

Ewart S Williams: The benefits of having a Financial Services Ombudsman

Feature address by Mr Ewart S Williams, Governor of the Central Bank of Trinidad and Tobago, at the 9th Annual Breakfast Meeting, Office of the Financial Services Ombudsman, Port-of-Spain, 3 May 2012.

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Thank you Suzanne for that perhaps too generous introduction. Thanks also for this invitation to give the feature address at this Ninth Annual Meeting of the Office of the Financial Services Ombudsman (OFSO).

I remember when the Office was established in 2003, there was a **mixture of anticipation and suspicion** on the part of the public. Some of the economic purists saw this as an **attempt to interfere with the market mechanism**. Competition in the marketplace, they argued, should ensure that financial institutions provide the best possible service to their consumers, failing which the consumer would simply move to the next provider. At any rate, it was suggested, that any consumer who aggrieved always had recourse to the courts for redress. It is now widely accepted that **this argument is flawed**, even for developed countries where markets tend to be more competitive. It is even much **more flawed** in developing countries where market failure is not the exception but the norm, and **where unchecked market forces** invariably resulted in some customers being exploited.

Fortunately the commercial banks, who were the first participants in the scheme, recognized that an independent Ombudsman was in the interest of the entire banking industry – **both banks and customers alike** – and they agreed to the Central Bank's proposal for a voluntary scheme, not waiting to have it enshrined in the law. I am pleased to note that this scheme has not only survived, but has become an important part of our financial architecture.

Over the past decade or so, many advanced countries have made consumer protection and financial literacy important elements in a broader strategy aimed at long term financial stability. Trinidad and Tobago continues to be **in the forefront of this movement in the Caribbean** and perhaps among developing countries.

Interest in consumer protection has increased significantly since the onset of the financial crisis of 2007–2009, as a result of which many advanced countries have introduced new legislation to protect consumers of financial services.

In 2010, the United States, enacted the **Consumer Protection Act** and created the **Customer Financial Protection Bureau** to ensure that markets for financial products and services worked in a fair, transparent and competitive manner. **In the UK**, the Financial Services Authority has recently outlined a new consumer protection strategy which, inter alia, aims at:

- making retail financial markets work better for consumers, and
- facilitating the delivery of prompt and effective redress for consumers of financial services.

In several other countries, the Office of the Financial Services Ombudsman is part of the arsenal of consumer protection. We can identify Banking and Financial Services Ombudsmen in at least thirty countries including Australia, the United Kingdom, Canada, Netherlands, and South Africa.

The Financial Services Ombudsman, **in any country**, focuses on an issue that is intrinsic to human interaction – i.e **CONFLICT** – and it operates against the reality that there **is an asymmetry of information and power** between the **financial institution and the**

consumer, which works to the advantage of the former. And this is particularly true in developing countries and **with respect to the smaller less financially-sophisticated consumer**.

What the Ombudsman's Office does is to provide an accessible, cost-effective and common sense approach to dispute resolution. The Ombudsman is there to be of assistance to financial consumers, **who would otherwise find it difficult to advocate their cause**; or consumers who are unable or unwilling to engage in slow, costly litigation.

In a sense, the function of the Ombudsman is to defend the rights of the consumer of financial services. But the Ombudsman **should also stress that consumers have responsibilities**.

It is the consumer's responsibility, for example, to provide complete and accurate information on his financial status: to read and to try to understand the agreements he signs and to take responsibility for his financial decisions. Against this background, the Ombudsman **should be prepared to be honest and forthright** with any consumer whose complaint is deemed to have no merit.

The Ombudsman could also be of tremendous benefit to the financial service provider, **in this sense**. A complaint could be one of the most direct ways of saying that **there is need for improvement**. Accordingly, financial institutions could use consumer complaints as opportunities for change. Since the Ombudsman keeps a record of complaints, **the Office could potentially provide an impetus for reforming banking practices**.

My point is that **the benefits to be derived from the Financial Ombudsman**, are there to be shared by both the financial sector and the small consumer.

Its value to the consumer **is in providing an accessible low-cost approach to resolving complaints**. To the institution, it provides an impetus to act in a responsible manner and, where appropriate, to improve its systems and procedures.

While there is a tendency to see the Ombudsman as a champion of the consumer, its real value is in providing a fair and balanced approach to investigating, without pre-judging or advocating the cause of either side of the dispute. I can tell you that, all over the world, Ombudsmen vigorously defend their independence and for good reason – their independence is the source of their legitimacy; it is what defines their credibility.

The mandate of **our** Financial Services Ombudsman is to facilitate the resolution of complaints **from individuals and small businesses** with respect to services provided by the banking and the insurance sectors.

In the case of the banks, the Ombudsman is empowered to treat with specific types of complaints involving **deposit and loan accounts; investment services, trusts and mutual funds**. However, the rules specify that the complaint must not be related to interest rates, fees and charges and other pricing decisions.

The Ombudsman's jurisdiction, **in the case of the insurance sector**, covers life policies, individual annuity products, fire and general insurance and third party property damage claims (up to \$50,000), **under motor insurance policies**. **Outside the terms of reference** are complaints involving a company's risk management policies, product pricing or interest rates.

The rules specify that **the complaint must first be referred to the financial service provider for resolution** and only if the complainant is not satisfied, could the Ombudsman be approached.

It is important to note that **the complainant does not surrender his/her legal rights** by approaching the Ombudsman. If not satisfied the complainant is always free to take legal action.

The limited jurisdiction of the Ombudsman scheme is an obvious weakness and a source of considerable irritation to complainants. However, even on matters strictly outside its jurisdiction, **our OFSO** has sought to intervene on behalf of aggrieved consumers **by bringing the parties together to search for a solution**. In many cases the strong **relation of trust** developed between the OFSO and the service providers, has facilitated resolution of complaints that fall outside the formal terms of reference of the Ombudsman scheme.

Mis-understanding of the role and function of the OFSO and confusion about the procedures to be followed in making complaints were some of the initial challenges faced by the Ombudsman scheme. As Suzanne noted the OFSO has taken steps to address these issues through various public awareness programmes. Most notably, the OSFO is now giving greater focus to financial education.

The results achieved by the OFSO since its inception have been **formidable by any standard**.

The total number of complaints against the banks received by the OFSO was, 585. However only 215 or less than 40 per cent fell within the “terms of reference”.

It is interesting to note that, in the case of the commercial banks, the Ombudsman scheme prompted the **establishment on strengthening of formal internal dispute-resolution mechanisms**. This, I **would assume**, has led banks to be more attentive to customer complaints so as to pre-empt the visit to the Ombudsman. Data provided by the banks themselves indicate that **they handled internally close** to two thousand complaints, **between 2008 and 2011**.

The number of qualifying complaints against the insurance companies referred to the Ombudsman Office amounted to about 2000, over the period 2005 through 2011, the vast majority of which (about 95 per cent) related to motor vehicle insurance. Unlike in the case of the commercial banks, we have no systematic information on the number of complaints handled internally by the insurance companies. A few companies have established formal dispute-resolution mechanisms. The majority, however, depend on informal ad hoc arrangements. The absence of effective internal mechanisms to deal with complaints may be one factor contributing to the larger number of complaints against the insurance companies.

Data from the Ombudsman’s Office point to a very impressive resolution rate of 94 per cent in respect of commercial bank complaints and 97 per cent in respect of insurance complaints.

Mr. Douglas Camacho alluded to it and I share the view that the large number of complaints against insurance companies compared to the banks may have much to do with the following three factors: i) the more robust regulatory regime concerning the commercial banks, **whose legislation is more current than that of the insurance sector** ii) a stronger compliance culture resulting **from decades of central bank supervision**, compared to only seven years for the insurance sector and iii) the lower capital and entry requirements faced by the insurance sector and particularly the general companies.

The area of **motor vehicle claims presents** by far the greatest challenge for the Ombudsman’s Office and is the area of greatest concern for consumers. Of the close to 2300 complaints processed by the OFSO over the past seven years, **about two-thirds involve 5 of the 29 operating** insurance companies. The inescapable reality is that, while most insurance companies operate in a reputable and responsible manner, **there are a few that adopt questionable industry practices, oft-times exploiting the antiquated and grossly inadequate insurance legislation**.

As an example, in order to capture market share, **some companies are prepared to under-price premiums, while operating with inadequate claims reserves**. Consequently, these companies face serious problems in meeting consumer claims. As a result, **the bulk of the insurance complaints reaching the Ombudsman are for unfair**

claims practices such as; forcing legitimate claims to litigation; under-payment of claims and unreasonable delays in paying claims.

The new Insurance Act, which is currently before Parliament, will seek to address this issue by requiring that every insurance company involved in general insurance carry a full-time actuary who will certify the adequacy of claims reserves.

I would like to provide some thoughts **about the way forward** for the Ombudsman Scheme, but I would like to couch these **against the background of the new global approach to financial sector stability** espoused by the foremost authority on these matters – the Group of G20 Finance Ministers and Central Bank Governors.

This approach says that traditional regulatory and supervisory frameworks adopted by oversight bodies are not sufficient for financial stability but rather should be complemented by “strengthened, dedicated and proportionate policy action geared to enhance financial consumer protection”.

The G20 explains that the enhanced focus on consumer protection is made necessary by the increased complexity of financial products and rapid technological change, all against the background of the prevailing low level of financial literacy.

The G20 emphasizes that these factors could increase the risk that consumers face **with respect to fraud, abuse and misconduct**. In particular, low income and less experienced consumers are more prone to these risks.

In these circumstances, the G20 suggest that **financial consumer protection should be integrated with financial literacy policies**. The Group calls for, inter alia, legal recognition of consumer financial protection, oversight bodies with the necessary authority and resources to carry out their mission, improved financial education, and adequate complaints handling and redress mechanisms.

The G20 makes a number of specific recommendations but cautions that the approach should be tailored to the specific country circumstances.

Against this background, I would like to make three suggestions for upgrading our existing regime of financial consumer protection.

Firstly, **it is time that the existing voluntary Ombudsman regime be enshrined into law**. While the voluntary arrangement confirmed the “**buy-in**” by the financial services firms, it limited the jurisdiction of the Ombudsman, since the Office’s “terms of reference” was limited to the least common denominator – that is to the areas on which there was total agreement among the service providers. This left a significant area of complaints outside of the jurisdiction of the Ombudsman. Giving statutory backing to the Ombudsman scheme **will also facilitate the introduction of appropriate sanctions for non-compliance**.

The second imperative, in my view, (and it follows logically from the first) is **to extend the scope of complaints that come under the authority of the Ombudsman**. The numbers tell the tale – only about one-third of all the complaints that reach the Ombudsman actually qualify under the terms of reference. **This limited jurisdiction is perhaps the greatest threat to the credibility of the scheme**.

Third, in order to deliver this expanded mandate the **OFSO would need to be better resourced**, with a range of competencies sufficient to deal with the rapidly-evolving financial services industry. Adequate resources and competence would strengthen the credibility of the institution in the eyes of both consumers and the service providers.

Ladies and gentlemen, I would like to end by congratulating **Ms. Suzanne Roach, the current Ombudsman**, her predecessors, **and their respective staffs**, for shaping a formidable institution that has gained considerable respect from both the providers and the consumers of financial services. Let me also thank the banking and the insurance sectors for their unstinting support for the Ombudsman scheme.

I really believe that the Ombudsman's office ***has earned the right to move to the next level*** and assume a more prominent role in the country's strategy for achieving financial stability.

I wish the Ombudsman and her staff continued success and ***I thank you all for your kind attention.***