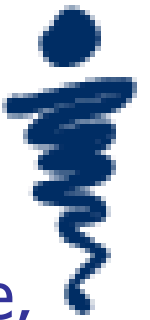


Peer Review Kenya ADR Scheme

Presented by Manie van Schalkwyk



What is ADR?

- ADR can be broadly defined as providing a free, informal, speedy and cost-effective alternative to court action.
- The ombudsman is an independent, impartial person with authority and responsibility to receive, investigate, or informally address complaints, and when appropriate, make findings and recommendations.

What is ADR?

Courts are
Expensive
Time Consuming
Stress full

ADR is not replacing courts

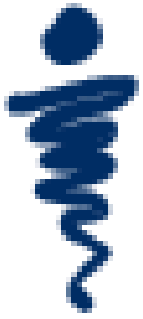
Alternative to courts

Solves your problems
Saves you money
Less stress
Protects Relationships

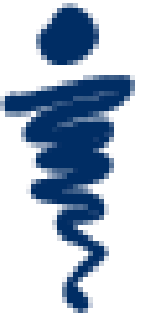
Value of ADR

- Value to Consumers
- Value to Business
- Value to Regulators





Value of ADR Consumer



Independent and Impartial

Informal

Free

Fast

Fairness

Flexible Outcomes



You just want to marry it

Value of ADR Industry



- Promote confidence in the industry- Bond and insurance

- Investigate complaints objectively with regard to the law, good industry practice, fairness – Industry focus on managing risk and generate profit

- Provide value added service to your clients

- Feedback on non-compliance issues

- Fast reaction to changes/ problems in industry

- You just want to marry it

Value of ADR Regulators



- Regulators are informed of complaint trends in industry

- Releases the Regulators from complaints handling

- Focus on regulation

- You just want to marry it



Background

Review December 2015

6 Days:

Processes of Tatu Center

Interview Staff members; Chairperson of Steering Committee; Financial Consultant; Credit Providers; Credit Reference Bureau ; Mediator ; Central Bank of Kenya

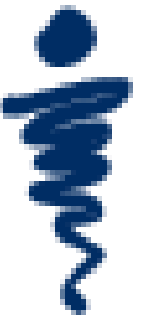
Reviewed case files

Evaluated feedback from complainants

Facilitated a workshop on benefits and challenges of ADR

Studied the Handbook for CIS Kenya – ADR

Context- Interim office seeking independence



Evaluation

Global Best Practice

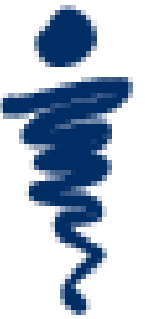
Worldbank Report 2012 – Fundamentals of
Financial Ombudsman

International Network For Financial Services
Ombudsman Schemes – Principles and Framework
flowing into Fundamentals – Using the Handbook
and feedback on interviews

Summarised the consumer feedback

Workshop on benefits and challenges perceived by
the credit industry

Reviewed consumer files



Deliverables



Provide feedback on the evaluation of Tatu Center



Feedback on consumers experiences



Feedback on industry perceived challenges



Possible expansion of the jurisdiction of Tatu Center



Observations and Comments



Position yourself as the consumer



- I want to know about Tatusa Center upfront – Insurance and Bond

- How – Every Credit Provider told me

- Tatusa Center created awareness

- Tatusa Center gave consumer education and now I know my rights and responsibilities

- I want to contact them easily

- Telephone/Fax/e-mail






- Even if I live in rural Kenya



Position yourself as the consumer



When I speak to Tatura Center I want:

-  Courteous, friendly, respectful and professional staff
-  Process must be informal and entire process must be explained to me in easy understandable language
-  In any official language that I understand best
-  People not focused on the rules, but on my complaint and understand what happened
-  Not being biased when making the decision



Position yourself as the consumer



- Final decision explained to me so that it makes sense and to such an extent that I want to tell my friends about this experience even if I did not win the case
- When I leave I feel I had an ear that listened, somebody did something about my problem, without asking me money
- Reporting problems so everybody knows about this and avoid the issues

Fundamental Principles for Ombud Schemes – INFO

- Independence
- Clarity of Scope
- Accessibility
- Effectiveness
- Fairness
- Transparency
- Accountability



Independence and Impartiality



- Financial ombudsman schemes are an alternative to the courts and should therefore be, and be seen to be, independent and impartial, resolving cases on their merits without fear or favour.
- Independent not only from Industry, but also from consumer bodies



Independence and Impartiality



- The **independence** of the financial ombudsman scheme is **established in law** or in a **constitution** that is approved by a public-interest agency
- **No commercial** or other influence over the ombudsman scheme directly or indirectly
- **Free to publish reports** on its work and on issues that give rise to complaints
 - Publishing of complaints data
 - Publishing of trends in the industry



Independence and Impartiality



– Resolving Cases

- Case decisions should be made by an ombudsman or a decision panel
- **Ombudsman should not have worked, in the previous 3 years in a financial business** (or an industry association for the sector) covered by the ombudsman scheme
- Only an Ombudsman should decide whether a case falls **within its jurisdiction**;
 - **choose the procedure** for resolution of any case;
 - **decide or recommend** the **outcome** of the case;
 - A decision or recommendation **cannot be overturned** except by a court or tribunal
 - **Disclose any possible conflict** of interest and should not be involved in case



Independence and Impartiality



– Appointment and terms

- Appointment in manner **commands public confidence,**
- Body who appoints ombudsman should **not** have a **majority of industry representatives**
- Ombudsman should be appointed by transparent process, following a **public advertisement,** and the appointment should be made on terms that secures his or her **independent from the industry or consumers bodies, the regulator and government.**
- The ombudsman should be appointed for a **sufficient term** to ensure independence (typically a minimum of five years) and should enjoy the **security of tenure**
- Can only be removed in terms of incapacity, misconduct or other just cause.



Independence and Impartiality



– Appointment and terms

- If Ombud **term is renewed**, the process should not compromise the independence of the ombud and the outcome of the process should be communicated at **least one year before the previous term ends**
- The Ombud's remuneration should **not be the subject of reduction or suspension** and should not be **influenced by the outcome of cases**



Independence and Impartiality



– Staff and Resources

- The scheme should be provided with **sufficient resources to cope efficiently with its workload**
- The scheme should be **not-for-profit**
- **Funding structure** should be of such a nature that the funders **cannot influence the work of the scheme**
- The scheme should be able to **select and employ its own staff**



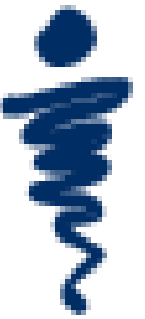
Independence and Impartiality



– Governance Body

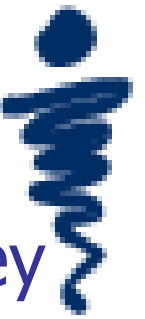
- Help **safeguard the independence**
- Ensure that scheme has **sufficient resources**
- **Oversee** the **efficiency** and **effectiveness**
- Advise on the **strategic direction** of the office
- **Not involved in deciding cases**
- **Not involved in day-to-day management** of the office
- Appointment of **members** should be a **transparent process**

- **TC is fully compliant with these requirements.**



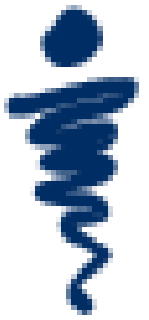
Clarity on Scope and Powers

- The financial ombudsman scheme should **publish** details of the **scope of its jurisdiction**; its **enquiry and case-handling processes**; its **powers**; the **status of its decisions**; any effect on the **complainant's legal rights** of using the ombudsman scheme; and what information is (or is not) **kept confidential**.
- **TC not compliant as website was not available at time of evaluation**



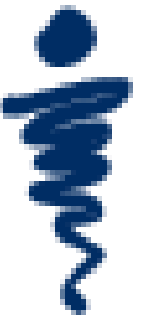
Accessibility

- Consumer can only access the ombud if they know about it, and **know where to find it.**
- **Financial businesses must** tell customers about the scheme
- Ombud- information on **its own website**
- Other appropriate ways;
- Easily **available and accessible** to complainants (Free of charge);
- Accept **all forms** of communication;
- Provision for **vulnerable** complainants,;
- Notify consumer of **court action**



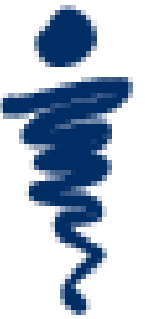
Accessibility

- Largely a challenge for TC – if not based in Nairobi – Unless all calls are recorded, consumers have access to email, fax and telephone
- Members **must tell consumer** about TC
- Lodge **complaints on website**
- Use public libraries, post office etc to facilitate complaints
- Currently Free of Charge
- Notification of courts
- **TC Partially compliant**



Effectiveness

- Clear definition of what constitutes a complaint
- Clear obligations on **industry** to deal with complaints **fairly and promptly.**
- Ombud scheme to have **flexible and informal process** (where parties do not need professional advisers);
- Have **skilled decision-makers;**
- **Properly resourced.**



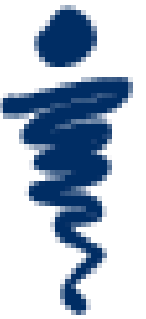
Effectiveness

- FSP's are required to have
 - **accessible, effective and fair internal complaints process, which is published;**
 - **written response to a complaint, with reasons,** within a specified **time;** tell complainants that, if they are still dissatisfied, they **can go to the ombudsman** scheme;
 - **single person** with overall responsibility for the handling of complaints;
 - **respond promptly to communications** from the ombudsman scheme;
 - **provide information** and documents requested by the ombudsman scheme;
 - and **comply promptly** with the ombudsman scheme's decisions.



Effectiveness

- TC is compliant with their requirements
- **IMPORTANT** for credit providers to treat complaints like a gift
- Very **confrontational**
- **Legal Department** is nearly always the central point for complaints – Maybe **customer service department should be**



Fairness

- Be prompt, be impartial, proceed fairly and tell the parties in writing its decision and the reasons for it.
- Use fairness and equity in decision making
- **TC complies fully with this requirement**



Transparency and accountability



- Ombud have regard to **overall public interest** in forward-planning and day-to-day operations;
- **consult publicly** about their **scope, procedures, business plans** and **budgets**;
- **publish a report at least yearly**, explaining the work that they have done.
- **TC not compliant but will be when operational**



Views of Stakeholders



Interviewed 8 organisations seeking info on:



Confidence in TC



Bias and fairness in decision making



Consistency of decisions



Quality of ADR



Skills and **professionalism** of staff



Do stakeholders feel **inhibited** in challenging views



Courtesy of staff members



Publication of information



Workshop for stakeholder about **benefits** and **challenges**



Views of Stakeholders



Remarkable confidence in TC

Staff of TC is **highly respected**

Well qualified to perform duties and
professional


Most challenges of ADR and TC could be
solved by **constructively engaging** with
Credit industry – They are not part of SC

Formal forums should be established

Trust in the system should be **established**



Views of Stakeholders



10 Consumers provided their views on the **quality of ADR -88% average score**



All consumers experienced **exceptional value** when dealing with TC and all **consumers will tell friends and family of the service**



Lowest score (78%) thought the **time** it took to resolve the complaint was too long.



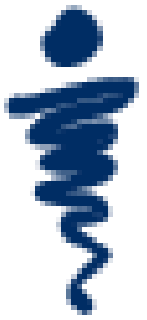
Expectations should be managed or if really an issue, then **stricter adherence to time**



Expanding the Scope of TC



- Central Bank of Kenya is investigating the possibility of a Financial Ombud Scheme
- Include Banks, Insurance, Capital Markets, Pension Funds and SACCO's
- TC is providing **a value service** and have learn valuable lessons, is **perfectly positioned** to expand its jurisdiction



Structure

- **Hybrid Ombud Scheme –**
 - **Central Bank approves** the scheme to ensure minimum standards
 - **Participation** in the scheme is **mandatory** and becomes a **license requirement**
 - Non-statutory so **industry can decide on the rules to keep scheme flexible**



Jurisdiction

- Jurisdiction to be **determined by Industry** with consultation with the Regulator
- **All FSP to participate**
- Ombud **rulings to be binding on industry**



Operations



Operations in line with Worldbank and INFO principles



Funding



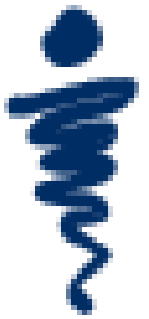
Ombudsman determine budget

Governance body approves

Central Bank to fund first year



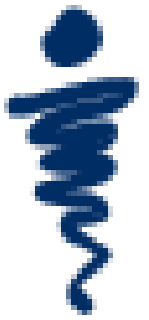
General Comments and observations



- **Position CRB's in positive light** with consumers and consumers to understand **positive impact** of credit bureau in their financial lives
- **Explore alternative of verifying the identity** of individuals than just using the **national ID** document. Result **more consumers** can access the **ADR dispute process** with CRB's.



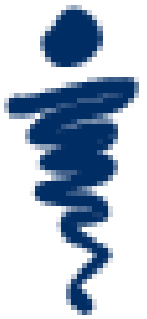
General Comments and observations



- **CRB's to notify** each other on **changes of information**, or shift **onto CP's** to update all CRB's once a dispute is resolved or a default account has been paid in full. Consumer must take off work to do this.
- Use of credit information for **employment purposes**, it should be **discouraged totally** and only required in limited positions i.e. direct working with **cash or finances**.



General Comments and observations



- Consider the **purpose, application and effectiveness** of “clearance letters” should be investigated together with the impact of this **requirement is on rural Kenyans.**
- **CBK to approve sources of data** for CRB’s and potentially limit data sources for CRB’s **could limit creativity within CRB’s** and should be reconsidered.

A large, faint, pixelated grey figure of a person with arms outstretched, serving as a background for the text.

Questions?