intelligible reasons for any decisions given.

OFS Terms of Reference paragraph 3(2)

OFS decisions

31. Not surprisingly, in our consultations with stakeholders, there was considerable interest in whether OFS decisions were fair.
32. Data provided to us by OFS shows that a large majority of Ombudsman decisions are in favour of the FSP as the following table demonstrates.

Sector (total adjudications shown in brackets)	Cases Resolved at Adjudication from 1 January to 30 June 2019		
	Monetary Award Granted	Direction to Take Certain Steps	Direction to Repay Actual Cost Incurred
Insurance (59)	10	0	0
Takaful (5)	1	0	0
Conventional Banking (20)	3	0	0
Islamic Banking (2)	0	0	0
Broking Business (0)	0	0	0
Financial Advisory Services (0)	0	0	0

Payment System (Non-Bank) (1)	0	0	0
Total (87)	14	0	0

33. The percentage in favour of the FSP is higher than we have seen in other jurisdictions, but a comparison of this statistic alone tells us little about the fairness of the scheme. It may be that the scheme is achieving good outcomes for consumers who have meritorious complaints, either through the process of conciliation, mediation or a Case Manager Recommendation, and so the complaints that proceed to Ombudsman decision are disproportionately weighted to less meritorious complaints. Providing support to this hypothesis, the OFS has told us that of 720 cases resolved in 2018 at Case Management stage, 350 (49%) were resolved by the FSP providing financial compensation to the complainant. We also note that FSPs that we interviewed indicated a strong propensity to accept Case Manager Recommendations that were in favour of the complainant – that their practice is not to appeal these to an Ombudsman. The table below bears this out, showing that about 90% of referrals to the Ombudsman are by the complainant.

Complaints referred to an Ombudsman:	By complainant (no. and percentage of total adjudications)	By FSP (no. and percentage of total adjudications)
2018	131 (92%)	12 (8%)
1st 6 months of 2019	81 (88%)	11 (12%)

34. In any event, our detailed review of a sample of 11 banking and insurance Ombudsman decisions found that these have appropriate regard to the law, contract (eg. product or policy terms and conditions), caselaw and guidance issued by Bank Negara Malaysia and that they are based on careful analysis of the facts of the case. Decisions are well-reasoned and clear. We were satisfied from our review that Ombudsman decisions are fair.
35. Later in this Report, we assess the various stages of OFS's dispute resolution processes and make some recommendations to enhance OFS's effectiveness including the fairness of OFS pre-adjudication outcomes.

6. Accessibility

The OFS shall promote easy and affordable access to its services by creating awareness of its services, maintaining easy to understand, clear and transparent procedures for Eligible Complainants to refer a Dispute to the FOS.

OFS Terms of Reference paragraph 3(3)

Complaint volumes

36. The OFS will only fulfil its role if potential complainants are aware of its existence. As a new scheme and the first so-named ombudsman scheme in Malaysia, there are challenges in building awareness of OFS's services and we would expect this to take some years to achieve.
37. Most of the submissions from OFS members expressed the view that the OFS has achieved appropriate profile in the financial services sector with consumers. However, 6 member submissions said that more was needed to raise the OFS's profile.
38. As the following table shows, OFS is receiving and resolving a lower volume of complaints than in its former guise as the Financial Mediation Bureau.

	FMB				OFS	
	2013	2014	2015	2016*	2017¥	2018
New cases received	1,881	1,691	1,707	1,588	1,327	761
Cases resolved	2,592	2,106	1,876	1,564	1,237	863

* 2016 was the transition year with 9 months operation as FMB and 3 months operation as OFS.

¥ On 1 October 2017, the OFS began charging a fee per registered complaint. The decline in 2018 in the number of lower value complaints has been attributed to this.

39. It is also of note that the National Consumer Complaints Centre is recording higher than OFS levels of banking/ finance sector complaints, as the following table shows.

	2013	2014	2015	2016*	2017
NCCC recorded Banking/Finance complaints	1,625	1,494	1,500	1,664	1,690

40. Of course, these comparisons require some caution, as the OFS's jurisdictional reach and approach to recording complaints is different from both the previous Financial Mediation Bureau and the National Consumer Complaints Centre.
41. As the OFS has acknowledged in its 2018 Annual Report, OFS complainants are predominantly from the Central Region (57%). Complaint volumes derived from the East Coast Region (5%) and East Malaysia (4%) are particularly low. On the face of it, the following table suggests that there are a number of states where the number of complaints is out of step with population and/or GDP.

State	% of Population	2018 % of GDP	% of 2018 complaints
Johor (Sthn)	11.6%	10.0%	9.3%
Kedah (Nthn)	6.7%	3.4%	1.8%
Kelantan (Nthn)	5.7%	1.0%	0.8%
Melaka (Sthn)	2.8%	3.2%	3.3%
Negeri Sembilan (Sthn)	3.5%	3.6%	3.3%
Non-Malaysian State			0.4%
Pahang (E Coast)	5.2%	4.5%	4.1%
Perak	7.7%	5.8%	7.1%
Perlis (Nthn)	0.8%	0.5%	0.1%
Pulau Pinang (Nthn)	5.5%	6.9%	8.7%
Sabah (E Malaysia)	12.0%	6.7%	1.6%
Sarawak (E Malaysia)	8.6%	9.9%	2.2%

Selangor (Central)	20.0%	24.6%	33.4%
Terengganu (E Coast)	3.8%	2.7%	0.5%
Wilayah Persekutuan Kuala Lumpur (Central)	5.6%	16.7%	22.2%
Wilayah Persekutuan Labuan	0.3%	0.5%	0.4%
Wilayah Persekutuan Putrajaya (Central)	0.3%	included in WP KL	0.8%
Grand Total	100.0%	100.0%	100.0%

42. To further analyse the demographics of populations that may be under-utilising the OFS, we obtained information from the OFS about the ethnicity and age of complainants whose complaint was registered in 2018.

Ethnic grouping	Percentage of total population	No. of complaints	Percentage of total complaints
Bumiputra	62%	204	27%
Chinese	21%	398	52%
Indian	6%	130	17%
Non-Malaysians	10%	16	2%
Others (Malaysian)	1%	13	2%
Total		761	

Age	Estimated % of total population 20 years or older (Source: Worldometers)	Percentage of total complaints
Under 25 years	12%	5%
25 to 34 years	27%	14%

35 to 44 years	22%	25%
45 to 54 years	16%	25%
55 to 65 years	12%	22%
Above 65 years	10%	10%

43. We also noted that complainants who were either self-employed or in professional or managerial roles accounted for some half of the complaints registered by OFS.
44. Whilst we do not have expertise in relation to the Malaysian economy, the data suggests that the OFS is primarily being accessed by complainants who are most able to defend their rights and likely to have higher self-confidence than many in the community. It seems to us that the challenge for OFS in its next stage of development will be to extend its reach to those in less connected regions and those less confident and skilled – eg. indigenous peoples, younger Malaysians (less than 35 years) and the less affluent. We understand that the OFS conducts its own demographic analysis and our recommendations below may be of assistance for the OFS to consider.

Awareness building

45. Both the OFS's members and the OFS have responsibilities for taking steps to make potential users of the scheme aware of the OFS.

Financial services provider obligations

46. OFS's members are required to inform complainants about the OFS in their final complaint resolution letters (OFS Terms of Reference paragraph 17(1)).
47. For insurance, there is, however, no obligation to provide information about the OFS in the letter declining a claim. As we saw in our review of OFS complaints, it is only if a claimant makes a complaint to the insurer about the declined claim that the claimant will receive a final resolution letter with information about the OFS.
48. We think that this markedly reduces the visibility of the OFS and misses an important point at which consumers can be informed of their right to access the OFS. In other jurisdictions in which we have worked, the insurer's declination letter must inform the claimant both about their right to complain to the insurer's customer service team and that, if after that process the claimant is still dissatisfied, they may access the ombudsman scheme. We think that the OFS should move to

introduce this requirement for member insurers and takaful operators. While this might be seen as undermining the principle of FSPs managing their own complaints, in our experience, earlier awareness of the ombudsman scheme will not only improve accessibility but also give some consumers the confidence to refuse unfairly low offers to settle. There is a small cost in the OFS referring consumers back to their FSP, but this is typically very minor.

Recommendation 4

OFS should consult with Bank Negara Malaysia and OFS's insurer members with a view to amending BNM Guidance and the OFS Terms of Reference to require insurers to include information in claim decision letters about their complaints process including about the OFS.

OFS awareness building

49. The OFS takes advantage of opportunities to reach out to potential users of its services. This year, the OFS has participated in 15 promotional events including 4 financial carnivals. Around 20,000 OFS brochures have been distributed through these kinds of events.
50. The OFS is also active on social media, regularly updating content on Facebook, YouTube, LinkedIn and Twitter.
51. Last year, the OFS Board approved an additional RM500,000 for an awareness building campaign. Amongst other activity, this permitted the OFS to air a 30 second advertisement on Astro Radio Nationwide for 4 weeks in July/ August 2018 (Malay, English and Tamil) and again in November 2018 (Malay and English). A 2 minute interview with the Ombudsmen was aired on BFM Radio once a week in November/ December 2018. Print media has been a focus. In addition, a billboard advertisement ran throughout November 2018 to January 2019 in the States of Kuala Lumpur, Terengganu, Johor, Pahang, Kedah and Perak.
52. We support these efforts which we see as leading practice amongst ombudsmen schemes we have worked with. Consistent with our comments above, going forward, we think that the OFS needs to take advantage of its recent more granular information collection to move from general awareness building to particularly target its efforts to the demographic groups that are currently under-utilising the OFS.

Recommendation 5

The OFS's next stage of awareness building should focus on the demographic groups that currently under-utilise the OFS including those in remote regions, eg. the indigenous peoples, younger Malaysians and those employed in a non-professional/ managerial position. To measure the success of its efforts, the OFS should undertake targeted awareness testing and monitor complainant demographic trends.

Accessibility of OFS's processes

53. The OFS's website provides helpful information for complainants. This includes information about the OFS's jurisdiction, who can lodge a dispute and how to do this, a document checklist and the dispute resolution process. The website also includes audio, video and written materials for complainants (all in four languages) and frequently asked questions. We think that this meets good practice standards.
54. We think however that the process of lodging a complaint with OFS could be less onerous and may be serving to discourage less able and less confident complainants. As set out in the OFS document checklist, a complainant is required to provide the following information:

<p>Banking including Islamic banking and Payment Systems</p>	<ol style="list-style-type: none"> 1. The Member's final decision (letter/email) or copy of your first dispute to the Member 2. Duly completed OFS Dispute Form (refer to link) 3. Duly signed original copy of the Permitted Disclosure Form by account holder(s) under :- <ol style="list-style-type: none"> a. Subsection 134 (1) of the Financial Services Act 2013 - for disputes against licensed banks and approved issuers of a designated payment instrument (refer to link) b. Subsection 146 (1) of the Islamic Financial Services Act 2013 - for disputes against licensed Islamic banks and approved issuers of a designated Islamic payment instrument (refer to link) c. Subsection 120 (c) of the Development Financial Institutions Act 2002 - for disputes against the prescribed development financial institution (refer to link) 4. Copy of account holder(s)'s identification document(s) (NRIC/Passport/SSM) 5. Copy of complainant's identification document (NRIC/Passport), if you attend on behalf of the account holder(s)
---	---

	<ol style="list-style-type: none"> 6. If you are representing the account holder (next of kin/beneficiary), letter of authorisation from the account holder (refer to link) and your identification document (NRIC/Passport) are compulsory. 7. Confirmation Letter of account holder(s)'s Small Business Status by the Company Secretary, if the business is not registered with SME Corporation Malaysia (refer to link) <p><u>Other relevant documents depending on the nature of dispute (where applicable):</u></p> <ol style="list-style-type: none"> 1. Summary of the dispute in chronological order, if it's not stated in the OFS Dispute Form 2. Correspondence (letters or email) between you and the Member 3. Police report 4. Bank statements 5. Credit card sales draft/transaction slip 6. The savings passbook or statement of account indicating the disputed transaction 7. Disputed Automated Teller Machine (ATM)/ Cash Deposit Machine (CDM) transaction receipt 8. Loan Statements 9. Bancassurance policy or bancatakaful certificate (if any)
<p>Insurance/ Takaful</p>	<ol style="list-style-type: none"> 1. The Member's final decision (letter/email) or copy of your first dispute to the Member 2. Duly completed OFS Dispute Form (refer to link) 3. Copy of policy or certificate holder(s)'s identification document (NRIC/Passport/SSM) 4. If you are representing the account holder (next of kin/beneficiary), letter of authorisation from the account holder (refer to link) and your identification document (NRIC/Passport) are compulsory. 5. Confirmation Letter of policy or certificate holder(s)'s Small Business Status by the Company Secretary, if the business is not registered with SME Corporation Malaysia (refer to link) 6. Copy of policy/certificate schedule and contract <p><u>Other relevant documents depending on the nature of dispute (where applicable):</u></p> <ol style="list-style-type: none"> 1. Correspondence (letters or email) between you and the Member

	<ol style="list-style-type: none"> 2. Summary of the dispute in chronological order 3. Copy of medical reports 4. Copy of police reports 5. Copy of adjuster's report 6. Copy of driver's licence 7. Copy of vehicle registration card 8. Copy of the hospital charges/bills
--	---

55. The OFS's 2018 Annual Report stated that the OFS received a total of 4,530 new complaints and enquiries. The OFS advises that 2,602 of these were written complaints. The other 1,928 matters were received by telephone or walk-in and were an unspecified mix of complaints and enquiries.
56. The 2,602 written complaints resulted in 761 complaints being registered in 2018. An additional 182 complaints were registered after the close of the 2018 calendar year, following the provision by the complainant of additional information in response to the OFS's request. The balance of the written complaints (1,659 complaints) were not registered for the following reasons:
 - a. 35 were withdrawn by the complainant (usually because the complainant had resolved the matter with the FSP)
 - b. 192 settled with the OFS's assistance before registration of the complaint
 - c. 1,060 complaints were excluded on the basis of being outside jurisdiction as discussed later in this Report (of these, 741 complaints were excluded because the information provided did not reveal financial loss).
 - d. 372 complaints were closed on the basis that inadequate information was provided or the complainant failed to respond to the OFS.
57. This means that 14% of written complaints to the OFS (372 complaints) did not proceed because the complainant failed to meet the OFS's documentation requirements. This fuels our concern that the OFS's front end processes may be discouraging meritorious complaints from being pursued through the OFS. The practice in other financial ombudsman schemes with which we have worked is to encourage, but not insist upon, the use of the scheme's application form. In appropriate cases (eg. where there are literacy issues, or a complainant is afraid or unable to obtain required information or documentation) some schemes will even take the details of a complaint over the telephone rather than requiring a written complaint.

58. In addition, and more importantly, other ombudsman schemes generally do not require information up front from the complainant prior to accepting the complaint. Rather, information is requested as the first step in the dispute resolution process (after registration), concurrently with the request of the FSP to provide information. Moreover, where documents are held by both parties, the expectation is that the financial services provider is primarily responsible for providing the documentation. This way requests of the complainant can be kept to a minimum.
59. Other schemes have found that this approach enhances accessibility without delaying the dispute resolution process. If the OFS adopted this approach, our expectation would be that complainant drop out rates at the beginning of the OFS's process would decrease.

Recommendation 6

The OFS should revisit its application processes and information requirements of complainants with a view to making the application process more accessible for complainants. New processes should include:

- a) The OFS should encourage but not require a complainant to use the OFS's standard form.
- b) Supporting documents should not have to be provided by the complainant prior to registration. Rather the OFS should make concurrent requests of both parties to provide their supporting information as the first step in the dispute resolution process.

We recognise that this would require a change to OFS's Terms of Reference and so consultation will be necessary with OFS stakeholders including Bank Negara Malaysia.

60. We discuss later in this Report opportunities for OFS's jurisdiction to be broadened to enhance accessibility for complainants.

7. Accountability

The OFS shall publish an annual report on its activities and operations and submit to Bank Negara Malaysia a report on its activities during the financial year, including its audited annual accounts.

OFS Terms of Reference paragraph 3(4)

Annual Report

61. Each year, OFS publishes an Annual report. The 2018 Annual Report includes information about how OFS meets its six guiding principles of independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness. It sets out the OFS's jurisdiction and exclusions, the number and types of enquiries and complaints the OFS receives, the percentage of disputes resolved at the various stages of OFS's dispute resolution process, the number of disputes resolve for and against OFS's members and the OFS's dispute resolution timeframes. The Report describes OFS's member engagement and consumer outreach activities and presents the results of member and customer surveying. The Report also includes sectoral analysis including key insights and observations and case studies. Audited annual accounts are included in the Annual Report.
62. Our review of the OFS's case management system suggests that this reporting captures all enquiries and complaints made to OFS. A complaint categorisation system is consistently applied. The result is that OFS's Annual Report is able to present accurate statistical information.
63. We think that OFS's Annual Report provides a good description of the OFS's activities and operations at an appropriate depth for a financial ombudsman of its size and stage of evolution.
64. As the OFS matures and amasses a larger body of work, we expect that it will be able to offer more extensive insights. At this stage, we make just a couple of enhancement recommendation – that statistical information is included about the time that the OFS is taking to register complaints (see Recommendation 10 and that more granular information is included about complainant survey results (see Recommendation 25 b).

Reporting to Bank Negara Malaysia

65. Bank Negara Malaysia requires the OFS to provide comprehensive quarterly statistical and other information about the OFS's operations.
66. Serious systemic or misconduct issues are reported to Bank Negara Malaysia immediately. Less serious matters are reported via the quarterly reports. This is good practice in our view and a level of development that many other schemes have taken years to achieve or have not yet reached.
67. In the OFS reports that we reviewed, all of the potential systemic issues were specific to a particular FSP, with none identified as arising across multiple FSPs. We would normally expect to see a few practices that would be present across more than one FSP. It is also important for these to also be identified and the OFS should be alert to this in its reporting to Bank Negara Malaysia. By way of update, OFS has told us that it has in fact, more recently reported issues that may be systemic across industry.
68. Given Bank Negara Malaysia's important role in setting sector guidelines, it seems to us that it would also be properly part of the OFS's role for it to be reporting matters it sees where the current law and industry guidelines are not, in OFS' view, meeting community standards of fairness. The expectation here would be that these are issues that Bank Negara Malaysia would take into consideration when next reviewing policy or guidelines.
69. By way of illustration, our file review highlighted one possible example. As we understand (and we are not Malaysian law experts), life insurers are able to cancel an insured's policy without cause if the insurer's policy terms so permit. We saw examples where life insurers rejected a total disability claim (on the basis that the disability was only partial) and immediately cancelled the policy, and OFS accepted this as permitted under the policy terms. Our concern was that in most circumstances this would result in the now partially disabled consumer unable to get any other insurer to accept them. This practice struck us as unfair and as something that is recognised as unfair and prohibited in some other jurisdictions. We think it is entirely reasonable for the OFS, where it forms a view on issues of fairness such as this one, to raise this with Bank Negara Malaysia as part of its role.

8. Transparency

- (a) The OFS shall publish information on the services and scope of coverage. This would include the types of Disputes and Awards granted by an Ombudsman, the approach adopted in handling Disputes and the manner in which the decisions were made; and
- (b) In a Dispute of material significance, the OFS should also publish relevant information on the manner and reasons for arriving at a particular decision with a view of educating the general public and Members. However, the identities of the disputing parties shall remain anonymous, in compliance with any confidentiality and privacy obligations

OFS Terms of Reference paragraph 3(5)

Published materials

70. OFS's website includes its Terms of Reference. It also includes OFS's Annual Report which provides a good description of the OFS's services, its scope of coverage and how it handles disputes (see paragraph 61 of this Report).
71. As already mentioned, OFS's website provides helpful information for complainants including about the types of complaints that OFS is able to handle and its dispute resolution process. This information may also be of some assistance to a new OFS member or those that only rarely have a complaint.
72. OFS's website does not, however, have resources specifically designed for OFS members that may want more in-depth information to assist them with dealing with OFS. Other financial ombudsman schemes with which we have worked have a webpage that lists and provides links to member and complainant resources. Examples of these resources include guidelines explaining how the Terms of Reference are applied and how commonly occurring cases are handled.
73. These types of guidelines are best developed from deep experience and it is typically some years before a financial ombudsman scheme is in a position to develop extensive materials of this kind. With three years' of experience, we think that the OFS should soon be developing this type of material so as to deepen external understanding of its approach.
74. Guidelines could, for example, expand upon the sectoral observations in the OFS's Annual Report and could refer to and provide a broader context for any relevant case studies published on the OFS's website. The aim should be to provide a more

in-depth discussion than is possible in a few paragraphs of an Annual Report. We are also conscious that guidelines that are published on the website under topic headings can be located through a website search and so can have ongoing visibility and value to users of the OFS, whereas observations in an Annual Report are much less easily located and over time are rarely referenced and become lost from view.

75. Published guidelines could also deal with particular aspects of OFS procedures that may apply across many different types of complaints. An example would be how OFS expects to receive evidence from audio recordings made by FSPs (typically of sales calls or complaint calls). The guideline could explain how the OFS relies on the recordings and explains why the original, unaltered recording itself is the highest standard of evidence and must be provided if available.

Recommendation 7

Over time, the OFS should develop and publish in-depth guidelines to deepen understanding of its approach, for example, in relation to the way OFS will deal with commonly occurring types of disputes or particular requirements for provision of information or evidence.

Publication of decisions

76. OFS's website and Annual Reports include anonymised case studies. Each of the eight case studies in the 2018 Annual Report explained in one page the background to the complaint, the factual findings and the outcome (settlement, Case Manager Recommendation or Ombudsman Adjudication). Topics included insurance mis-selling, medical insurance claim denial, travel insurance claim denial, credit card unauthorised transactions and ATM losses.

These case studies are useful and good practice, in particular for the format of the Annual Report. We think however that more detail is needed to be available to provide greater insight for readers. In our view, the best way to do this is to publish full Ombudsman Adjudications, which shed more light on the factual or legal issues disputed by the parties and the basis on which the Ombudsman findings were reached. We recommend that the OFS begin publishing all Ombudsman Adjudications in an anonymised form (eg. removing personal details, using fictional names, etc). The only exception should be if anonymising would not be sufficient to adequately protect the complainant's privacy. To enhance accessibility, these should be published in a searchable register.

77. To do this would meet the leading practice of the United Kingdom Financial Ombudsman Service (UK FOS) which, since April 2013 has published all of its final decisions (the UK FOS published decisions identify the relevant FSP by name but this would be contrary to the OFS's Terms of Reference).

Recommendation 8

The OFS should begin publishing on its website all Ombudsman Adjudication decisions. These should be anonymised to protect the private information of both the complainant and the FSP as required by the OFS's Terms of Reference.

9. Effectiveness

- (a) The OFS shall have the necessary resources, coverage and powers to resolve Disputes in a timely and effective manner. This includes ensuring an adequate number of suitably qualified and competent Case Managers and Ombudsmen to reflect the volume and complexity of Disputes handled; and
- (b) The OFS shall proceed with the minimum formality and technicality to resolve the Disputes. Decisions on Disputes and reasons for the decision must be clearly communicated to the disputing parties

OFS Terms of Reference paragraph 3(6)

Resourcing

- 78. OFS has two experienced Ombudsmen, one of whom specialises in banking and one in insurance matters. As previously noted, we were satisfied with the quality of reasoning in the 11 Ombudsman decisions that we reviewed. We received no stakeholder feedback to the contrary and indeed, some highly positive feedback from a number of both FSPs and complainants.
- 79. OFS's Case Managers are also an important resource for the scheme. They resolve 83% of registered complaints. The OFS recognises this and has identified the development of the OFS's dispute resolution staff as a key strategic focus in this year's Business Plan. Internal and external training is occurring. Effort is also being put into building the OFS's knowledge resources. We discuss later in this report the particular importance of Senior Case Managers (see paragraph 122).
- 80. OFS's budget appears to be adequate. We have been told by the OFS that it has been able to obtain approval from the Board for additional budget for projects such as expanding its awareness campaign, enhancing staff training and IT development. At this stage of the OFS's development, we think that investment in these areas is vital. We discuss IT infrastructure in Chapter 10.
- 81. We note that if our Recommendations are accepted, there may need to be some budgetary provision, but we think this will mainly be project-related rather than a matter of ongoing expense.

Coverage and powers

82. The OFS's Terms of Reference specify the OFS's jurisdiction and powers. We think that this document is clear and gives the OFS appropriate powers to investigate and resolve complaints. In Chapter 11, we recommend some changes to the OFS's jurisdictional reach.

Minimum of formality

83. Earlier in this Report we have explained the OFS's application and registration process and recommended that complainants should be encouraged but not required to use OFS's application template. This would reduce the formality of the front end process.
84. In the case of bank complaints that proceed to mediation, the OFS has a seven page standard OFS document that both parties are asked to sign. This is written in a formal manner. The document explains the dispute resolution process and the Case Manager's role. It includes an authorisation by the complainant to the FSP to disclose relevant information and documents to the OFS. Whilst we think that this information is useful for the complainant, we think that it could be expressed and set out in a more consumer-friendly, less formal style.

Recommendation 9

The OFS should revise its standard form Terms and Procedures of Mediation to present and express this in a more consumer-friendly, less formal manner.

Timeliness

85. The OFS measures the timeliness of its dispute resolution processes from registration until closure of complaints. This has the advantage of more fairly representing the OFS' case-handling timeliness, by only starting the timing once all information is provided and initial eligibility checks are complete. As discussed elsewhere, it also avoids aggravating FSPs by only charging them complaint fees (usually RM1500) once it is clear that the complaint is likely to proceed to resolution.
86. The disadvantage of this approach is that it does not reflect the complainant's experience – from their perspective, the process began when they first applied to the OFS. Any pre-registration delays impact adversely on their experience and this can expose OFS to external criticism. The practice also distorts the cost-per-complaint figures that are frequently relied on as an indicator of efficiency, making

OFS appear to be less efficient in comparison with other financial ombudsman schemes (discussed at Chapter 10).

87. The OFS's pre-registration process has often been a quite lengthy process as the following table illustrates.

Time taken to register complaints in 2018	Number	Percentage of total complaints registered
Within 1 Week	41	5.39
Within 1 - 2 Weeks	92	12.09
Within 2 - 4 Weeks	130	17.08
Within 1 - 2 Months	218	28.65
Within 2 - 3 Months	104	13.67
More than 3 Months	176	23.13
Grand Total	761	100

88. The OFS has advised us that generally these delays have been because the complainant's documentation was insufficient. In addition, the OFS acknowledges that there have been some process and team inefficiencies. We are told that these have now been addressed through standardising operating procedures and enhancing supervisory oversight and that currently most complaints are registered within 4 weeks from the date the complaint was first received.
89. Despite this, we remain concerned about pre-registration delays. Our expectation is that a simpler application process, with few front end requirements for complainant documentation, would substantially reduce timeframes (see Recommendation 6). We think that the OFS should aim to typically be registering complaints within 1 week of receipt of the complaint (whether or not the OFS's application form is used).
90. We understand that there is some risk that under the current fees regime, registering complaints more quickly may result in complaint fees being charged by the OFS to the relevant FSP in circumstances where this is not fair. In Chapter 11, we discuss ways in which this risk can be ameliorated through refinements to the fees regime.
91. To strengthen transparency and accountability, we think that the OFS should also report publicly on its registration timeframes (information along the lines of that in the table above).

Recommendation 10

The OFS should publish statistical information in each Annual Report about the time it is taking to register complaints.

92. Like most financial ombudsman schemes, the OFS has also encountered challenges progressing complaints in a timely way post-registration. Its 2018 Annual Report disclosed that 35% of closed disputes took more than 6 months from registration. The reason given was that commonly further documents were required (medical and reassessment reports) or one or both parties to the complaint required an extension of time to respond to an OFS request.
93. In a couple of reviewed complaint files, the file showed that the complainant had expressed dissatisfaction to the OFS about the slow progress. Four of the eight complainants we interviewed expressed frustration about OFS timeframes. The following comments were made to us: “The whole process took almost 2 years which was too long”, “The OFS took too long to decide”, “The OFS allowed the bank 7 weeks to produce its documents after the mediation”, “I didn’t know if my complaint was being processed or not. The Ombudsman needs to provide updates more regularly”.
94. Prolonged timeframes can also be a problem for the FSP. Four of the submissions to our Review by OFS FSPs called for more certainty as to timeframes or quicker resolutions (about half of our submitters did not have direct experience of OFS’s dispute resolution timeframes).
95. As the following table shows, during 2019, the OFS have made progress in reducing the number of complaints that have been taking longer than 6 months to resolve.

Timeframe from registration to closure	No. of disputes closed in 2018	No. of disputes in 9 months to 30 Sept 2019
181 to 210 days	51	73
211 to 240 days	68	37
241 to 270 days	46	30
271 to 300 days	53	11
301 to 330 days	21	7
331 to 365 days	19	4

1 year to 15 months	29	1
15 to 18 months	6	1
More than 18 months (oldest 623 days)	11	0
% closed in more than 6 months	35% of 863 complaints	25% of 660 complaints

96. Our review of complaint files included a number with extended timeframes where the delay appeared to have been caused by the OFS, rather than the parties. There was often a hiatus of 2 to 4 months while the Case Manager wrote up the Recommendation – this occurred in 10 of the 15 complaint files we reviewed that included a Case Manager Recommendation. The Ombudsman Adjudication process on the other hand was timely in all of the 11 complaint files that we reviewed that reached that stage.
97. This year, there has been a focus on clearing the backlog and improving resolution timeframes. A new monitoring process was established in January 2019 – Senior Case Managers are now responsible for monthly reviewing of the status of disputes within their teams and the OFS’s Ombudsmen clearly also keep an eye on timeframes. It would seem from the table above that these efforts are improving timeframes.

We think that there is scope, however, for further improvement. A more streamlined process for simpler complaints would reduce average timeframes and free up resources for more timely resolution of the more complex cases - we discuss this later in our Report. To meet financial ombudsman good practice¹, we think that the OFS should be aiming to resolve 90% of complaints within 180 days – and we understand from the OFS that this is what its Board now expects. Note that it is important for the KPI to allow for the inevitable, small proportion of matters that will always be outliers in the length of time required. We have never seen an ombudsman scheme that can meet a timeliness KPI 100% of the time.

¹ The Taiwan Financial Ombudsman Institution in 2017 took an average of 40.59 days to close an ombudsman case, with 99% of ombudsman cases closing within 3 months and no cases taking more than 5 months to close: Annual Report p.24. The Singapore FIDReC in 2017/18 closed 50.9% of complaints within 3 months, 96% of complaints within 6 months and 99.4% of complaints within 9 months: Annual Report p.25. The Malaysian Securities Industry Dispute Resolution Centre in 2018 closed 88% of complaints within 90 working days of receiving complete documentation: Annual Report p.66 . The Australian Financial Ombudsman Service in 2017/18 closed disputes in an average 54 days, with 86% of complaints closing within 90 days.

10. OFS's performance against Terms of Reference

Review requirements

- b. Review on OFS' performance against the scheme's Terms of Reference (TOR), in particular:
 - o The requirement to resolve dispute in an efficient, timely and fair manner, whilst proceeding with minimum formality and technicality;
 - o OFS' processes to ensure consistency and high quality decision making in accordance with its obligation under the TOR to resolve a complaint on its merit, to do what in its opinion is fair and reasonable;
 - o OFS' achievements vis-a-vis its mandate.
- e. The efficiency of the pre-registration process of disputes received.
- f. Appropriateness of the process for low value and simple dispute.
- g. Review of capacity and competency of the OFS staff to handle disputes

OFS Independent Review Requirements

Documented procedures

- 98. OFS has well documented, good practice work processes that promote consistency in disputes handling. The Procedures Manual has detailed flow charts that set out how disputes are to be handled. There are work procedures that articulate the frontline enquiry and dispute registration process, the process for excluding or dismissing a dispute, the case management processes and so on.
- 99. This section of our report assesses the various stages of OFS's dispute resolution processes, other than the Ombudsman Adjudication stage that is reviewed earlier in our Report. We make recommendations for OFS as it moves beyond its establishment phase, including in relation to the case management system that supports the OFS's dispute resolution work.

Frontline registration process

100. When OFS receives a new complaint, the OFS undertakes a pre-registration check to see if the complaint is within jurisdiction and whether all required information has been provided. We have set out earlier in this Report our recommendations to make this frontline process easier for complainants and more timely.
101. In the case of complaints where the claimed amount is less than RM1,000 (such as loss of use of the complainant's vehicle, minor damage to the complainant's luggage or minor medical reimbursement claims), the OFS will seek to facilitate a pre-registration settlement between the parties. In 2018, there were 130 complaints that were successfully settled in this way. The advantage for the FSP is that the OFS does not charge the FSP for a complaint settled pre-registration. Under the current fees regime, we think that this is a practical approach. We set out later in this Report our recommendations for refinement of the current case fee structure.

Information gathering processes

102. Upon registration, the dispute is allocated to a Case Manager. Typically the investigation process includes the collection of relevant information from the FSP.
103. From interviews with OFS members and our review of OFS files, we became aware of reluctance by some members to provide full information to OFS – there was a view that procedures, reports, call recordings etc were the FSP's proprietary documents. In one reviewed file where telephone mis-selling was asserted, the member did not provide the OFS with call recordings but rather provided transcripts instead (and neither a call recording nor transcript for the call that was most pivotal). When we interviewed the complainant, he was critical of this and asked how he could be sure that the FSP's transcript was accurate.
104. We think that the OFS must insist on their members providing all relevant information and in the form that constitutes best evidence. The OFS has to right to do this under paragraph 21 of its Terms of Reference – this obliges the OFS's members to "provide or procure all data, document and information as may be relevant to the Dispute within 14 days . . . from the date of receiving [the OFS's] request".
105. The OFS needs to take rigorous action if a member fails to respond to an OFS information request on time without good reason. Our review of complaint files suggested that this does not always happen at the moment. The reviewed files included examples where the member failed to meet the OFS's information

requests by the due date. Whilst the OFS followed up with reminder letters and set new due dates, there were no real consequences for the member. This is notwithstanding that the OFS's Terms of Reference permit the OFS in these circumstances to proceed to decide the dispute, drawing a negative inference from the failure to meet the information request. In other jurisdictions, this is what happens.

106. The OFS should also report an FSP to Bank Negara Malaysia if the member repeatedly fails to meet information requests on time. This would be consistent with the Terms of Reference requirement that the OFS report to Bank Negara Malaysia where a member fails to comply with the terms of membership. We think that this is a necessary part of an effective framework for encouraging co-operation.
107. We are also concerned about the evident reluctance by many members to have the OFS share their information with the complainant. We saw in our file review, for example, instances of key documents only being shared with the complainant in the course of the mediation. As one complainant said to us, this did not give him a chance to read the document in full and to respond to it in a measured way. We think that this diminishes procedural fairness for complainants and is contrary to the practice of all other financial ombudsman schemes with which we have worked. In our view, Paragraph 33 of the OFS's Terms of Reference, which sets out the current approach, should be changed.

Recommendation 11

The OFS should strengthen its information collection procedures:

- a) Where the OFS makes an information request, it should always seek the information in the form that has most probity - eg a telephone call recording rather than a transcript.
- b) Where a member fails to meet an OFS information request on time without good reason, the OFS should exercise its right under the Terms of Reference to proceed to decide the dispute, drawing a negative inference from the FSP's failure to meet the information request.
- c) Where a member repeatedly fails to meet an OFS information request on time without good reason, the OFS should report this non-compliance to Bank Negara Malaysia.
- d) The OFS should consult with stakeholders including its members and Bank Negara Malaysia with a view to amending OFS's Terms of Reference to permit it to share the information provided by one party to a dispute with the other party to the dispute, on the basis that the information will be kept confidential and only used for the purposes of the OFS dispute resolution

process. This would pave the way for the OFS to share all relevant information with the parties and provide them with enough time to respond to this information (typically, schemes will allow 30 days for key reports or documents).

Processes for low value, simpler disputes

108. From our interviews and our review of files, it was evident that the OFS has a flexible case management process that accommodates different types of disputes. For banking disputes, a face-to-face mediation is often but not always held. For insurance disputes, mediations are not typically held, however the OFS may meet with the parties individually. These meetings can be a vehicle for early guidance by the Case Manager as to the merits of the dispute.
109. In the case of some commonly occurring, low value complaints such as ATM cash withdrawal complaints, the OFS has leveraged its prior experience to develop a complainant questionnaire as a way of gathering relevant information. Standardised questions are also put to the relevant bank. This standardised approach can mean that a mediation conference is not needed and can permit these types of complaints to be resolved in a streamlined and timely way.
110. We think that this is good practice. We encourage the OFS to progressively identify other types of commonly occurring, simpler disputes and develop standardised questions or processes for Case Managers to use to quickly elucidate the issues and to streamline the dispute resolution process.
111. We also encourage Case Managers to provide more often an early oral view (whether by telephone or in a meeting) as to the merits of a complaint where the factual and legal issues are reasonably clear, particularly in low value disputes. In our file review we saw that Case Managers sometimes do this and that this can lead to early resolution of the dispute (without the Case Manager preparing a written Recommendation). For example, the complainant may respond by deciding to withdraw the dispute or the parties may respond by agreeing to a settlement. Our file review suggested that there are more disputes that could be streamlined in this way.
112. Whilst we recommend this, we caution that the Case Manager guidance must be demonstrably fair. Over time, the OFS will be under more pressure to defend the fairness of outcomes at all stages of its dispute resolution process, including settlements, and any 'fast-tracked' processes. For this reason, it will be important

to have some supervisory oversight and good record keeping where a Case Manager provides an early oral view as to the merits of a dispute.

Recommendation 12

The OFS should seek to streamline its resolution of simpler complaints, particularly where the financial loss is small.

- a) The OFS should identify types of commonly occurring, simpler complaints and develop tools (eg. standardised questions) for its Case Managers to use to streamline the investigation of these complaints.
- b) Where the factual and legal issues are reasonably clear, particularly in low value disputes, Case Managers should provide an early oral view (whether by telephone or in a meeting) as to the merits of a complaint. The aim should be an informed decision by the parties as to whether to settle or continue with the dispute. To ensure that oral Case Manager views are soundly based and appropriate, the OFS should establish a supervisory process for these and maintain accurate record keeping of any view expressed.

113. When interviewing members, we received some feedback that they are uncomfortable that Case Managers sometimes ask them in a mediation, in front of the complainant, whether they are willing to provide an ex gratia payment. They felt that this placed unfair pressure upon them to offer a payment in circumstances where they had not been at fault.
114. We agree that this is not appropriate. If the OFS Case Manager wishes to suggest an ex gratia payment, this is better done separately with the FSP so as not to encourage a sense of entitlement by the complainant to a payment of this type. The OFS agrees and has told us that this is no longer Case Manager practice, something which we think it would be good to re-iterate in communication to members.

Recommendation 13

The OFS should communicate to members that it is OFS policy that if Case Managers wish to propose that an FSP make an ex gratia payment to a complainant, this conversation should be done separately with the FSP rather than in front of the complainant, for example, during a pre-mediation discussion.

Complainant non-response

115. As with all ombudsman schemes, if a complainant fails to engage with the dispute resolution process, the OFS will close the dispute file. In the 6 months to 30 June 2019, the OFS closed 37 disputes during the case management stage before the Case Manager provided their Recommendation.

Sector	No response from Complainant prior to Recommendation
Insurance	18
Takaful	17
Conventional banking	2
Islamic banking	0
Broking business	0
Financial advisory services	0
Payment System (Non-bank)	0
Total closed for non-response	37
Percentage of total disputes resolved (387)	9.5%

116. We think that this 9.5% drop out rate is a little too high. Note that this is in addition to disputes that are resolved on the basis that the complainant has withdrawn the dispute (typically because they have recognised that their dispute lacks merit). In the 6 months to 30 June 2019, a further 13 disputes were withdrawn by the complainant.

117. Our review of complaint files demonstrated that the OFS does not rush to close files on the basis of non-response by the complainant. Rather the OFS typically sends two reminder letters before the dispute file is closed. To provide the complainant with full chance to proceed with the complaint, we think that the OFS should also try to telephone the complainant and not just rely on written communications. Our experience from interviews of complainants across many ombudsman schemes is that there a proportion who will not properly read or not understand written communication and who will only respond to oral communication.

Recommendation 14

If a complainant fails to respond to a Case Manager's contact, the Case Manager should telephone the complainant by way of forewarning that failure to respond will result in the complaint being closed. This telephone contact should be in addition to the two reminder letters as per existing OFS practice.

118. The OFS and its Board should also be watchful of the trend in relation to complaint closure for complainant non-response (see Recommendation 17). This is an issue that has the potential to adversely affect the credibility of the scheme.

Case Manager Recommendation processes

119. If a dispute fails to resolve through settlement discussions, the Case Manager prepares a written assessment of the dispute with a recommendation as to how it should resolve (a Recommendation). The parties have 30 days to decide whether to accept the Recommendation. If either wishes to do so, the dispute may be referred to the Ombudsman for a binding decision.
120. We reviewed 15 complaint files where the Case Manager prepared a Recommendation. As mentioned earlier in this Report, in 10 of these complaints, there were significant Case Manager delays. In 5 Recommendations, we thought that either the quality of analysis or written expression needed improvement. In a couple of Recommendations, there were important errors that appeared to be typographical.
121. The OFS recognises that its capability in this area is still developing. To enhance quality, it has introduced a peer review process for Recommendations. We support this attempt to improve quality and we are conscious that peer review is being adopted in many ombudsman schemes around the world. Nevertheless, we have

some doubts about whether a peer review approach is necessarily the best fit. We have found in other settings that peer review requires a particularly robust and strongly egalitarian culture to be effective. It can take a considerable period of time for staff to overcome discomfort when reviewing the work of their peers – especially if they view them as more senior. Moreover, when people are busy, there can be a tendency not to give sufficient time to the peer review task.

122. We think that it would be preferable for the review task to be undertaken by a Senior Case Manager with demonstrably high order skills. (Whilst the OFS has 2 Senior Case Managers with insurance expertise, it does not currently have Senior Case Managers with banking expertise.) We suspect that this would be an easier fit within the office dynamics and if made part of their Senior Case Managers’ duties, would be more certain of getting the necessary attention. To have high order Senior Case Manager capability would also help with Ombudsman succession planning.

Recommendation 15

The OFS’s organisational structure should include two Senior Case Managers with high order skills in deciding disputes and writing decisions. Their responsibilities should include assisting and developing other Case Managers, including by undertaking a review of their Recommendations prior to finalisation.

123. Where a Case Manager finds against a complainant in a Recommendation, the complainant will sometimes be persuaded by the Case Manager’s reasoning and will accept the Recommendation. There are, however, large numbers of disputes where the complainant is evidently dissatisfied with the Recommendation (either actively rejects the Recommendation or much more commonly fails to respond to the Recommendation), but nevertheless does not elect to ask for an Ombudsman decision as the following table shows.

Recommendations made in 6 months to 30 June 2019			
Sector	Recommendation accepted	Recommendation rejected by the complainant but not referred to Ombudsman	No response from complainant to Recommendation
Insurance	6	2	65

Takaful	2	0	16
Conventional banking	9	4	13
Islamic banking	1	0	0
Broking business	0	0	0
Financial advisory services	0	0	0
Payment System (Non-bank)	0	0	0
Total	18	6	94

124. We think that this has the potential to adversely affect the credibility of the scheme. It may in part be a weariness with the dispute process. The case management delays discussed earlier in our Report may be contributing to this occurrence – and improvements in these may assist with complainant engagement.
125. At least in one interview, a complainant told us that he did not proceed with his complaint because he did not realise that he could have asked for an Ombudsman adjudication. Our review of his file showed that this information was provided to him in the Recommendation, but not as prominently and clearly as we would expect.
126. We think that the covering letter accompanying the Recommendation should set out this important information for complainants (our review of closed files found that sometimes this happened, but not always). For the reasons addressed in paragraph 117, the information should also be orally reinforced. If the OFS does not get a response from the complainant within 30 days as to whether they accept or reject the Recommendation, the OFS should phone the complainant to check what they would like to do. We understand from the OFS that this improved practice has been recently implemented.
127. Again we think that this is an issue that has the potential to adversely affect the credibility of the scheme and so the OFS and its Board should be watchful of trends.

Recommendation 16

When sending a Recommendation to a complainant, the OFS's covering letter should clearly state that if the complainant is not satisfied by the Recommendation, the complainant has a right to ask the Ombudsman to decide

the complaint. As per recently instituted practice, if the OFS does not receive a response from the complainant, the OFS should telephone the complainant and ensure that they understand that an Ombudsman decision would involve a fresh look at the complaint.

Recommendation 17

The OFS and its Board should monitor complainant drop-out trends both pre-Recommendation occurrence and post Recommendation (rejection or non-response to the Recommendation without a request for escalation to an Ombudsman). The aim should be to see these reduce over time.

IT infrastructure

128. Information technology is an area that requires substantial investment for ombudsman schemes. OFS is part way through a process of modernising its IT infrastructure (Strategic Focus 1 in its 2019 Business Plan).
129. Office automation (use of word processing, spreadsheet tools, presentation software, printing, etc) is of a sound, modern standard, using Microsoft Office 365 software licensing. As for most modern office environments, the challenge is to lift staff skills in using these office automation tools as productively as possible. Training is provided through a mix of in-house (for example, IT staff with the assistance of HR staff, organise a special 'knowledge day' to spread good practice in the office) and some use of external sources.
130. The office is in the process of converting a mix of laptops and desktops to a standard-build fleet of desktops for security and maintenance reasons.
131. The office has also maintained its own web and email hosting and security systems for some years. It has now begun to move towards externally hosted capability – with the priority being an externally sourced project to provide a member and complainant portal with access to the appropriate parts of the case records. We expect this to significantly enhance service to external users of OFS dispute resolution.
132. We were advised that the somewhat older building that houses the OFS premises does not fully support modern IT infrastructure – something to be taken into account when weighing up whether a building move is sensible.

133. The core case management systems are less well developed than systems in most other ombudsman schemes, relying on a system developed in-house by IT staff commencing in 2012. This has been a very impressive achievement, however we consider that the OFS has reached a stage where inhouse development can no longer keep up with the pressure to continuously develop and enhance the system.
134. In particular, the current system requires two databases, one for the 'front of house' acceptance of complaints, document collection and complainant records and a separate database for the 'back of house' complaint-handling by Case Managers and Ombudsmen. This creates some double-handling and the potential for inconsistencies in the data. The office is now in the process of specifying the requirements for a replacement integrated case management system – which we think will add significantly to OFS effectiveness, customer service and efficiency.
135. We strongly support the directions being taken by the OFS. While it is tempting to recommend an acceleration of the IT capacity building underway, we are acutely aware that there are limits to a small organisation's ability to absorb change. As described to us, we think the proposed rate of change is appropriate, but we would not like to see any diminished commitment or delay to this critical improvement.

Recommendation 18

The OFS should continue its direction in Information Technology development, in particular:

- a) Investing in improving staff skills in using modern office automation;
- b) Moving to externally hosted capability for internet services such as the website, mail and customer portals; and
- c) Investing in a replacement, modern and integrated case management system.

Efficiency of dispute resolution process

136. Part of our remit for this Review has been to examine the cost efficiency (we discuss timeliness under Section 9 Effectiveness) of OFS's dispute resolution. This task is less straightforward than it may initially seem, with many variables affecting the apparent efficiency. We have first examined OFS' efficiency from the point of view of our first-hand observations of the focus and methods applied to being cost-efficient – and from the perspective of whether cost-efficiency has been improving. Second, we examine comparisons with other ombudsman schemes.

137. Typically, schemes measure overall cost-efficiency by determining an average cost to close a dispute. If this is calculated on the basis of all operational costs, then will be subject to considerable change depending upon what projects the office has underway – eg. a change of premises, a new office fitout, the timing of a major information technology investment, a new case management system, efforts at building consumer awareness etc.
138. Even where an attempt is made to separate one-off costs from operational complaints-related costs, often staff time is not broken down into areas of effort. This can also distort the apparent picture. We find that small scale schemes are at a particular disadvantage in this. The staff time spent on non-complaints work (management, administration, representation, awareness, stakeholder engagement, etc) is typically a much smaller proportion of the costs in a larger scheme than in smaller schemes.
139. It is particularly difficult to quantitatively compare and assess the cost efficiency of one scheme's dispute resolution to another. There are a great number of variables that can affect the publicly reported number of complaints, including how enquiries and disputes are defined. Information about costs is typically not available at a granular level – as is normal in smaller organisations – and as the table below for OFS costs illustrates. Even if cost data is available, comparisons can be quite misleading if the industries involved are not the same – as the dynamics of resolving complaints from distinct sectors can be quite different. Often there are no other schemes to compare except internationally and then there can be significant differences in the overall legal and regulatory framework – which can radically change how efficient an ombudsman scheme can appear to be.
140. Another key factor in any cost-efficiency comparisons is the number of FSP members. For example, the New Zealand Insurance and Financial Services Ombudsman has total annual costs quite similar to OFS, but has almost 5,000 FSP members compared with around 200 for OFS. This has a significant impact on the apparent efficiency expressed as cost per complaint.
141. Finally, local salary levels and the scale (and therefore economies of scale) of the scheme can also make comparisons invalid.

OFS focus on cost-efficiency

142. From our observation, the OFS operates with an appropriate level of cost-consciousness. Salaries are not excessive in the context of the Malaysian financial sector. The organisation's premises are of a modest, acceptable standard. Office equipment and fitout is functional and meets the organisation's needs. From our

reviews of procedures and briefings from staff, we were satisfied that there is a focus on managing to budget and on handling complaints without wasting effort or resources.

143. There are some limitations in the Information Technology available to the OFS, in particular the integration of the case management system and the absence of an efficient electronic gateway to interface with complainants and FSPs that are limiting the potential cost-efficiency of complaint-handling. These are recognised by the OFS and strategies are in place to address them as discussed further elsewhere in this report.

Cost-efficiency trend

144. On the face of the bottom line figures in the table below, the OFS cost per dispute increased by some 57% in 2018. We know that part of the difference is the effort put into building public awareness through a publicity campaign. The bottom line in the table below attempts to corrects for that and shows an underlying change of under 40%. As other budget figures have hardly changed, the cause of the increase must be primarily related to the apparent reduction in the number of complaints closed.

OFS	2017	2018
No. of closed disputes	1,237	863
Full Time Equivalent staff	40	41
Staff costs	RM 4.35m	RM 4.43m
Other operating expenses excluding publicity and communication	RM 1.65m	RM 1.67m
Publicity and communication	RM 0.08m	RM 0.56m
Total Cost	RM 6.08m	RM 6.66m
Cost (all expenses) per dispute	RM 4,915	RM 7,717
Cost per dispute excl P & C and allowing 5% staff time to awareness campaigns		RM 6,811 (estimate)

145. From our investigation, there are a number of factors that have contributed to the increase in per complaint costs for OFS between 2017 and 2018. These include:
- a. The OFS has focused considerable effort on consumer awareness in 2018. A part of this effort has been funded by the special allocation approved by the Board (and separately identified in the table above). Of course this effort requires support from staff and would have had some impact on the time staff could spend on complaints-handling. In our estimates in the table above, we have made some guesses about that impact.
 - b. The OFS has also invested during 2018 in capability building which has included staff development and training and development of Standard Operating Procedures to ensure efficiency and consistency. Again, we see this as entirely sensible although it has doubtless had a temporary impact on efficiency.
 - c. Our assessment however is that the introduction of case fees has had the greatest influence on the cost-per-complaint figure. Members told us that because of the case fee, they were more likely to resolve complaints or to settle them to avoid incurring the case fee. Their experience and that of OFS staff is that this has resulted in a more complex or difficult mix of complaints going forward to OFS – (the quickest complaints are no longer part of the mix) which has slowed the average speed of resolution.
 - d. Another consequence of the change is that OFS staff have been more particular about ensuring that incoming complaints are complete with all necessary information provided and that members have provided a final letter where needed. We understand that this is primarily to make sure that members do not incur an unwarranted case fee – and also to ensure that OFS can meet the KPI of 6 months to resolve complaints. Our assessment is that this has created more work that is not reflected within the accepted (registered) complaints numbers.
 - e. Our assessment is that OFS have in fact improved their efficiency in a number of ways within the complaints-handling process, for which we commend the management and staff. This has included strengthened Board scrutiny, improved tracking reporting, supervision, process refinements and use of office IT. Understandably, there is some way to go before the OFS has achieved the consistent level of cost-efficiency that long-established ombudsman schemes can expect. We expect that this could take a few more years.

- f. A few of the factors that we see as necessary for OFS to achieve its potential long-term cost-efficiency include:
- i) A greater community awareness of the availability and role of OFS
 - ii) A financial sector more accustomed to working with an Ombudsman
 - iii) Continuing effort at capability building at OFS – including strengthening the ranks of Senior Case Managers
 - iv) Implementation of a modern, integrated case management system
 - v) Implementation of a fully functioning member and complainant portal
 - vi) A levy/case fee funding model that has been refined to encourage efficient responses from FSPs

OFS have strategies in place to work on all of these key elements, and we have made recommendations for further action on some of these fronts, and we fully expect that this will begin to pay off in efficiencies in the coming years.

Comparisons

146. We undertook some comparison between OFS and Singapore and Taiwan – the only Asian countries with financial ombudsman schemes that are members of the International Network of Financial Ombudsman Schemes and that publish financial statements.

Singapore Financial Industry Disputes Resolution Centre Ltd

	2018
No. of closed disputes	1,251 including 260 resolved through adjudication
FTE	unknown
Staff costs incl Adjudicator fees	2,088,530
Total expenditure	3,540,475
Cost per dispute	2,830 Singapore dollars = RM8,596 at today's exchange rate

Taiwan Financial Ombudsman Institution*

	2017
No. of closed disputes	9,226 representing 4,374 disputes, 1,797 Ombudsman cases, 55 other cases
FTE	64FTE excluding 18 person Ombudsman Committee
Operating expenses	130,708,793 New Taiwan Dollars
Cost per dispute	14,167 New Taiwan Dollars = RM1,916 at today's exchange rate

* 2018 Annual Report not yet published

147. As the tables show, the uncorrected OFS cost-per-complaint figure is lower than that for Singapore (by around 10%) and nearly four times the rate for Taiwan. For another example, we also looked at the New Zealand Insurance and Financial Services Ombudsman which has an annual budget similar to the OFS – and on the face of its public reporting has a cost per dispute ratio some 2.5 times greater than OFS.
148. As discussed at the beginning of this section above and as the tables above bear out, to internationally benchmark cost-efficiency is very difficult and potentially very misleading. Without a very detailed of the regulatory framework, the nature of the complaints, the conventions for defining complaints and measurement of the processes and an understanding of the level of consumer education and the culture around making complaints within each country, it is impossible to draw reliable conclusions.
149. Our conclusions are that the OFS is sound in its cost-efficiency, has been addressing ways to improve and has committed to improve this over time through attention to the right things.

11. OFS Terms of Reference

150. Like other ombudsman schemes, the OFS's Terms of Reference set out categories of complaints that provide for the exclusion of complaints.
151. Some exclusion categories are mandatory and others are discretionary. For example, OFS has a discretion to exclude a dispute if it considers the dispute to be frivolous, vexatious or lacking in substance. In fact, in 2018, OFS did not exclude any disputes on this basis. We agree with OFS that this exclusion category should be used very sparingly particularly pre-registration. This is because typically some investigative steps are necessary before a view can be credibly reached that the dispute falls within this category.
152. The following table sets out the categories of exclusion relied upon by OFS for complaints lodged in 2018.

Clause	Details	Number
13(1)	Exceed monetary limit	24
13(2)	Underwriting	21
	Restructure loan	7
	Pricing	24
	Product Feature	6
	NCD	13
	Reschedule	4
	Reinstatement of Policy	9
	Waiver of interest	20
13(3)	Credit decision	8
	Actuarial	8
	Not guaranteed policy	2
	Paid up policy value	2
	Surrender value	1
13(4)	Agency matters	5
13(5)	Court	14
13(6)	Exceed timeframe	27
13(7)	Time barred	16

13(8)	Existing case	3
13(9)	Capital market	4
13(12)	TP bodily injury	3
13(13)	Policy monies	5
10	Indirect financial loss	13
11	Non-members	59
9	Non-eligible complainant	18
14	Fraud	1
	No coverage	2
	General/ service related issues - no financial loss	741
Total		1,060
Percentage of total lodged complaints (2,602)		40.7%

153. The percentage of disputes ruled outside jurisdiction is higher than we have found for financial ombudsman schemes in other jurisdictions. We recognise, however, that these statistics are hard to compare because approaches differ. For example, other ombudsman schemes do not necessarily include non-member disputes in equivalent statistics. Notwithstanding the difficulty in comparing schemes, we think that the high volumes of excluded disputes have the capacity to undermine the credibility of an ombudsman scheme and is something that the OFS Board has been alert to and should continue to watch carefully.

Recommendation 19

OFS management and its Board should regularly assess whether the OFS's jurisdiction gives the scheme sufficient reach and whether exclusion categories are being appropriately applied.

154. We are concerned that 27 complaints lodged in 2018 were ruled outside jurisdiction on the basis that the complaint was not referred to OFS within the Terms of Reference timeframe of 6 months from the FSP final decision. The Terms of Reference entitle the OFS to consider a dispute that is outside the 6 month timeframe if there are exceptional circumstances or if the FSP agrees to the OFS handling the complaint. The OFS has told us that they ask a complainant who is out of time the reason for their delay and will exercise their discretion to allow in a

complaint if, for example, the complainant has been seriously unwell. But for these 27 complaints, the OFS neither found exceptional circumstances nor obtained the financial services provider’s agreement to the OFS handling the complaint. This is notwithstanding that a number of these complaints were only just outside the Terms of Reference timeframe, as the next table demonstrates.

Timeframe exceeded by:	Number of complaints excluded in 2018 as outside timeframe
Less than 1 month	6
1 to 2 months	5
2 to 6 months	3
More than 6 months	13
Total	27

155. A six month time limit for consumers to access OFS is a tighter timeframe than we have seen in other financial ombudsman schemes. We question whether 6 months is long enough, particularly as the financial loss being complained about is often associated with traumatic physical or emotional experience such as an accident, serious injury or illness, fraud, a business dispute, theft, etc and in particular for a complainant who is not financially sophisticated.
156. We recognise that all but four of the OFS member submissions to our Review were opposed to increasing the period available to complainants to apply to the OFS (and a couple actually recommended that the period should be shortened). We are also conscious that members will often agree if OFS requests them to allow acceptance of a dispute that is beyond the 6 month limit. Nevertheless, in the interests of enhancing accessibility, and to align with international good practice, we recommend that the Terms of Reference are amended to provide complainants with 12 months to bring their dispute to OFS.

Recommendation 20

OFS should consult with stakeholders including its members and Bank Negara Malaysia with a view to amending OFS’s Terms of Reference to give complainants 12 months, from the date of their financial services provider’s final resolution letter, to apply to OFS to resolve the dispute.

Monetary limit

157. OFS is only able to consider a dispute if the amount claimed is not more than RM250,000 (or RM10,000 in the case of motor/ takaful third party property damage or RM25,000 in the case of unauthorised transactions through designated payment instruments).
158. In 2018 calendar year, 31 complaints were received by OFS that were above the monetary limit. The OFS's standard practice in these circumstances is to ask the member to agree to the OFS handling the complaint. In 23 of these complaints, the member refused to agree and so the OFS had to exclude the complaint. By agreement with the member, the other 8 complaints were resolved by the OFS. The following table demonstrates the information we were able to obtain from OFS about 19 of these complaints.

Complaints received by OFS in 2018 above the monetary threshold and handled by the OFS with the member's agreement		
OFS Monetary Limit	Disputed amount	Product
RM25,000	26,400.00	Electronic payment instrument
	29,455.10	Electronic payment instrument
	391,176.56	Electronic payment instrument
RM250,000	253,527.53	General insurance
	330,078.00	Life insurance
	553,530.40	Life insurance
	659,707.00	Takaful family
	296,887.50	Life insurance
Complaints received by the OFS in 2018 above the monetary threshold and where the member refused to consent to OFS handling the complaint		
10,000.00	14,688.00	Third Party Property Damage
	22,966.55	Third Party Property Damage
	25,575.90	Third Party Property Damage
25,000.00	29,000.00	Internet Banking

	29,501.00	Internet Banking
	35,000.00	Internet Banking
	43,999.00	Internet Banking
	53,693.50	Credit Card
	55,142.83	Credit Card
250,000.00	290,000.00	Motor Own Damage
	487,139.00	Life insurance

159. Where a member receives a complaint that is above the monetary jurisdiction of OFS and the complainant is not satisfied with the member's response, we understand that the member will typically refer the complainant to Bank Negara Malaysia. We have been advised by Bank Negara Malaysia that in the period from January 2017 to 30 June 2019, it received about 73 complaints which exceeded OFS's monetary limit.
160. Of course, the statistics of the OFS and of Bank Negara Malaysia inevitably do not capture all complaints that involve an amount in excess of the OFS's monetary threshold. Whilst most OFS member submissions to our Review gave their experience that the monetary threshold is generally adequate, one life insurer estimated to us that 10% to 20% of their complaints involved an amount in excess of OFS's monetary threshold.
161. The following table compares OFS's monetary threshold with that of other ombudsman scheme Asia-Pacific members of the International Network of Financial Services Ombudsman Schemes.

Ombudsman scheme	Monetary threshold
Australian Financial Complaints Authority	Generally AUD\$500,000 (RM1,420,480)
Insurance & Financial Services Ombudsman Scheme	NZ\$200,000 (RM539,782) for a lump sum payment NZ\$1500 (RM4,048) per week for a regular payment product
Pakistan Banking Mohtasib (Ombudsman)	No ceiling on the amount that it may award a complainant
Singapore Financial Industry Disputes Resolution Centre Ltd	S\$100,000 (RM304,000)

Taiwan Financial Ombudsman Institution	T\$1,000,000 (RM136,470) for investment type products T\$100,000 (RM13,647) for non-investment type products
--	---

162. Taking into account available information about instances where the monetary limit is inadequate and comparative ombudsman scheme information, we think that the OFS’s monetary threshold is on the low side at least for some products within OFS’s jurisdiction. Whilst a couple of OFS members suggested to us that there should be additional monetary limit product differentiation, we are inclined to think that this adds unnecessarily to complexity. Rather we recommend that as a first step the general monetary limit should be increased to RM300,000. Every 3 years thereafter, the OFS in consultation with OFS stakeholders should review the monetary limit and consider whether further increases would be appropriate in order to provide a good practice service for complainants.
163. For unauthorised designated payment system transactions, we are not persuaded that there is a compelling reason for the much lower monetary threshold of RM25,000 that currently applies. If there are lapses or oversights by the FSP (systems or process problems) that contribute to the complainant’s loss, it seems to us that the customer should be able to recover the appropriate proportion of their losses, without recovery being capped at RM25,000.
164. For motor vehicle third party property damage complaints, we think that it is appropriate (and consistent with practice of other financial ombudsman schemes) to have quite a modest monetary threshold. We make no recommendation for an immediate increase but again recommend that the OFS in consultation with stakeholders review this limit in 3 years’ time.

Recommendation 21

- a) The OFS should consult with its stakeholders including Bank Negara Malaysia with a view to increasing its RM250,000 monetary threshold to RM300,000 and dispensing with the lower limit that currently applies to disputes about unauthorised payment system transactions.
- b) In consultation with its stakeholders including Bank Negara Malaysia, the OFS should review its monetary thresholds every 3 years with a view to ensuring that the thresholds meet good ombudsman service practice.

Awards

165. Paragraph 41 of the OFS's Terms of Reference enables the OFS to award compensation for direct loss. The OFS can also require a member to pay a complainant's costs in relation to a dispute (limit of RM1,000) and to pay late payment charges if the FSP fails to pay a monetary award to a complainant within 14 days.
166. Where an Ombudsman awards compensation to the complainant, our understanding is that in practice the OFS does not award interest from the date of the complainant's loss (in the case of an insurance claim, the date of the loss is the date it became unreasonable for the insurer to refuse to pay the claim and not the date of the event giving rise to the claim). We think that the time value of money is part of a complainant's direct loss and so the OFS's Terms of Reference give the OFS power to make an interest award. Other financial ombudsman schemes with which we have worked provide this type of compensation to complainants in order to put them back into the position they would have been in, but for the FSP's failure. We think that the OFS should change its practice to do this also. If the OFS considers that there is reasonable doubt as to whether its Terms of Reference permit this, the OFS should take steps to amend its Terms of Reference to explicitly permit this.
167. There is also the issue of non-financial loss. The OFS's Terms of Reference do not permit the OFS to compensate for this. Typically schemes that belong to the International Network of Financial Services Ombudsman Schemes have the ability to do this, albeit a modest sum, and only where there is an unusual degree of inconvenience or distress. Our experience is that this is applied quite infrequently.
168. In our Issues Paper, we sought views as to whether the OFS should be able to compensate for non-financial loss. Two submissions by FSPs supported this. Overwhelmingly there was opposition from FSPs, with much concern that this would be too subjective and prone to abuse.
169. We understand those concerns and think that this would be an area where detailed OFS guidance and examples would be necessary to create certainty for stakeholders as to when and how the OFS would exercise this power, along with a modest cap on any award. If this happens, we think that the concern about subjectivity is mitigated. We think that the OFS should take steps to amend its Terms of Reference to provide an appropriately constrained power to compensate for non-financial loss.

Recommendation 22

- a) The OFS should generally award interest from the date of financial loss as part of a monetary award (and should consult with its stakeholders including Bank Negara Malaysia with a view to amending its Terms of Reference to explicitly permit this if the OFS considers this necessary).
- b) The OFS should consult with its stakeholders including Bank Negara Malaysia with a view to amending its Terms of Reference to permit it to provide modest compensation (limited to RM1,000) where the complainant has incurred an unusual degree of inconvenience or distress.

12. Funding structure

170. OFS is entirely funded by its members². The membership is diverse, with about half (100 or so) being FSPs licensed by Bank Negara Malaysia. This category includes commercial banks, Islamic banks, development banks, life insurance companies, general insurance companies and takaful operators.
171. The other half of the membership (a little over 100) is made up of approved designated (non-bank) payment issuers. This category includes e-money issuers, credit and charge card issuers, insurance and takaful brokers, financial advisers and Islamic financial advisers.
172. Around 80% of OFS funding comes from levies on licensed members (approved members are not charged a levy). Each licensee incurs the same levy regardless of size or numbers of OFS complaints. The levy is variable and is calculated by OFS based on the budget that has been approved by the Board. In 2018, the levy was RM66,000 (paid in 2 instalments).
173. The other 20% of OFS's funding is made up of case fees paid by members per complaint. This is a new development, applying only since late 2017. We understand that the intention of the fee was to introduce a user-pays element to the funding and to provide an incentive for members to make every effort to resolve complaints themselves where possible.
174. Licensed members pay a flat amount of RM1,500 per complaint which is charged at the point of registration of the complaint. For approved members, the fee is RM100, unless the complaint proceeds to adjudication in which case the fee is RM500. In 2018, there were only 2 approved businesses that had OFS complaints (10 complaints in total of which 9 were resolved at the case management stage and so were billed at the rate of RM100).
175. It is important to note that a significant proportion of members have had no complaints at all with OFS and only 39 members have had more than 5 complaints (see below).

No. of members	No. of registered complaints
134	0 complaints

² Note that at the moment, the exception is that the CEO of OFS is seconded from Bank Negara Malaysia who have continued to cover her salary. This arrangement is expected to end in early 2020.

30	1 to 5 complaints
15	6 to 10 complaints
11	11 to 20 complaints
6	21 to 30 complaints
3	31 to 40 complaints
2	41 to 50 complaints
1	51+ complaints

Issues raised by stakeholders

176. It was clear from our consultation with OFS members and the written submissions that many are unhappy about aspects of the current funding structure. Issues raised with us included:

- a. Some licensed members felt it was unfair that the OFS does not charge approved members a levy
- b. Some licensed members felt that it was unfair that small members paid the same rate as very large members
- c. Some licensed members considered that the single size levy is unfair for members that do not use the OFS, for example, for a licensed member that only has corporate clients and so will never have complaints within OFS's jurisdiction
- d. Some felt that there was no reward within the levy structure for FSPs that managed their customer service and any complaints well – and no penalty within the levy for those with large numbers of complaints
- e. Approved members thought it was appropriate that they did not pay a levy, given that (with a couple of exceptions) they do not have complaints going to the OFS
- f. The case fee for licensed members of RM1500 was seen as particularly unfair if the amount in dispute was lower than the fee of RM1500 – driving the member to settle the matter for commercial reasons rather than on its merits
- g. Many members felt that applying any case fee (irrespective of amount) was unfair where the OFS upheld the member's decision and found against the complainant

- h. The case fee is also seen as unfair because it applies irrespective of the complexity or amount of work involved in a matter
177. Members told us that their behaviour has changed since the case fee came into effect and that they take the fee into account in deciding whether to come to terms with customers with a complaint. OFS's statistics support that this is happening. In 2017, 49% of complaints involved less than RM5,000, whereas after the introduction of case fees, only 24% of complaints involved less than RM5,000.

Design considerations

178. Designing funding models for industry-funded ombudsman schemes is no simple task. Typically, there will be a range of objectives, some will be subjective (eg. fairness) and many of them will be in conflict with each other. For example, the objectives of simplicity and ease of collection will often be at odds with the objectives of user-pays and fairness to all.
179. There are practical considerations for the ombudsman scheme beyond simplicity and ease of collection. The scheme must have some predictability and security of income. A sudden spike in workload may require taking on additional staff – well before the revenue from case fees or increased levies can fund this. The reverse is more problematic. A scheme may not be able to quickly reduce its workforce in response to sudden drop in the number of cases. Maintaining some funding reserves can be a sensible strategy, but members will not want to see large sums being held over long periods.
180. Ombudsman schemes are not generally capital-intensive, most of the costs being rent and staff, however periodic spikes in costs can occur, perhaps 5 yearly or 10 yearly, for example, when new computer systems, new premises or a premises re-fitting is required. It can be unfair and unpopular to try and fund these additional costs from members within a single year, so schemes need to be able to spread these costs over a longer period, typically from accumulated reserves but this can also be by borrowing or entering into leasing or other financing arrangements.
181. Inevitably, schemes must find a point of balance of competing objectives that provides them with secure, adequate funding, that has some in-built flexibility to adapt to changing costs, that is fair to the circumstances of different members, that provides the right incentives for members to provide good practice internal customer service and complaints-handling, that reasonably reflects the costs incurred by the scheme in handling its work, is perceived to be reasonably fair by members as between each other and also fair in the relationship with the scheme – and minimising 'pain points' that cause unnecessary aggravation.

182. All of these objectives must be met while remembering that the funding of the scheme is a zero-sum exercise. The costs of the scheme must be met somehow, so reduction in one part of the funding model (say, to address an issue of fairness) must be made up somewhere else in the system. Our experience is that members may find the 'cure' more unpleasant than the original problem.
183. The most successful schemes we have seen have sought a balance that avoids too much complexity – and have progressively evolved their funding models, also avoiding too much change at one time. We recommend this approach for OFS. Our recommendations below set out some general objectives and suggest a few initial steps in those directions.

Priorities for OFS Funding Model

184. From the strength of feeling expressed by members, it is important that the OFS is seen to be listening and that some of the member concerns be addressed at the next practical opportunity. Overall, members showed a very positive attitude to the OFS and this opportunity to show that the OFS is listening should not be wasted.

Fairness and the levy contribution

185. It has become generally recognised across ombudsman schemes that members obtain some benefit from their membership even if they do not have complaints. They are able to advise their customers of their membership, reference that protection in their marketing and sales, gain the benefit from an improved reputation for their sector and gain some benefit from the spread of good practice by the ombudsman scheme. We think that it is a useful principle that all members of the scheme should contribute something, even if it is a small amount. We suggest RM500 as a minimum annual contribution – see below.
186. Another dimension of fairness complained about is the application of levies to different sized members. In very large multi-sector ombudsman schemes we have seen differential levy contributions for different sectors and within those sectors from different sized members. While within a sector, we find that dividing members into bands is usually achievable, it is far more difficult to do this as between sectors. In schemes with thousands of members this degree of complexity is often unavoidable but it can create as many tensions as it reduces. We do not see that the effort is warranted in a scheme of the scale of the OFS.

187. A final matter raised with us, which we have some sympathy for, is the situation where a licensed FSP is required to be an OFS member, but their business model (eg. exclusively corporate clients) means that they will never access the OFS services. It is difficult to create a set of rules that will anticipate every situation and in our experience, rules that rely on the FSP's own declaration for exemption will rarely be accepted by a regulator. In some regulatory environments, the regulator has the power to issue exemptions – either to an individual firm or to a class of firms. As we understand it, this avenue would be a matter for Bank Negara Malaysia rather than the OFS but the OFS could recommend it if it supported the idea. (Of course, every FSP that gains an exemption from financially contributing, results in a higher burden on other members.)
188. It would be possible to have a rule that reduced or exempted a member from the annual levy if (say) they had no complaints for two years. But we would be concerned by any system that introduced additional incentives for members to keep complaints away from the OFS.
189. Another way we have seen this dealt with is by having a composite levy – partly a flat amount incurred by every member and partly an amount that is calculated on the number of complaints received from that member in the previous year by the scheme. This would not produce a zero levy result for members in this situation but can be designed to provide some relief. That said, we think this option is likely to over-complicate the first year of implementation of a new fees regime and we are not recommending it as an immediate change.

Fairness and user-pays

190. The user-pays principle that aims to target the cost of running OFS to the heaviest users usually has significant emotional appeal, but introduces significant practical and political problems. The most straightforward way to apply the user-pays principle is to have a significant part of the budget (in some schemes this can be over 90%) recovered from case fees rather than levies. Unfortunately by forcing case fees up, this magnifies the aggravation experienced by members. If OFS were (say) to reverse its current balance of case fees to levies such that 80% of costs is recovered from case fees, under the current structure, the much maligned case fee of RM 1500 would need to go up to something like RM 6000. This would mean that a huge number of the current complaints cases would become completely uneconomic for FSPs to resolve at OFS irrespective of their merits. Although there would be an offsetting reduction in the annual levy, our experience is that this does not offset the emotional resentment that comes from case fees. We think that would create unmanageable friction between members and OFS and any increase in user-pays should be kept to a minimum.

191. One common fairness concern raised with us was a resentment amongst members that they still had to pay a case fee even when the OFS found in their favour. This arises from a misconception of the purpose of the case fee that we have found amongst scheme members in almost every scheme that we have worked with. First, the case fee can legitimately be seen as a cost-recovery measure or an economic pricing mechanism – but it is not a reward or punishment for being right or wrong. Second, the reason that complainants do not pay a fee (in almost every financial ombudsman scheme in the world) is to provide unrestricted access to consumers and to reflect the great imbalance in knowledge and resources between the financial services provider and the consumer. An understanding of these principles can only be achieved over time through continuing education of members by the scheme.

Scale of case fees

192. In general, a better way to manage relations with members while applying user-pays case fees is to introduce a scale of fees. While some members will still resent the case fees at times, our experience is that the aggravation is much reduced when the fees seem more proportional to the seriousness of the matter and the amount of work required of the OFS. While some schemes have an extensive range of case fees for different types of disputes and for different stages in the dispute-handling process, we would recommend a simpler scale for OFS to begin with, which can be refined based on experience over the next few years.
193. A revised case fee scale would, we think, strike the right balance with three stages of escalation at its initial implementation:
- a. A small initial registration fee of around RM350 should be applied for initial acceptance of the complaint. This will allow for quicker acceptance of complaints with much lower levels of aggravation from members. We would expect that more complaints will be accepted at this stage. It will also allow the OFS to perform initial screening work before applying a more significant case fee. We expect that a number of complaints will be withdrawn or settled at this early stage.
 - b. A case management fee should be applied for negotiation, a mediation or preparing a Recommendation. We suggest a fee of around RM 900. The fee should be in addition to the initial registration fee. The expectation is that the cumulative fee for these cases would in total be a little lower than the current one level case fee of RM 1500.

- c. A third stage fee for an Ombudsman's Adjudication of around RM1650. The fee should be in addition to the initial two fees. This should be a significant step up to reflect the seniority of the Ombudsman and the seriousness of a complaint that has progressed this far. The total amount charged will be a significant increase from the current one level case fee but apply to far fewer complaints.
- d. Our recommendation is to leave case fees for the approved members untouched at this stage, but to make it clear that, subject to experience with the new model for licensed members, OFS would intend to move to a three-level case fee model for approved members in the future with the level to be set in consultation with members.
- e. When OFS moves to trial a fast-tracked complaints process for matters considered to be open to quick resolution, an important decision will be to price the case fees at an advantage by comparison with the standard scale. We envisage that the initial registration fee would apply as usual, but the subsequent case fee would need to be less than the RM 900 suggested above.

Package of changes

- 194. To reiterate the point, the OFS funding is a zero-sum model – any change must be offset somewhere else in the model and it is important that any proposed changes are presented as a package.
- 195. Note that the figures suggested above are based on estimates of projected volumes at each stage of the complaint-handling process. On our assumptions (shown in table below), they produce close to the same overall revenue as the current system, although individual members would find some change to their costs – up and down. For example, we have assumed that the lower registration fee along with some changes to process will result in about 20% more disputes accepted at this stage. We have also assumed that some of the 39% of disputes that currently settle will settle in the first stage and some in the Case Manager stage. Our assumptions will need to be tested and validated by the OFS. To firm up these estimates, some time will be required of OFS to apply its own assumptions and projections and adjust the proposed fees to produce the intended revenue outcome.

2018 Actual				
Funding sources	Collected			
Licensed FSP case fees @ RM1500	1,130,600			
Approved FSP Initial case fee	900			
Approved FSP 2nd case fee	500			
Total Case Fees	1,132,000			
Licensed FSP Levy @RM 65k	6,500,000			
Total revenue in 2018	RM7,632,000			
PROPOSED (using 2018 figures)				
	Suggested fee RM	# of Compl		
Licensed FSP CF 1 - Initial registration	350	900	315000	(est. + 20% accepted, 35% dealt with at this stage)
Licensed FSP CF 2 - Case management	900	575	517500	(estimated number that progress to this stage)
Licensed FSP CF 3 - Adjudication	1650	153	252450	(assume same 17% progress to this stage)
Approved FSP CF 1 - Initial Registration	100		900	No change
Approved FSP CF 2 - Case mngt or Adjudication	500		500	No change
Total Case Fees			1086350	

Licensed FSP Levy @ RM65k			6500000	
New Approved Member levy	500	102	51000	
Total projected revenue comparison			RM7,638,750	

Recommendation 23

The OFS should progressively move its funding model towards:

- a) An annual contribution from all members
- b) Maintaining the levy to case fee ratio at between 80/20% and 75/25%
- c) An escalating scale of case fees that better reflect the effort required of OFS in handling complaints that progress to different stages and provide appropriate and reasonably fair incentives for FSPs at each stage of the process.

Recommendation 24

The OFS should consult with Bank Negara Malaysia and its stakeholders. It should take small steps towards implementation of this model and refine the model periodically in light of experience. As first steps towards this refined funding model, we recommend that:

- a) Approved members should contribute a small annual levy of approximately RM500
- b) The case fees for licensed members should move to a three tier escalating scale of:
 - i. RM350 for initial registration of a complaint
 - ii. RM900 for Case Manager handling (incl. mediation, negotiation, recommendation)
 - iii. RM1650 for an adjudication by the Ombudsman
- c) These fees should be cumulative
- d) If OFS introduces a fast-track process for selected complaints, the pricing for this should be at a point lower than the proposed Case Manager level above

- e) Case fees for approved members should remain as they are – and be examined in future once there is more experience of complaints in this category

13. Stakeholder satisfaction and engagement

OFS surveying

196. OFS's 2018 Annual Report reports that 74% of complainants and 71% of FSPs are satisfied with the OFS's overall service. These results were derived from surveys conducted in early 2018. As part of our review, we enquired about the survey methodology and reviewed some of the detailed findings. We were satisfied with the phrasing of the questions and compilation of results. The OFS is now obtaining more contemporaneous feedback from complainants: at the end of each month it provides a survey opportunity to complainants whose complaint was closed that month. A 10% response rate is being achieved which we think is satisfactory. The OFS is also annually surveying all FSPs that have had an OFS complaint: the February 2019 survey achieved an excellent 95% response result. This repeat surveying will allow the OFS to identify satisfaction trends and position it to continuously improve.
197. As a secondary check on the OFS's surveying, we calibrated the OFS's survey results against the feedback about the OFS that we received from the OFS's stakeholders. We received 43 submissions from members in response to a quite structured set of questions. Those submissions were of enormous help in understanding how FSPs experience the OFS processes. While they provided many suggestions for improvement, the overall impression provided was highly positive and consistent with the survey results published by the OFS. We were satisfied that the OFS survey accurately represented FSP satisfaction levels.
198. Our interaction with OFS complainants was more limited, although we were able to review correspondence from complainants in the files we reviewed and we spoke directly with 8 complainants about their experience of OFS. In general our impression was also consistent with the published survey results. We caution, however, that written surveys do not necessarily achieve a response from the less sophisticated and capable consumers and so provide only one window on the complainant experience. To address this, we encourage the OFS to undertake periodic telephoning of a sample of complainants who do not respond to the written survey. We also note that from experience with financial ombudsman schemes over many years that complainant survey results are very skewed by the complainant's complaint outcome. To provide richer insight for readers of the OFS's Annual Reports, we suggest that in the future Annual Reports should present complainant survey results by category of complainant according to the result of their complaint (those who settled their complaint early in the OFS process, those who withdrew their complaint, those whose complaint was closed for non-response,

those who obtained a positive result from OFS in a Recommendation or Adjudication etc).

199. That said, the survey approach is used widely amongst ombudsman schemes and the OFS implementation is good practice from our perspective.

Recommendation 25

- a) The OFS should try to contact by telephone a sample of complainants who do not respond to the written survey opportunity to obtain their oral response.
- b) When publishing complainant survey results in its Annual Reports, the OFS should present the results by category of complainant according to their complaint outcome.

Complaints about OFS

200. OFS's Register of Complaints about OFS's performance reveals that this year only 9 complaints have been made about OFS's performance.
201. From our review of a sample of these complaints, we were satisfied that the OFS takes a responsible, non-defensive approach to the review of complaints about its own performance. We did not identify any concerns.

Engagement with members

202. As OFS recognises in last year's Annual Report, it is an important part of the OFS's function to meet regularly with its members and share insights from its complaints work. This assists OFS's members to understand how they can improve their operations and minimise future complaints.
203. The OFS undertakes some of its member engagement through industry associations and some directly with members. This year, the OFS met on 16 April with members of the Life Insurance Association of Malaysia, on 18 April with members of Malaysian Takaful Association, on 29 April with members of Persatuan Insurans Am Malaysia and 11 July with members of the Association of Banks in Malaysia. We heard from interviewed members that these forums were extremely useful. We would encourage the OFS to hold these more regularly – at least twice per year – to enhance information sharing.

Engagement with consumer representatives

204. As yet, OFS has not put in place regular dialogue with consumer representative organisations. While we recognise that the President of Federation of Malaysian Consumers Association is on the OFS Board, we think that the OFS would also benefit from regular engagement with its partner organisation, the National Consumer Complaints Centre.
205. In 2017, the National Consumer Complaints Centre recorded a total of 1,690 complaints against the banking/ financial sector. The Centre's Annual Report stated that the potential loss to complainants amounted to RM19,950,450. 35% of these complaints were about loans, with the most common issue being the unreasonable hike in interest rates due to the complainant's arrears.
206. We think that it is important that the OFS regularly engages with the National Consumer Complaints Centre so that the NCCC is aware of the advantages of resolving complaints through OFS rather than the relying on court litigation. In addition, the OFS would benefit from the intelligence the NCCC can offer about consumer issues in the marketplace.

14. Summary of Recommendations

207. As our Executive Summary set out, the OFS is an effective ombudsman scheme, that has been focusing its efforts on the right things for a scheme in an establishment phase. Our Review found that the scheme should now move into an 'evolution' phase – which we expect to last for around the next three years.
208. We recognise that all of our Recommendations may not be accepted and the those that are adopted by OFS may take most of those three years to fully implement. Rightly, that is the job of the management team to progressively implement. Of course, it will help greatly with stakeholder support if there are signs of early progress in implementation.
209. We have arranged this Summary of the Recommendations grouped into the main themes identified in the Executive Summary – reach and access to the scheme, fairer and more timely dispute resolution, continuing to build capability, stakeholder support and engagement, a fairer, more nuanced funding model and strengthening accountability. The Recommendations retain the numbers from where they appeared in the body of the Report.

a. Reach and access to OFS

Recommendation 4

OFS should consult with Bank Negara Malaysia and OFS's insurer members with a view to amending BNM Guidance and the OFS Terms of Reference to require insurers to include information in claim decision letters about their complaints process including about the OFS.

Recommendation 5

The OFS's next stage of awareness building should focus on the demographic groups that currently under-utilise the OFS including those in remote regions, eg. the indigenous peoples, younger Malaysians and those employed in a non-professional/ managerial position. To measure the success of its efforts, the OFS should undertake targeted awareness testing and monitor complainant demographic trends.

Recommendation 17

The OFS and its Board should monitor complainant drop-out trends both pre-Recommendation occurrence and post Recommendation (rejection or non-response to the Recommendation without a request for escalation to an Ombudsman). The aim should be to see these reduce over time.

Recommendation 19

OFS management and its Board should regularly assess whether the OFS's jurisdiction gives the scheme sufficient reach and whether exclusion categories are being appropriately applied.

Recommendation 20

OFS should consult with stakeholders including its members and Bank Negara Malaysia with a view to amending OFS's Terms of Reference to give complainants 12 months, from the date of their financial services provider's final resolution letter, to apply to OFS to resolve the dispute.

Recommendation 21

- c) The OFS should consult with its stakeholders including Bank Negara Malaysia with a view to increasing its RM250,000 monetary threshold to RM300,000 and dispensing with the lower limit that currently applies to disputes about unauthorised payment system transactions.
- d) In consultation with its stakeholders including Bank Negara Malaysia, the OFS should review its monetary thresholds every 3 years with a view to ensuring that the thresholds meet good ombudsman service practice.

Recommendation 22

- e) The OFS should generally award interest from the date of financial loss as part of a monetary award (and should consult with its stakeholders including Bank Negara Malaysia with a view to amending its Terms of Reference to explicitly permit this if the OFS considers this necessary).
- f) The OFS should consult with its stakeholders including Bank Negara Malaysia with a view to amending its Terms of Reference to permit it to

provide modest compensation (limited to RM1,000) where the complainant has incurred an unusual degree of inconvenience or distress.

b. Fairer and more timely processes

Recommendation 3

When conducting mediation conferences attended by both the complainant and a representative of the FSP, the OFS Case Manager should be careful not to engage with the FSP representative in a way that might create a perception of bias.

Recommendation 6

The OFS should revisit its application processes and information requirements of complainants with a view to making the application process more accessible for complainants. New processes should include:

- a) The OFS should encourage but not require a complainant to use the OFS's standard form.
- b) Supporting documents should not have to be provided by the complainant prior to registration. Rather the OFS should make concurrent requests of both parties to provide their supporting information as the first step in the dispute resolution process.

We recognise that this would require a change to OFS's Terms of Reference and so consultation will be necessary with OFS stakeholders including Bank Negara Malaysia.

Recommendation 11

The OFS should strengthen its information collection procedures:

- a) Where the OFS makes an information request, it should always seek the information in the form that has most probity - eg a telephone call recording rather than a transcript.
- b) Where a member fails to meet an OFS information request on time without good reason, the OFS should exercise its right under the Terms of Reference

to proceed to decide the dispute, drawing a negative inference from the FSP's failure to meet the information request.

- c) Where a member repeatedly fails to meet an OFS information request on time without good reason, the OFS should report this non-compliance to Bank Negara Malaysia.
- d) The OFS should consult with stakeholders including its members and Bank Negara Malaysia with a view to amending OFS's Terms of Reference to permit it to share the information provided by one party to a dispute with the other party to the dispute, on the basis that the information will be kept confidential and only used for the purposes of the OFS dispute resolution process. This would pave the way for the OFS to share all relevant information with the parties and provide them with enough time to respond to this information (typically, schemes will allow 30 days for key reports or documents).

Recommendation 12

The OFS should seek to streamline its resolution of simpler complaints, particularly where the financial loss is small.

- a) The OFS should identify types of commonly occurring, simpler complaints and develop tools (eg. standardised questions) for its Case Managers to use to streamline the investigation of these complaints.
- b) Where the factual and legal issues are reasonably clear, particularly in low value disputes, Case Managers should provide an early oral view (whether by telephone or in a meeting) as to the merits of a complaint. The aim should be an informed decision by the parties as to whether to settle or continue with the dispute. To ensure that oral Case Manager views are soundly based and appropriate, the OFS should establish a supervisory process for these and maintain accurate record keeping of any view expressed.

Recommendation 13

The OFS should communicate to members that it is OFS policy that if Case Managers wish to propose that an FSP make an ex gratia payment to a complainant, this conversation should be done separately with the FSP rather than in front of the complainant, for example, during a pre-mediation discussion.

Recommendation 14

If a complainant fails to respond to a Case Manager's contact, the Case Manager should telephone the complainant by way of forewarning that failure to respond will result in the complaint being closed. This telephone contact should be in addition to the two reminder letters as per existing OFS practice.

Recommendation 16

When sending a Recommendation to a complainant, the OFS's covering letter should clearly state that if the complainant is not satisfied by the Recommendation, the complainant has a right to ask the Ombudsman to decide the complaint. As per recently instituted practice, if the OFS does not receive a response from the complainant, the OFS should telephone the complainant and ensure that they understand that an Ombudsman decision would involve a fresh look at the complaint.

c. Continue building capability

Recommendation 15

The OFS's organisational structure should include two Senior Case Managers with high order skills in deciding disputes and writing decisions. Their responsibilities should include assisting and developing other Case Managers, including by undertaking a review of their Recommendations prior to finalisation.

Recommendation 18

The OFS should continue its direction in Information Technology development, in particular:

- a) Investing in improving staff skills in using modern office automation;
- b) Moving to externally hosted capability for internet services such as the website, mail and customer portals; and

c) Investing in a replacement, modern and integrated case management system.

d. Stakeholder support and engagement

Recommendation 7

Over time, the OFS should develop and publish in-depth guidelines to deepen understanding of its approach, for example, in relation to the way OFS will deal with commonly occurring types of disputes or particular requirements for provision of information or evidence.

Recommendation 8

The OFS should begin publishing on its website all Ombudsman Adjudication decisions. These should be anonymised to protect the private information of both the complainant and the FSP as required by the OFS's Terms of Reference.

Recommendation 9

The OFS should revise its standard form Terms and Procedures of Mediation to present and express this in a more consumer-friendly, less formal manner.

e. A fairer, more nuanced funding model

Recommendation 23

The OFS should progressively move its funding model towards:

- a) An annual contribution from all members
- b) Maintaining the levy to case fee ratio at between 80/20% and 75/25%
- c) An escalating scale of case fees that better reflect the effort required of OFS in handling complaints that progress to different stages and provide appropriate and reasonably fair incentives for FSPs at each stage of the process.

Recommendation 24

The OFS should consult with Bank Negara Malaysia and its stakeholders. It should take small steps towards implementation of this model and refine the model periodically in light of experience. As first steps towards this refined funding model, we recommend that:

- a) Approved members should contribute a small annual levy of approximately RM500
- b) The case fees for licensed members should move to a three tier escalating scale of:
 - i. RM350 for initial registration of a complaint
 - ii. RM900 for Case Manager handling (incl. mediation, negotiation, recommendation)
 - iii. RM1650 for an adjudication by the Ombudsman
- c) These fees should be cumulative
- d) If OFS introduces a fast-track process for selected complaints, the pricing for this should be at a point lower than the proposed Case Manager level above
- e) Case fees for approved members should remain as they are – and be examined in future once there is more experience of complaints in this category

f. Strengthened accountability

Recommendation 1

The Board should continue to seek out opportunities to build Directors' knowledge of ombudsman scheme practice in other jurisdictions.

Recommendation 2

Unless exceptional circumstances apply, OFS directors should retire at the conclusion of their third term of 3 years (a total of 9 years) on the OFS Board.

Recommendation 10

The OFS should publish statistical information in each Annual Report about the time it is taking to register complaints.

Recommendation 25

- a) The OFS should try to contact by telephone a sample of complainants who do not respond to the written survey opportunity to obtain their oral response.
- b) When publishing complainant survey results in its Annual Reports, the OFS should present the results by category of complainant according to their complaint outcome.

Attachment 1 – Scope of the Review

The scope of review shall include

- a. Review on the operations and procedures of OFS with regard to adherence to 6 principles that underpin the financial ombudsman scheme, namely independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness. A more detailed explanation of factors to be considered under the principles is set out in *Appendix I*.
- b. Review on OFS' performance against the scheme's Terms of Reference (TOR), in particular:
 - i. The requirement to resolve complaint in an efficient, timely and fair manner, whilst proceeding with minimum formality and technicality;
 - ii. OFS' processes to ensure consistency and high quality decision making in accordance with its obligation under the TOR to resolve a complaint on its merit, to do what in its opinion is fair and reasonable;
 - iii. OFS' achievements vis-à-vis its mandate.
- c. Review on the relevance of TOR, in particular:
 - i. Jurisdiction/scope of eligible disputes;
 - ii. Funding structure (levy and case fee);
 - iii. Dispute resolution process.
- d. The satisfaction levels of customers and members with the operations of OFS.
- e. The efficiency of the pre-registration process of dispute
- f. Appropriateness of the process for low value and simple dispute
- g. Capacity and competency of the OFS staff to handle disputes