Designing a sound GRM: Principles and International Experience

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Abstract

Grievance redress mechanism (GRM) is an essential component of the consumer protection framework in the financial sector. Its presence and performance can have far-reaching effects on the participation of consumers in the financial sector. Using GRM a consumer can seek expeditious and fair remedy against the wrongs of the financial service providers. While there are various forms of GRM (both judicial and non-judicial), in this paper, we study the design of a non-judicial redress agency. Using first principles we study the design of a financial redress agency by focusing on the critical organisational decisions of — manner of establishment, governance, funding, dispute resolution processes, and performance evaluation. We build on two strands of literature, one studying the GRM design at a conceptual principles level and the other providing practical guidance for setting up a redress agency. Further, the paper analyses four different redress agencies, namely, — Financial Ombudsman Services Scheme in the U.K., Kifid in the Netherlands, Consumer Financial Protection Bureau in the U.S., and Insurance and Financial Services Ombudsman Scheme in New Zealand. The paper contributes by assimilating all the varied resources to map principles, decisions, and case studies to provide an accessible yet comprehensive introduction to designing a GRM for a varied readership

Keywords: GRM, redress agency, financial ombudsman, dispute resolution, consumer protection in finance

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Introduction

For the success of any financial consumer protection framework, it is essential to have an efficient Grievence Redres Mechanism (GRM). GRM is an independent recourse mechanism that is expected to help consumers assert their rights and seek expeditious and fair remedy against the wrongs of the Financial Service Providers (FSPs). While GRM in its expansive meaning can include the judiciary, international experience shows it is usually understood as an out of court institutional arrangement to settle disputes. GRM primarily helps to redress grievances, however, its presence can have a wider impact. For instance, in countries with a sizeable section of low income and vulnerable consumers, a good GRM develops trust in the FSPs and the financial sector. This is key as lack of trust can influence consumer participation in the financial sector which may have far-reaching consequences (World Bank Group, 2019). Even in developed financial markets, with the growing complexity of financial products, information asymmetry remains a concern, which underpins the need for an effective redress mechanism. While there could be various forms of out of court grievance redress mechanisms, in this paper, we study the design of a redress agency.[1]

The purpose of this paper is to provide a high-level principles guide for the design of a financial redress agency. It revisits the main decisions involved in setting up such a body based on first principles and international experience but does not serve as an implementation guide or manual. While the paper focuses on the external dispute resolution through the redress agency, it also touches upon the internal dispute resolution of service providers since it is an essential component of the GRM framework.

For identifying and examining the decisions, we build on two strands of literature, one studying the GRM design at a conceptual principles-level and the other providing practical guidance for setting up a redress agency. These usually do not focus on any one country.[2] Further, this is combined with an extensive study of the international experience, by focusing on four financial redress agencies - the Kifid[3] in Netherlands, the Insur-

[1]We use the term, redress agency, to describe any non-court body that redresses complaints using tools like dialogue, negotiation, fact-finding, and adjudication. Globally we see that most often formal institutions perform the role of GRM. These institutions can have different names, in particular, some countries (for instance, U.K. and New Zealand) use the term ombudsman scheme to refer to the entire redress body and not a person who serves as an ombudsman or ombudswoman.

Recently, there has been a debate about repacing the expression 'ombudsman' with a gender-neutral term like 'ombudsperson'. However, some have argued that the term 'ombudsman' is an English translation of the Swedish word umbuds man, gender-neutral in origin, which means 'representative' or 'proxy' (Doyle, 2017).

[2]Some of the practical guidance reports are: *OECD*, G20 High Level Principles on Financial Consumer Protection; *The International Network of Financial Services Ombudsman Schemes (INFO Network)*, Effective approaches to fundamental principles; *World Bank*, Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman; *World Bank Group*, Technical note: Complaints Handling within Financial Service Providers, Principle Practices and Regulatory Approaches.

[3]Kifid (Klachteninstituut Financiële Dienstverlening) or the Dutch Institute for Financial Disputes (Arbitration Commission & Appeals Commission)

ance and Financial Services Ombudsman (IFSO) Scheme in New Zealand, the Financial Ombudsman Service (FOS) Scheme in the United Kingdom, and the Consumer Financial Protection Bureau (CFPB) in the United States of America. These four agencies together cover prominent financial redress networks, with the IFSO being part of the Australian and New Zealand Ombudsman Association (ANZOA), the FOS a part of the British and Irish Ombudsman Association (BIOA), and Kifid following the European Union Directive (2013/11/EU) aimed to promote high-quality consumer alternative dispute resolution (ADR) schemes in the European Union. While the CFPB is an interesting case of a unified complaint collection mechanism.

We study the key decisions that should be considered in the design of a sound GRM in four parts - GRM Framework, GRM Body, GRM Process, and GRM Performance. The aim is to provide all the options that can be adopted as an answer to the decision, discuss the rationale for each and describe what is being done internationally. Our aim is not to provide recommendations for each decision but objectively compare and evaluate the options so they can be adopted in a given context. Central to our analysis is the redress agency and how all the GRM stakeholders should interact with it to ensure that consumer interests are protected. For example, we discuss how to incentivise FSPs to solve a majority of the complaints using their internal dispute resolution mechanism or the need to maintain distance between the regulator and the redress agency for its independent functioning (See, Chapter 1 on Establishment).

While some of the decisions to make when designing a redress agency are globally accepted best practices, others are still open to debate. Here are the key learnings from these principles and international experiences:

GRM Framework

Establishment: The redress agency's independence from the regulator and the industry is essential for the success of the GRM framework.The literature on design principles and country experiences suggest that the redress agency is best positioned outside the regulator. Even when the agency is located at an arm's length from the regulator, rules must guarantee its operational independence and the power of rule-making is best left with the redress agency. Country experiences suggest that the redress agency established by law or recognised by law is the favoured option, however, the merits of the hybrid option of establishment should be explored based on the country context. Finally, if the redress agency adopts a corporate structure, it is more likely to adhere to the standards of corporate governance and transparent processes.

Coverage: Given the increasing bundling of financial products, there may be merits in unification of the redress agencies. In our study, we are yet to find an example of a unified redress agency with separate sectoral regulators. Most countries have first moved to a unified conduct regulator and then a unified agency, or simultaneously. As a result, if there is a unified financial regulator, then there is a strong case for a unified redress agency. However, if there are different regulators, then the problem that unification aims to solve should be evaluated based on the context. Partial unification of few sectoral agencies or

some redress agency roles could be done if needed.

Roles and powers: The primary role of redress agency is to settle disputes between FSPs and consumers using both informal and formal procedures. However, with time redress agencies have realised the benefits of preventing disputes, and some of them have started providing services like inquiry, informal guidance, etc to avoid disputes at the threshold. Redress agencies can also contribute in flagging systemic risks in the financial sector to the regulator, but should not factor in such concerns while adjudicating individual complaints. While the powers of redress agencies may differ depending on the national context, some features are necessary to render the function of dispute resolution. These are – decision making; awarding compensation; binding decisions; and enforcement of the decision.

GRM Body

Governance structure: To ensure fairness and independence, the redress agency could have a two-tier structure. While the board takes care of the non-executive role i.e., administrative activities, the decision makers perform the core function i.e., resolve disputes. Clear criteria should be laid down for appointment of decision makers and board to ensure independence and expertise. The board must have a balanced composition of the industry and consumer representatives. Further, a panel of decision makers over an individual is a better choice in resolving complaints. Such a panel may consist of an independent chairperson and nominated members each from the financial industry and a consumer body.

Funding: The most common source of funding of the redress agency are the financial service providers rather than the regulator. In the case of funding by the FSPs, the direct involvement of the regulator is reduced. The main issue is to ensure independence from the funding body. It is possible that redress bodies may fail to deliver the public services (dispute resolution) if their activities are unduly influenced, whether by the regulated industry, government, politicians or outside interest groups. As a result, autonomy is an essential dimension for the success of the agency even though it might be completely dependant on the government grants or collect fees from the regulated entities. Precisely, the source of funding should not have a bearing on the agency's manner of functioning. In essence, autonomy should be agnostic to the source of funding. Our study shows that the structure of funding usually comprises a levy, case fees, and budgetary public grants.

GRM Process

Internal dispute resolution: Standard practise suggests that first, the FSP should attempt to resolve the complaint before the redress agency gets involved. To ensure FSP resolve the complaint effectively, there could be options like compulsory framework, incentives (like higher case fee, reporting obligations) or a combination of both. Some of the essential features of internal dispute resolution are easy access, clear process, definite timeline, free of cost, and impartial process.

External dispute resolution: Traditionally redress agencies have followed an inquisitorial approach to settle disputes, where they strive to address complaints at the threshold and

avoid converting them into a full-fledged dispute. Rather than through an adversarial approach in which the focus is on who argues the case more persuasively. The inquisitorial approach demands active involvement of the decision maker in resolving the issue with the aim of creating an alternate dispute resolution mechanism and not replicating the more rigid court system. Some redress agencies have also adopted the *preventive approach* where they provide tools like inquiry or screening system, and technical desk which caters to inquiries of both consumers and service providers. Informal guidance is also provided to the parties.

GRM Performance
It is essential to build-in performance evaluation mechanisms into the redress agency functioning. Most redress agencies follow similar mechanisms - annual reports, complaints against the redress agency, complainant satisfaction survey, independent evaluation, special evaluations. The independent evaluation is key and should be carried out by an external party every 3-5 years. However, it is just as important to build in the incentives to ensure that the redress agency implements the evaluation mechanisms in a regular and unbiased manner. Ideally the law and accompanying rules governing the redress agency should mandate this.

Given our approach, the paper contributes to the literature by assimilating all the varied resources to map decisions, options, principles, and case studies, providing an accessible yet comprehensive introduction to designing a GRM for a varied readership.

Part I

GRM Framework

Creating a robust framework is at the core of an effective GRM. In the absence of a strong foundation, there could be sub-optimal results towards the ultimate goal of consumer protection in the financial sector. The first chapter of this Part deals with the questions which need to be looked into for designing the framework. How a redress agency should be established, whether it should be an outcome of a legislation passed by a body like the parliament or a body created by collaboration between industry and consumer representatives or maybe a combination of both. For instance, some jurisdictions may have an existing agency created by the market participants which could later be recognised by law. Where should the redress agency be places, some redress bodies are housed within the regulator which may result in better compliance from the regulated entities due to their existing relationship with the regulator.

The second essential component of the GRM framework is determining the coverage or jurisdiction of the redress agency. Similar to the options of establishment, one could be faced with different choices, like whether to create a unified agency for the entire financial sector or have seperate agencies for specific sectors (like banking, capital market, insurance, etc) in the financial ecosystem. The second chapter also deals with questions, like what are the factors or prerequisites which may influence the coverage decision and what would be the optimum choice in an existing financial system.

The last chapter of this Part on roles and powers identifies the essential attributes a redress agency must possess, like decision making, awarding compensation, binding decisions, and enforcement of the decision. In this section, we elaborate on some of these irreducible features which may be necessary for rendering the function of dispute resolution and to achieve the larger goal of consumer protection in the financial sector.

Further, the discussion in this Part is informed by inferences drawn from the international experience of four financial redress agencies - the Kifid in Netherlands, IFSO in New Zealand, FOS in the United Kingdom, and the CFPB in the United States of America. In all the four Parts of this paper, we follow a similar approach where international experience constitutes an essential component of our analysis.

1 Establishment

Key points

The redress agency's independence from the regulator and the industry is essential for the success of the GRM framework.The literature on design principles and international experience suggest that the redress agency is best positioned outside the regulator. Even when the agency is located at an arm's length from the regulator, rules must guarantee its operational independence. The power of rule-making is best left with the redress agency.

With respect to establishment, international experience suggests that the redress agency established by law or recognised by law is the favoured option, however, the merits of the hybrid option of establishment should be explored based on the country context.

Finally, if the redress agency adopts a corporate structure, it is more likely to adhere to the standards of corporate governance and transparent processes.

The traditional role of the redress agency was to protect the rights of the citizens against the wrongs of the state due to which independence from the executive arm of the government was necessary (Asian Development Bank, 2011).[4] As a result, independence was always emphasised in establishing a redress agency. In due course of time, the need for structured and speedy redress was felt in several areas, including the financial sector. While the presence of redress agencies expanded, global practices suggest independence continues to be a core principle. For instance, the International Network of Financial Services Ombudsman Schemes (INFO) which is the worldwide association for financial redress agencies, strongly recommends that while a redress agency may be designed in different ways depending on the national context, it must remain free from the influence of regulator, industry, and the government to function freely (INFO Network, 2018).

This chapter deals with the key design choices policy makers may face while establishing a redress agency - establishment, relationship with the regulator, rule-making, legal structure - and evaluate these through the lens of independence.

Decisions and Principles

1. Decision: How can the redress agency be established?
   Options:
   - Established by law
   - Established by industry
   - Hybrid establishment

[4]Independence in both form and substance, i.e., in design and conduct.

Option: Established by law

Legal instrument: Statute and subordinate legislations

Under this option, parliamentary law establishes the redress agency and vests it with compulsory jurisdiction over the FSPs.[5] The law usually lays down the basic powers that the redress agency must possess, like investigation, call for information, and sanction. For instance, in U.K., the redress agency FOS was established by law.[6] Similarly, in Netherlands, the law has established the redress agency, Kifid. INFO Network (2018) states that a redress agency created under the law may enjoy a greater ability to compel cooperation by the FSPs and be perceived by the consumers as having more authority. However, details like the approach of dispute resolution, administrative functioning, relationship with FSP could be left to the scope of delegated legislation. Delegation helps in operational flexibility such that the rules can be amended swiftly without amending the principal law which is a rigid and time-consuming process.[7]

For instance, the law may state that the FSP should report information to the redress agency, but it is better if the agency decides the kind of information it requires depending on the market conditions and nature of complaints. Delegated legislation may also be necessary for autonomy of the agency so it can serve its mandate without external influence. In New Zealand, the law instructs the approved redress agency to publish rules on certain subject matters like how FSPs are made members of the dispute resolution scheme and the grounds for termination of their membership. Whereas the details are left to be formulated by each such redress agency.[8] Decisions on autonomy and delegation may also depend on the national context, like existing GRM structure in other sectors, how much power the regulator exercises, perception of consumers and precedents (INFO Network, 2018).

Option: Established by industry

Legal instrument: Contract

In some cases, an industry association of FSPs may take initiative and voluntarily set up the redress agency to earn goodwill and better business prospects. Sometimes it could be the outcome of pressure from consumer bodies or apprehension of regulatory intervention. When industry establishes the redress agency, it does not derive its sanctity from any statute, but the constitution document (terms of reference) lays down its scope, powers, jurisdiction, and obligations of the service providers (INFO Network, 2018). Each service provider has to subscribe to its membership through *contract* and adhere to the rules set by the redress agency. The contract sets out the consequences of non-compliance or breach of the terms and conditions, which may

[5] In 1809, the Swedish Parliament set up the first redress agency of the modern history.

[6] See, Part XVI of the Financial Services and Markets Act, 2000.

[7] In the Indian context, statutory regulators perform legislative function (outcome of delegated legislation) through regulations, whereas it is the prerogative of the government to frame rules.

[8] See, Part 3: section 62-67 of the Financial Service Providers (Registration and Dispute Resolution) Act, 2008.

range from reprimand to severe sanction like cancelling the membership.

Voluntary establishment could also be an unincorporated body set up under a charter agreed between the government, relevant industry, and consumer bodies. Since this is a self-regulatory model, its efficacy would depend on the initiative and commitment of industry and consumer associations. To make the process transparent and participative, the industry is expected to involve the consumer bodies in the initiative. In this model, the redress agency enjoys operational flexibility and can draw on the expertise of market participants. However, there are risks of consumer mistrust, conflict of interest or scepticism regarding impartiality and fairness. Hence, independence would need to be addressed both in substance and perception. Necessary safeguards would have to be built in aspects like source of funding, appointment of the board, and decision-making process. For example, the budget of the redress agency should not be made a part of the budget of an industry association (INFO Network, 2018).

In U.K., the Insurance Ombudsman Bureau (IOB) is one of the first industry led voluntary redress agencies which was set up in 1981. Some have hypothesised that it was established to possibly deter statutory intervention (Geraint and Rhoda, 2002). While it was an industry led ombudsman, its chairman was a person of high repute and the majority of the members were independent from the industry. Later this model was followed in other countries like Australia, New Zealand, and Canada. Since IOB was an industry funded agency, concerns were raised over its independence (Geraint and Rhoda, 2002). The agency operated till 2001 to be finally replaced by the FOS which was established by law.

Option: Hybrid establishment
Legal instrument: Contract and statutory or government recognition
Under this model, the aim is to maximise the benefits and minimise the concerns associated with the previous options. The autonomy and flexibility of voluntary establishment is blended with the standards of an organisation established by law. The redress agency is set up in a manner similar to the voluntary establishment where industry and consumers associations are expected to play an active role, and service providers enter into a contract with the redress agency and agree to follow the terms and conditions. While the redress agency retains the autonomy and discretion to frame rules, they are supposed to be done adhering to certain benchmarks set by the law or the regulator (INFO Network, 2018). For instance, such an agency will be required to obtain recognition or legitimacy under a statute or some other form of legal recognition and the regulator may review its performance to ensure compliance with set standards. However, several other aspects like procedural details of dispute resolution and administration can be left to the discretion of the redress agency.

Adopting a hybrid structure may keep a check on the industry's influence and also retain its freedom to operate. Moreover, some jurisdictions have moved away from pure self-regulatory model to a hybrid option, like self-regulatory within a statutory

framework. To ensure that the FSPs take the agency seriously, the law may make it compulsory for them to take membership of the recognised redress agency before providing services to the consumers (like at the time of obtaining licenses from the regulator). In such an event, the regulator would have to ensure at the time of granting the license whether the FSP has obtained the membership or not.

In Germany, the Association of German Banks (Bundesverband deutscher Banken) established an Ombudsman Scheme to conciliate disputes between banks and customers. While it is a privately led dispute resolution mechanism, it has received approval from the Federal Office of Justice (Bundesamt fur Justiz) (Association of German Banks, 2018). Presently there are more than 200 private commercial banks who are members of this redress agency and adhere to the rules of procedure established by the scheme. Since it is a privately funded body, to ensure independence from the industry, the rules of procedure provides that the Federal Office of Justice and the Federation of German Consumer Organisations have to be involved in the appointment process of the decision makers.[9]

2. Decision: Should the redress agency be positioned within the regulator?
   The redress agency could be set up as a department within the regulator either mandated by law or by rules made by the regulator. However, the agency must possess a clear mandate and resources to render its role effectively. Drawing on the experience of financial redress agency in multiple jurisdictions INFO Network (2018) highlight that the agency must be free from the influence or direction of the government or regulator. In other words, and as discussed previously, their operational independence is essential for the GRM framework. For instance, the agency must possess the discretion to hire staffs as per its requirements or spend resources as per its priorities.

   Given that the complaints brought to the redress agency are not against the regulator, one might think that there is no reason for the regulator to undermine the agency. However, since the roles of regulator and redress agency are different, their incentives may not always align. The regulator makes regulation to protect consumer interest and prevent consumer grievances. Additionally, it regulates the conduct of FSPs and initiates actions for any breach of the law or regulations (Government of India, 2016). On the other hand, the role of the redress agency comes into place when a FSP has acted in a manner that leads to a consumer grievance. This may give rise to a conflict of interest in prioritisation and allocation of resources towards the dispute resolution function (World Bank Group, 2017a). Past experiences suggest that lack of resources has been a major hurdle in the success of redress agencies (Soderman, 2004).[10] Also, different roles and objectives would demand different kinds of capacity building within the same organisation.

[9] See, section 2 of Rules of Procedure of the Ombudsman Scheme of the German private banks.

[10] Based on J. Soderman's paper presented at the Conference of European Ombudsman held in Madrid

In addition, the regulator may perceive rising consumer complaints as an indicator of its inefficiency in regulating the FSPs (Bhandari and Sane, 2019).[11] The *Report of the Task Force on Financial Redress Agency* suggests that a situation like this may create perverse incentives for the regulator to reduce the number of complaints by tweaking the regulations (Government of India, 2016). Lastly, the consumers would benefit from having a system that permits as many grounds for redress as possible.

While there are challenges associated with this structure of the redress agency within the regulator, there could be some benefits. This model can help the redress department to utilise the institutional capacity in common functions and resources like the infrastructure of the regulator. It may also command more authority among the FSPs due to their existing relationship with the regulator. However, it can be argued that some of these benefits like command and respect can be enjoyed even by an independent redress agency through measures like recognition of the agency in law or by the regulator, collection of levy on behalf of the agency by the regulator, etc.[12] For instance, in the U.K., the financial regulator, Financial Conduct Authority (FCA) reviews the performance of the FOS and approves its budget, yet the FOS is an independent agency. Similarly, in New Zealand, the IFSO is an independent entity separate from the conduct regulator. Even when the redress agency is set up outside the regulator, any experience built up by the sectoral regulators in dealing with consumer protection and disputes must be utilised.

Some national contexts may be inclined towards having the redress agency within the regulator. For example, in Spain, the redress function exists as a separate department within the three financial regulators (World Bank Group, 2017a). However, in such situations, creating an effective GRM framework would depend on multiple factors. The most important one is that the regulator must have an incentive to promote the dispute resolution function. Several necessary safeguards must be in place within the regulatory setup to ensure independence both in form and substance. Further, sufficient powers and financial resources should be provided to the redress department. Any changes that affect the operation of this department should be subject to strong checks and balances. In theory, this model may work with minimum intervention from the regulator, however, in practice, the possibility of operational challenges and conflict of interest cannot be ruled out.

Finally, the true test of independence hinges on the relationship between the regulator and the redress agency, and how much power the regulator exercises on the latter. For instance, in the U.K., FOS is operationally independent of the FCA and enjoys autonomy. However, FCA has the power to appoint and remove the chairman

in 2004. In July 1995, the European Parliament elected J.Soderman as the first European Ombudsman.

[11]The Unique Identification Authority of India has the power to take criminal action in the event of a breach of privacy and tampering of the Central Identities Data Repository. However, doing so can also highlight its inefficiency as an administrator of the repository.

[12]The aspect of collection of levy by the regulator has been discussed in detail in Part II.

and members of the FOS, approves the annual budget, makes rules governing the compulsory jurisdiction of FOS, and gives approval to rules framed by FOS (Financial Conduct Authority, 2020). As a result of this intertwined design, questions have been raised on the feasibility of FOS's operational independence (Ferran, 2002).

3. Decision: Who makes the rules of the redress agency?
Options:
- Regulator
- Redress agency
- Redress agency makes the rules subject to approval by the regulator

Option: Regulator makes the rules
When the regulator makes the rules, the general perception is that the redress agency may command better authority and compliance. This could happen when the law authorises the regulator to make rules or the redress function exists as a department within the regulator. In both scenarios, vesting the rule making activity with the regulator can influence the independence of the redress agency. Further, leaving rule making function with the regulator may not be efficient as a redress agency is expected to be more informed about its need. Also, this option will involve coordination with the legislative and administrative staff of the regulator. Since their incentives may not align with the redress agency, this may become a time consuming and frustrating exercise. However, international practices suggest that some regulators make rules for the agency. For instance, in U.K., the conduct regulator FCA makes rules on how complaints are to be dealt by the FSP and the FOS (Financial Conduct Authority, 2020).

Option: Redress agency makes the rules
Under this option, the agency retains the autonomy of rulemaking which provides it the flexibility to amend rules to suit its operational needs. Since the agency directly deals with consumer complaints, it makes sense if it frames rules suitable for dispute resolution. In both forms of establishment whether set up by law or voluntarily, the redress agency can be vested with the power to frame rules.

Option: Redress agency makes the rules subject to approval by the regulator
In this scenario, the redress agency retains autonomy in rulemaking, but subject to overview by the regulator. This may depend on the manner of establishment. For instance, where the agency has to adhere to certain standards set by the law, the regulator may play a supervisory role in approving the rules. Another scenario could be where the regulator and the redress agency jointly make rules (Government of India, 2016).

4. Decision: What is the legal structure of the redress agency?

International experience shows redress agencies are instituted on a *not for profit*

basis using three broad choices — corporate, society and trust. The final choice may depend on what the statute demands, and if there is no instruction or compulsion in the statute, then the redress agency may decide for itself. In an industry promoted establishment, the structure could be in the form of society or trust. Usually, the domestic legislations governing trusts and societies provide tax benefits and require minimum compliances. For example, in New Zealand, the IFSO is a society mainly because of the minimum legal compliance and maximum taxation benefits (Insurance and Savings Ombudsman, 2009). However, in the U.K. the FOS is structured as a corporate body and complies with the standards of corporate governance applicable to an incorporated company. Adopting a corporate structure can be beneficial as the redress agency would adhere to the same norms of governance and transparency which any incorporated company does. Finally, if the redress body exists within the regulator as a department, it will not have an independent legal structure.

Country Experience

The four redress agencies studied are all created or recognised by law.[13] They all exist outside the regulator except for the CFPB which is a unique case of a conduct regulator and a unified complaint collection service for the entire financial industry.

Table 1 Implementation of the decisions

	Netherlands - Kifid	**NZ - IFSO**	**UK - FOS**	**US - CFPB**
(1) Type of establishment	By law (Financial Supervision Act (Wft) 2007)	Pre-existing and later recognised by law – Financial Service Providers (Registration and Dispute Resolution) Act, 2008	Established under law (Financial Services and Markets Act, 2000)	By law (Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010)
(2) Separate redress agency or within regulator	Separate	Separate	Separate	The CFPB is the regulator for some products but accepts complaints for products it does not regulate as well.
(3) Who makes the rules	Redress agency	Redress agency	Regulator	Redress agency and Regulator
(4) Legal structure	Foundation	Society	Corporate Body	Government agency

[13]The Klachteninstituut Financiële Dienstverlening in Netherlands, the Financial Services Ombudsman Scheme in New Zealand, the Financial Ombudsman Service Scheme in the United Kingdom, and the Consumer Financial Protection Bureau in the United States of America.

2 Coverage

Key points

Given the increasing bundling of financial products, there may be merits in unification of the redress agencies. In our study, we are yet to find an example of a unified redress agency with separate sectoral regulators. Most countries have first moved to a unified conduct regulator and then a unified agency, or simultaneously. As a result, if there is a unified financial regulator, then there is a strong case for a unified redress agency. However, if there are different regulators, then the problem that unification aims to solve should be evaluated based on the context. Partial unification of few sectoral agencies or some redress agency roles could be done if needed.

A unified agency provides consumers with a one-stop service for dealing with disputes about any financial services. While this sounds appealing from the consumer point of view, there is no clear evidence on the magnitude of this problem or benefit to the consumer. One possible solution to this problem could be a centralised complaint collection system or redirecting the consumer to the appropriate agency.

Within the definition of consumer, a prospective consumer may also, be included to address the problem of wrongful refusal, unlawful discrimination (e.g., gender bias), and to ensure financial inclusion.

To ensure discretionary powers are exercised carefully, so a consumer is not wrongfully deprived of pursuing a complaint, every redress agency must define the circumstances as specifically as possible to avoid confusion in the minds of consumers regarding the admissibility of a complaint.

This chapter covers the key questions of a unified redress agency for the financial industry, competing agencies within sectors, and deals with decisions on defining the jurisdiction of a redress agency. These are the essential decisions that must be designed cautiously for the GRM framework to deliver its objectives.

Decisions and Principles

1. Decision: Should there be a unified financial industry redress agency or a separate one for each sector?

   To examine this choice, we discuss the common problems that exist in a GRM framework and how a unified agency or other solutions can potentially solve them. We also elaborate on other pros and cons of a unified redress agency.[14]

[14]It is worth noting that a unified approach usually implies unified in all the roles of the redress agency,

Disputes involving FSPs under the jurisdiction of different redress agencies

Given the increasing blurring of traditional distinctions between the financial industry sectors, as firms are restructured and products are packaged together, there could be a need of coordination between different redress agencies of different sectors. For example, banks are selling insurance and investment products alongside bank accounts and loans (Thomas and Frizon, 2012a). In particular, as financial products become more bundled with multiple parties involved, disputes could involve FSPs that are members of different redress agencies. Ramsay et al. (2017) provide an example in the Australian context of a dispute that may involve a mortgage broker who is a Credit and Investments Ombudsman (CIO) member, but relate to a home loan issued by a major bank (which is a FOS member). They argue that in such disputes the consumer may have to pursue the dispute in both schemes, thereby being a burden for the consumer, as well as inefficient for the FSPs and the GRM framework.

Non-uniformity between redress agencies

It is likely that various redress agencies have varying jurisdiction (i.e. the definition of FSP), process of complaint resolution, decision making criteria, etc. This could potentially lead to different processes and outcomes for similar disputes. For example, Ramsay et al. (2017) state that -

> *A key principle guiding this Review is that the outcomes from similar disputes should be comparable. This is critical for consumer confidence in the financial system overall. This guiding principle is one of the main reasons behind the decision to unify the* FOS*, the CIO, and the Superannuation Complaints Tribunal (SCT) in Australia. In life insurance disputes, the mere fact of whether the insurance was obtained within or outside superannuation determines which redress body (FOS or SCT) deals with the dispute and results in very different experiences for the consumer, given the lengthy delays currently experienced by SCT.*

On the financial service providers side, a unified agency would lead to uniformity for the FSP in dealing with a single set of procedures, reducing any possible duplication or confusion. For example, the first annual report of the UK FOS (FOS, 1999) highlights that consistency is valued by the industry as well -

> *For example, we will be able to harmonise the approach to handling complaints about banks and building societies where some matters have previously been dealt with differently by the separate Banking Ombudsman and Building Societies Ombudsman schemes. And we will prepare and publish*

the main ones being - complaint collection, dispute resolution, research and outreach. But depending on the context and the problem to be solved in the GRM framework unification could be used for only part of the roles. For example, the CFPB serves as a unified complaint collection agency.

common guidelines in relation to awards for distress and inconvenience.

Consumer accessibility
In a GRM framework with sectors having different redress agencies and with overlap between the industry sectors, it can be confusing for the consumer to know where to seek redress. For example, if the complaint is about an insurance policy sold by a bank, does the complainant go to the insurance or the banking redress agency (INFO Network, 2018). A unified agency provides consumers with a one-stop service for dealing with disputes about any financial services. While this sounds appealing from the consumer point of view, there is no clear evidence we could find on the magnitude of this problem or benefit to the consumer.

Another solution to this problem could be a centralised complaint collection system or redirecting the consumer to the appropriate agency. We have not yet come across a pure centralised complaint collection system that accepts any complaint and serves only that purpose. The closest solution is the CFPB in USA, which is the supervision regulator and its complaint management system accepts complaints for a wide range of products and forwards them to the appropriate redress agency if the complaint does not fall under its jurisdiction. The gain in consumer access should be traded-off with any 'inefficiency' in resources that are expended in ensuring the dispute is directed to the appropriate agency rather than resolving it. Further, re-direction of disputes can cause delays which may discourage a consumer to pursue disputes through this medium (Ramsay et al., 2017).

Pros of a unified redress agency
- **Economies of scale**: While in the short run, the formation of a unified agency would pose substantial costs and effort, in the long run, it should lower costs and benefit the financial services industry, in terms of cost-efficiency (INFO Network, 2018). It could also increase efficiency by allowing flexibility in shifting resources between financial sectors, if the workload shifts between the sectors (Thomas and Frizon, 2012a).

- **Research at industry level:** the complaints data collected by a unified GRM could be used to monitor and analyse complaints patterns and risk at an industry level. The CFPB serves this purpose by making the complaints database public and doing analysis to detect any industry level patterns. If there is a unified regulator, then the regulator could serve this purpose by collecting all the complaints from sectoral redress agencies. However, if there is no unified regulator or redress agency, then data sharing and centralised analysis could be hard to operationalise.

Cons of a unified redress agency
- **Role and coordination of regulators:** The role of the regulator with respect to the unified agency would be easier to define when there is a unified regulator. For instance, in the U.K. and Netherlands, there is a unified regulator that is associated with the unified redress agency. We are yet to find an example of a unified redress

agency with separate sectoral regulators. Most countries have first moved to a unified conduct regulator and then a unified agency, or simultaneously.

- **Large size and need for varied expertise** A unified agency would need a sizeable staff to manage the industry-wide complaints. The first problem could be the management of such a large organisation. The second problem is of staffing experts who can cover varied financial sectors and products. Broad jurisdiction can lead to complex and difficult issues coming before the unified agency (FOS, 1999).

- **Expensive to set up and use of existing regulator resources:** Given that the sectoral regulators would have built up functioning frameworks of their own, the cost of setting up a unified agency needs to be carefully weighted against the benefits. Also, it must be ensured that no experience and expertise built up by the sectoral regulators is lost.

2. Decision: Should there be competing redress agencies within sectors?

   At the other extreme of a unified financial industry, GRM is the option of having more than one, competing redress agencies within sectors or at the industry level. In such a case, the regulators approve two or more competitive redress agency schemes (each meeting the statutory criteria) with FSPs choosing which scheme to join (INFO Network, 2018).

   The main argument in favour of having competing redress agencies is the classical competitive markets argument of competition driving innovation. The benchmarking of agencies against each other would create an incentive to innovate and lead to consumer welfare (Ramsay et al., 2017). The other advantage could be a competitive market price where the redress agencies can alter the participation fees to attract FSPs and keep fees low. ANZOA (2011) acknowledges these benefits but argues that - it is inappropriate to apply concepts of market forces and competition to what are effectively 'natural monopolies'. It argues to use other mechanisms to reach these goals, e.g., independent reviews, public reporting, benchmarking, formal or informal peer reviews.

   One of the most cited example of competing redress agencies is from Australia and New Zealand. While some groups continue to push for such a framework, the Australian and New Zealand Ombudsman Association (ANZOA) stands in strong opposition. In fact, in 2017 the Australian GRM framework ended the existing competing framework by unifying the FOS, Credit and Investments Ombudsman (CIO) and Superannuation Complaints Tribunal (SCT). Ramsay et al. (2017) state that - "competition among ombudsman schemes runs counter to the principles of independence, accessibility, fairness, efficiency, effectiveness, and accountability." There are several potential ways in which this could happen. First, FSPs may become members of a redress agency that has a less stringent complaint process or one that they consider

is likely to give them the best deal. Second, it could increase the confusion for consumers to access redress and affect their perception of independence of the redress agency. Third, it leads to higher costs for the industry given the duplication of all the systems. Overall, a competing framework overlooks the role of financial redress agency as an alternative to the courts and creates one-sided competition given that the consumers are not given a choice of redress agency (Thomas and Frizon, 2012a).

3. Decision: Who is a FSP? Which financial service providers should be covered?

   It is necessary to clearly identify which FSPs and which of their activities are covered by the redress agency. Usually, all regulated FSPs in a given sector are under the jurisdiction of the redress agency. This is often by law, as a condition of the regulatory licence through compulsory jurisdiction. Else it can also be a result of membership of an industry association. For FSPs that are not regulated or not registered, it is usual to allow such FSPs to become a member of the redress agency through voluntary jurisdiction. Finally, FSPs must accept liability for the acts and omissions of their agents and intermediaries (INFO Network, 2018). For example, an insurance redress agency should cover not only insurers (and their agents) but also intermediaries, such as banks and insurance brokers. Otherwise, complainants will not know where to go and there may be significant gaps in coverage.

4. Decision: Who can be considered as a complainant?

   While it is fairly straightforward that the redress agency must consider individual consumers as complainant, i.e., someone who buys products or services mainly for personal or household use - rather than for use in their trade, business or profession. There are a few additional options that may be included in the ambit of consumers.

   - Small businesses
   The precise definition is usually based on turnover and staff numbers. But some exceptions like a small family business could be considered as the dividing line between consumers and business.

   - Non-business bodies (like charities and trust)
   These are bodies with a not for profit motive. If the redress agency accepts complaints from small businesses, it should also accept complaints from non-business bodies of equivalent size.

   - Financial service businesses genuinely acting as a consumer
   If the redress agency accepts complaints from small businesses, should it handle a financial services complaint by one FSP (that qualifies as a small business) against another FSP? Ideally, the redress agency can use its power of early dismissal to reject a complaint where the FSP is not genuinely acting as a consumer. For instance, a

dispute between an insurance agent and the insurer it represents. However, it may admit a complaint where an insurance agent is complaining against its bank.

- Prospective consumer
Potential consumers who are yet to buy a financial service should be considered as complainants. This will allow the redress agency and regulator to learn about wrongful refusal, unlawful discrimination (e.g., gender bias), and ensure financial inclusion.

5. Decision: Which complaints are admissible and inadmissible?

Every complaint falling within the jurisdiction of the redress agency is admissible. However, a redress agency may have limited grounds on which a complaint can be dismissed at an early stage without going into its merits. These are called inadmissible complaints. The aim is to ensure all complaints are admitted unless they fall under the exhaustive list of grounds on which complaints can be dismissed at an early stage. To ensure discretionary powers are exercised carefully, so a consumer is not wrongfully deprived from pursuing a complaint, every redress agency must define the circumstances as specifically as possible to avoid confusion in the minds of consumers regarding the admissibility of a complaint. INFO Network (2018) provides a list of such possible grounds which are as follows:

- Identical issue pending in court/settled in court/can be resolved only through court: test to be applied is whether doing so ensures finality, avoids conflicting remedies, unjust enrichment, and violation of jurisdiction.

- Maximum compensation offered by FSP in identical issue as redress by the agency could have provided: test to be applied is whether doing so ensures fairness and finality.

- Legitimate business decision and no maladministration:[15] test to be applied is whether such event is a fall out of genuine business risk (market practice, condition of market etc.).

In the U.K., the regulator FCA has framed the grounds on which FOS can dismiss a complaint without consideration of its merits (Financial Conduct Authority, 2020).[16] Similarly, the IFSO in New Zealand has specified grounds when complaints cannot be admitted (Insurance and Financial Services Ombudsman Scheme Incorporated, 2015).[17]

[15]Maladministration includes discrimination, not providing documents, refusing to deal.

[16]See, section 3.3: Dismissal without consideration of the merits and test cases, FCA Handbook on Disputes Resolution.

[17]Section 5 of Terms of Reference.

Country Experience

The four agencies studied have some form of unified GRM adapted to the national context. In the U.S.A., there is no unified regulator for the entire financial industry and the CFPB serves the role of a unified complaint collector. None of these countries has competing agencies within sectors.

Table 2 Implementation of the decisions

	Netherlands - Kifid	**NZ - IFSO**	**UK - FOS**	**US - CFPB**
1) Unified	Yes	No	Yes	Only unified complaints collection
2) Competing	No	No	No	No
3) Which FSP covered	Mandatory for all license holding financial institutes	Specified FSPs	All FSPs regulated by FCA	Complaint against any FSP can be submitted, the CFPB directs them to the appropriate agency and handles complaints against FSP under its jurisdiction
4) Who can be complainant	Consumers, small businesses and self-employed persons	Consumers, small businesses, charities, clubs, trust	Consumers, small businesses, charities and trust within defined limits	Consumers

3 Roles & Powers

Key points

The primary role of the redress agency is to settle disputes between FSPs and consumers using both informal and formal procedures. However, with time redress agencies have realised the benefits of preventing disputes, and some of them have started providing services like inquiry, informal guidance, etc to avoid disputes at the threshold. Redress agencies can also contribute in flagging systemic risks in the financial sector to the regulator, but should not factor in such concerns while adjudicating individual complaints.

While the powers of redress agencies may differ depending on the national context, the following are some features that are necessary to render the function of dispute resolution.

- Decision making;
- Awarding compensation;
- Binding decisions; and
- Enforcement of decision.

Traditionally the role of the redress agency has been to provide remedy to the citizens against the wrongs of the state. Since the need for a redress agency was gradually felt across many dimensions of society, it lead to its presence in the world of financial services. Even then its primary duty is to handle complaints of consumers arising out of their relationship or dealings with the service providers. With this central objective, it has evolved innovative methods of settling complaints with a judicious mix of both informal and formal procedures (See, Chapter III for this discussion). Further in the process of settling disputes, a redress agency is expected to address the balance of powers, the *David and Goliath* like situation, between the FSP and a consumer (Gill et al., 2014). While this need not translate into a favourable decision for consumers, the agency must encourage and facilitate them to pursue complaints independent of their level of resources and knowledge.

However, in due course of time, as the experience of financial redress agencies evolved, it was realised that in addition to settlement of disputes, preventing disputes can have additional benefits. Given the high administrative costs and burden of settling a complaint, the redress agency may have an incentive to assist with enquiries if it can avoid future disputes. In addition to informal and flexible procedures followed by the redress agencies for resolving disputes, this is one more aspect that can distinguish redress agencies from the courts. For instance, (Thomas and Frizon, 2012a) state that in developing countries only a quarter of the enquiries brought before the financial ombudsman translated into disputes. Further, the national context, like the level of financial literacy of the consumers, can influence the

volume and nature of complaints. For these reasons, gradually some redress agency have started providing the service of receiving inquiries.

Although it is the primary duty of a financial regulator to educate and protect consumer interests, some financial ombudsmen may choose to render this role in a limited sense. In the U.K., the FOS have front line staff who handle queries of consumers in addition to processing complaints. In some countries, redress agencies also engage with service providers as a part of dispute prevention strategy (Thomas and Frizon, 2012a). For instance, a service provider may have accepted the deficiency on its part but is not sure about what kind of remedy will satisfy the consumer. In such an event, a firm may choose to contact the redress agency. In New Zealand, the IFSO maintains a constant interaction with the industry as a part of a feedback loop to improve things for the future (See, Chapter III).

Off late, some redress agencies have flagged concerns involving systemic risk to the regulators based on the repeated nature of complaints. Since they receive complaints of various kinds, it helps them to identify a pattern, if any. Early warning signals to the regulator can help to avoid any major financial crisis. However, it would be better if a redress agency limits itself to dispute resolution and not factor in systemic concerns while *adjudicating* an individual complaint. Doing so would be akin to stepping into the shoes of the conduct regulator which may become counterproductive. For instance, it can lead to more conflict with the service providers. Having said that merits of flagging systemic issues cannot be ruled out. In 2018, as part of an independent audit of the IFSO, the auditor recommended amendment to the terms of reference to include powers to refer systemic problems to the service providers, regulator — Financial Market Authority (FMA), the government or the decision makers (Mcmillan, 2018).

Below we discuss the powers of the redress agency which may vary depending on the national context. However, there are some irreducible attributes of a redress agency that are necessary for rendering the function of dispute resolution. For e.g., powers like decision making and giving awards are integral to a redress agency irrespective of the nature of its constitution. However, features like the binding nature of decision and power of enforcement may depend on the design choices.

1. **Decision-making:**
   Before a redress agency decides upon a complaint, it must have the power to dismiss it without going into the merits. As discussed previously in chapter 2, to ensure no consumer is unduly deprived of the right of being heard, the grounds for such dismissal should be clearly laid out. In other words, there should be limited grounds on which a complaint can be dismissed without considering the merits.

   For effective decision making, the redress agency should have the powers necessary to investigate and resolve complaints. This entails several specific powers that need to be designed carefully whether the agency is established by law or through contract (INFO Network, 2018). Further investigation into any complaint will require information, hence, the redress agency should have the power to call for relevant

information or documents from both parties and appropriate powers to handle and protect confidential information. For instance, IFSO's dispute resolution service is a confidential process where both complainants and service providers undertake confidentiality obligation with respect to information arising out of the resolution process (Insurance and Financial Services Ombudsman Scheme Incorporated, 2015).

Further, to meet its role of decision making, a redress agency enjoys some degree of flexibility to decide on the basis of what is *fair and reasonable* in the circumstances. While the law, rules, industry practice or policy terms will govern the process. The redress agency need not take a legalistic approach in circumstances like unclear guidance or out-of-date norms. For example, to arrive at a reasonable outcome the redress agency chooses to compare the policy terms of the insurance policy of an FSP against similar schemes of rival firms, although the complainant is not the customer of other firms. Based on this comparison, the ombudsman may rule against the FSP which need not be termed as unfair treatment (Sharma, 2020). (Ross, 2014) summarises the ombudsman's exercise of fair and reasonable standard as follows:

> *He can, therefore, ignore technicalities in the law or a lack of evidence or award compensation which would not have been recovered at law if he thinks that this is the right course. On the other hand, he may in any particular case conclude that it would be wrong to depart from the legal position.*

However, the use of fair and reasonable standards is not 'carte blanche' (Ross, 2014). Using this approach arbitrarily can cause anxiety in the minds of both parties and can be set aside by the courts. To overcome such apprehensions, the redress agency must clarify and review from time to time what are the standards of applying fair and reasonable criterion (Mcmillan, 2018). Specific instances of past decisions can be provided as illustrations for stakeholders to understand how the standard of fairness is likely to be applied. For instance, in the U.K., the FCA in its handbook has provided that this standard can be used only in light of law, rules, guidance and standards, codes of practice and good industry practices prevailing at the relevant time (Financial Conduct Authority, 2020).

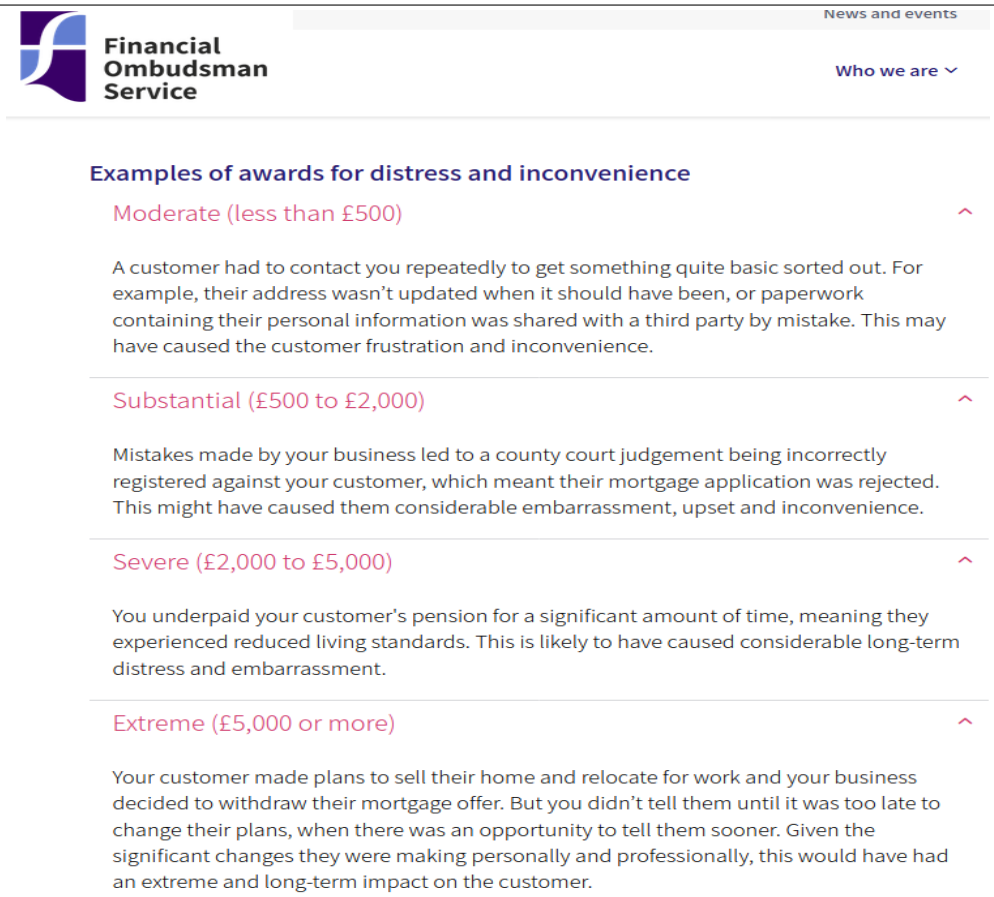
Finally, unlike courts, redress agency decisions may not be legal precedents binding them in future decisions. In our limited scope of this study, decisions given by the ombudsman in the U.K. and New Zealand are not legal precedents. As a result, some firms prefer their matters to be heard by courts since court judgments act as precedents (Financial Conduct Authority, 2010).[18] However, firms can be encouraged to look at past decisions for future complaint handling. Also, decisions are given on the facts and circumstances of each case and a certain level of consistency and reasonableness in awards is desirable. To ensure quality awards, some redress agencies have quality assurance processes and controls. For e.g., FOS has an intense '3 lines

[18]Firms prefer formal proceedings, like an automatic right of oral hearings and right of appeal if the matter goes to court.

of defence' model where the work of front line case managers is checked at three different levels (Financial Ombudsman Services, 2018).

2. **Awarding compensation:**
Usually, the redress agency should have the power to award compensation to cover direct loss, consequential loss, any damage to reputation, material distress or inconvenience. The award could be based on either one or more than one parameter. Interest may be awarded from the date of loss till the date of decision or to encourage prompt payment. A commonly accepted approach is to indemnify the consumer i.e., make good the loss suffered and not penalise the FSP (Thomas and Frizon, 2012a). An alternative to monetary compensation is that the FSP may be required to do or not to do certain things in relation to the complainant. For instance, the FSP may be directed to modify, rectify or terminate the contract. However, a redress agency should issue directions only relevant to a particular complaint and not issue general conduct directions like a regulator. As a matter of good practice, a redress agency must communicate clearly about the compensation it can award so a consumer knows in advance what it can possibly expect at the end of the redress process (See, Figure 1).

Figure 1 **Examples of awards given by FOS**



Source: Website of FOS

To avoid operating as a court with involvement of high stake, usually, an upper limit is put on the maximum compensation amount that the redress agency can award (INFO Network, 2018). While putting a cap on award amount is standard practice, this limit may vary depending on the national context, after considering factors like the usual highest and lowest quantum of claim raised by the consumers. General principals require that limit should be high enough to cover all types of complaints in a given country along with the power to adjust for inflation. In case of shortfalls, the redress agency can recommend the firms to pay the extra amount, but it is voluntary for them to comply.

Designing an optimum award limit is a challenging exercise. It should be high enough to incentivise the consumers to avail redress agency services than going to the courts, which otherwise can affect their decision to pursue the complaints. Further, a lower award limit may offer incentive to the firms to reject the complaint when they know that the redress agency can award compensation up to a certain limit and the process will involve some time. This can severely affect a high value complainant if sufficient

compensation cannot be obtained due to award limit and the complainant cannot bear the cost of pursuing the complaint in a court of law.

However, as a fallout of a high award limit, firms in response may increase the cost of financial products which can have adverse consequences. For instance, in 2010 when FOS' award limit was being revised, insurers indicated a potential increase in insurance premiums. This was expected to affect both individual consumers and small businesses (Financial Conduct Authority, 2010). In sum, finding the right balance between competing interests is not easy and the limit needs to be reviewed on a periodic basis after considering the past experience and future expectations to align with the actuals. Also, the regulator needs to keep a constant tab on how consumers and industry are responding to the existing award limits, major events like a global or domestic financial crisis (See, Box 1).

Box 1: Case study - Award limit of FOS, U.K.

The award limit in FOS has been changed several times. In 2018, it was increased from £100,000 to £150,000 and in 2019, it was further enhanced to £350,000 (Financial Conduct Authority, 2019). The objectives were three folds — to secure a better/higher degree of protection for consumers without going to the courts, increase firms' incentive to improve their conduct and promote competition between the firms to perform better in the interest of the consumers. In 2019, FCA conducted a stakeholders consultation process before bringing the new cap limit into operation. Based on the analysis of high-value complaints, FCA calculated the 'redress deficit' and estimated the revised cap.
Several firms argued against the proposed limit on several grounds like no appeal option available to service providers and complainants with high value would prefer to go to a court. However, FCA's response was that past dealings indicate even if with a hypothetical no-win-no-fee arrangement to avoid the lawyers' fee, courts are too costly and time-consuming for complainants. While Parliamentarians and consumer associations advocated a higher amount, FCA opined after cost-benefit analysis that £350,000 was an appropriate award limit.

3. **Binding decision:**
While in some jurisdictions the GRM framework may not make redress agency's award binding, it would require strong compliance culture and highly competitive market to nudge service providers to honour the decision. However, most international ombudsmen associations like International Network Financial Services Ombudsman Schemes, British and Irish Ombudsman Association and Australian and New Zealand Ombudsman Association consider binding award on FSPs as an essential feature of the ombudsman's functioning. In effect, most countries have opted for binding decisions.

Depending on the manner of establishment, the legal basis of the binding decision can either flow from the statutory law or from the contractual arrangement between the redress agency and the service providers in a voluntary establishment.[19] When a decision is binding, it may have a dual effect, first it can help the redress agency to command compliance from the service providers, and second, it can earn the confidence and faith of the aggrieved consumers. This, in turn, may translate into more consumers availing of the redress services.

Although the decision is binding on FSPs, it becomes binding on consumers only upon acceptance. A consumer has the right to appeal against the award before the appropriate court. However, if full substantive redress is already available with the redress agency, it is possible the court may strike down the appeal (Ross, 2014).

4. **Enforcement of decision:**
No matter how efficient the dispute resolution process is, a complainant gets relief only once the decision is honoured. However, if a service provider refuses to comply with the decision, it needs to be enforced. Usually in a legal establishment, the enforcement authority is vested with the court and regulator and not with the redress agency. However, a redress agency should have the power to take necessary actions to ensure its order is complied with, for instance, it must have the authority to make an application to the appropriate court for enforcement or refer the matter to the conduct regulator for appropriate action.

   In the U.K., Financial Services and Markets Authority Act, 2000 provides that the ombudsman's order is legally enforceable in court on the application of the complainant.[20] In case of a money order where the redress agency has awarded compensation, the court orders an execution as if it is an order of the court. When the redress agency gives direction to the FSP i.e., to do some act or not to do some act, the court will enforce it by issuing an injunction. While enforcing the orders, the court will neither reopen the case and examine its merits nor allow parties to re-argue. Otherwise, this can frustrate the outcome of the redress agency's dispute resolution process.

   Further, where a regulator has compulsory jurisdiction over a service provider is vested with enforcement powers. As a result, instances of non-compliance with the redress agency's decision may not be frequent. Usually, the apprehension of regulatory action against an errant service provider which can result in imposition of penalty, temporary or permanent suspension of registration will force an FSP to take the redress agency's decision seriously. For example, non-compliance of FOS' order amounts to a breach of rules and can lead to cancellation of license (Financial Conduct Authority, 2020). This can mean loss of both business and reputation.

[19] Some countries may make the decision automatically binding on both the parties but this may work only where the redress agency has well established credibility.

[20] See, Paragraph 16 of Schedule 17, section 228 and 229 of the Financial Services and Markets Authority Act, 2000.

Even in a voluntary establishment, if the service provider does not comply with the final decision it can trigger a breach of contract between the firm and the redress agency. One of the fallouts could be redress agency cancelling the membership of the service provider. In New Zealand, if an FSP rejects the decision of the IFSO, it has two options — either cancel the membership of the firm or refer the matter to the FMA for appropriate action (Insurance and Financial Services Ombudsman Scheme Incorporated, 2015). Unlike U.K., the court does not enforce the decision of the redress agency.

Country Experience

The roles are similar across the four agencies studied. The CFPB does extensive complaint analysis to study industry level patterns given its role as the unified complaints collector. It also makes the complaint database public for consumers to access. In the case of Kifid, the conduct regulator (AFM) has access to the complaints database to conduct analysis. The monetary compensation awarded by each agency varies based on the national context, but the decision of the agencies is binding either de jury or de facto.

Table 3 Implementation of the decisions

	Netherlands - Kifid	**NZ - IFSO**	**UK - FOS**	**US - CFPB**
1) Roles: prevention	Yes	Yes	Yes	Yes
2) Roles: consumer protection	No	Yes	Yes	Yes
3) Roles: complaint analysis	Yes	Yes	Yes	Yes
4) Powers: Compensation	Monetary award	Monetary award, interest and specific performance, cap: £150,000 for complaints filed before April 1, 2019, or else £355,000	Monetary award and specific performance, cap: $1500 in case of product that provides regular payments, or else $2,00,000	-
5) Powers: Binding decision	Yes. Not by statutory law but usually both parties agree to it at start of process	Yes, once consumer accepts award. Binding as per the terms of membership.	Yes, once consumer accepts award. Binding as per the FCA Rules.	-
6) Powers: Enforcement	Court	Regulator	Redress agency	-

CFPB: We were unable to obtain verified information on the powers of the CFPB with respect to its dispute resolution role.

Part II

GRM Body

The focus of this Part is governance of the redress agency and possible ways of funding the body. The first chapter deals with the Governance Structure where we discuss the operational and administrative issues pertaining to governance. Every institution has administrative activities. However, the prime function of a redress body is to settle disputes. Given the role of the agency, a valid question arises whether it is essential to separate the decision making function of the redress body from the administrative activities. Should there be a separate board structure like in corporate entities to supervise the administrative and management activities but maintain an arm's length from the decision making function of the agency? Given these considerations in designing the structure of a redress body, we discuss relevant operational issues like whether there should be a single decision maker or a panel, the need for a governing board structure, the relationship between the board and the decision makers, the eligibility criterion for appointment of decision makers and board, and how the appointment is to be made.

The next chapter is on Funding which constitutes a critical analysis of various aspects of sources of funding and the influence it can exercise on the independence and effective functioning of the redress body. It is possible that redress bodies may fail to deliver the public services (dispute resolution) if their activities are unduly influenced, whether by the regulated industry, government, politicians or outside interest groups. As a result, autonomy is an essential dimension for the success of the agency even though it might receive grants from the government or collect fees from the regulated entities. Precisely, the source of funding should not have a bearing on the agency's manner of functioning, for instance, the discretion to prioritise utilisation of the resources should be the prerogative of the body. Hence, in this sense, autonomy could be directly linked to the operational independence of the body. In this chapter, we explore different options of funding like from the industry, regulator, government or a hybrid option. Additionally, the multiple options of funding structure i.e., case levy, case fee, budgetary grants, etc. have been also dealt along with the possible ways to calculate them.

4 Governance Structure

Key points

To ensure fairness and independence, the redress agency could have a two-tier structure. While the board takes care of the non-executive role i.e., administrative activities, the decision makers perform the core function i.e., resolve disputes.

A panel of decision makers over an individual is a better choice in resolving complaints. Such a panel may consist of an independent chairperson and nominated members each from the financial industry and a consumer body.

A separate governance body like a board can act as an interface between stakeholders and the decision makers. The board must have a balanced composition of the industry and consumer representatives.

Clear criteria should be laid down for the appointment of decision makers and board to ensure independence and expertise.

The decision makers should be appointed by the board if possible, else by the government or regulator or a body consisting of public interest members. The chair of the board should be appointed by a body that commands public confidence and the members of the board either by the board or by the same appointment body that appointed the chair.

Resolving disputes between consumers and FSPs is the central role of a redress agency performed through its decision making team, for example, the ombudsman. In order to keep this function independent and fair, the redress agency often has a two-tier governance structure with a clear separation of roles of the decision maker and the board. While the board performs the non-executive role i.e., the overall administration of the redress agency, interface with the stakeholders, risk assessment, preparation of annual reports, the ombudsman focuses on the core function of handling queries, complaints and adjudication of disputes. Apart from the board and decision makers, this chapter details the role of staff and how to build their capacity.

Decisions and Principles

1. Decision: Should a complaint be resolved by an individual or a panel of decision-makers?
   While it is common to have an individual decision-maker handling each case, there are arguments in favour of having a panel of decision-makers consisting of an independent chairperson and nominated members each from the financial industry and a consumer body. A mix of industry and consumer representation could ensure a balanced panel

with varied expertise that could be suited to dispute resolution, especially given that financial disputes can be complex. It could also be perceived as more impartial than an individual decision-maker by both the consumer and industry. It could especially be better suited for industry or FSPs that are new to alternate dispute resolution by providing additional assurance and perceived fairness. However, such a panel would come with increased costs and most likely additional time taken to resolve disputes. These resource constraints need to be weighed against the benefits of a panel, but it is also important to think of mechanisms that will allow a panel to achieve internal consistency and hold the different members accountable (Gill et al., 2014).

2. Decision: Should there be a governance body, i.e., a board?
   It is advisable for the redress agency to have a separate governance body if it can be independent of the various stakeholders. The board usually has a non-executive role in the redress agency. It can reduce the direct influence of the regulator or ministry by performing some of the oversight and non-executive duties, as well as act as an interface between the decision-maker and other stakeholders. The composition of the board should ensure a balance of industry and consumer representation, thereby acting a the public face of the decision-maker and representing the public interest.

3. Decision: Eligibility criterion for decision-makers and board members.
   Decision-maker:
   - Skills: The decision-maker should have three domains of knowledge and skills: law, financial services, and dispute resolution. Former judges or practising lawyers are suitable, but there can be members from other professions. Moreover, all of them must receive additional training on the role of dispute resolution which is different from court procedures.

   - Independence: should not have worked in the financial industry or association within the previous years (three years could be a reasonable time period) or be a serving politician. This is necessary to ensure impartiality and build consumer confidence.

   Board:
   Should have an independent chair and members that represent the industry and consumer bodies.
   - The independent chair: should not be associated with the financial services industry, i.e., have no association with the industry in the past 3 years and no family member holding more than a certain prescribed percentage of beneficial interest in a financial business.
   - Members: cannot be a serving politician or member of a financial services regulator. The composition of the board should be such that equal representatives from industry and consumer bodies and only a minority of the board should be associated with the industry. Apart from these essential eligibility criterion, it is encouraged that the board should include members known to and trusted by consumers - come from the types of jobs or backgrounds that are trusted by consumers in the particular country

(even better if some of the individuals are well-known).

4. Decision: Who appoints the decision-makers and the board?
   Decision-maker:
   The decision-makers are appointment by the board if one exists or by a body that commands public confidence if the board does not exist, e.g., the legislature, the government, the financial services regulator(s) or a body that has only public-interest members. The essential criteria is that the appointment body should not be appointed by the industry, nor by a body with a majority of industry or consumer members. If an independent board appoints the decision-makers, especially the chief decision-maker if there is one, it adds a layer of separation between the decision maker, and the regulator, industry, consumer bodies. Keeping these checks and balances in the appointment process is necessary to maintain independence both in form and in the perception of consumers.

   Board:
   The chair of the board is appointed by a body that commands public confidence - the legislature, the government, the financial services regulator(s) or a body that has only public-interest members. The members of the board can either be appointed by the chair or by the same appointment body that appointed the chair.

5. Decision: What should be the terms of appointment?
   The terms of appointment provide mechanisms to enforce the independence of the redress agency from the appointing body, as well as, try to ensure impartiality in the dispute resolution process.
   Decision-maker:
   The position of the decision-maker should be secured for a sufficient fixed term. Fixed-term can ensure that the appointing body cannot control the term duration and the decision-maker has sufficient time to establish itself in the redress agency. Similarly, they should not be removed except for incapacity, misconduct or other just causes. The pay should not be subject to reduction or suspension or be influenced by the outcome of complaints, and ideally should be linked to the equivalent grade of a judge. For transparency and accountability, the appointment should be through public advertisement. For instance, in U.K., the law instructs the board of FOS to ensure independence in the terms of appointment of the ombudsman.[21]

   Board:
   Similar to the decision-maker, the board members should be appointed for a secured fixed term and be protected from removal except for removal by a two-thirds majority of the rest of the independent board because of incapacity, misconduct or other just cause. Appointments should be done through public advertisement.

[21] Paragraph 4 of Schedule 17, Financial Services and Markets Act, 2000.

Country Experience

The CFPB given its unique structure does not have a board and decision-makers, however, the other redress agencies have a clear two-tier governance structure. The CFPB has a director along with different units like consumer response unit and enforcement unit. The complaint collection and response is based in the consumer response unit.

Table 4 Implementation of the decisions

	NL - Kifid	**NZ - IFSO**	**UK - FOS**
Existence			
Decision-maker	No panel, but more than one decision maker at mediation	No panel, but one ombudsman and one deputy Ombudsman	Panel of ombudsmen, which includes a chief ombudsman
Board	Exists	Exists (called as Commission)	Exists
Eligibility			
Decision-maker	Disputes Committee & Appeals Committee formed by judges, lawyers, other experts	Ombudsman has training in law and alternative dispute resolution	Chief ombudsman is a non-practising barrister, Principal ombudsman holds regulatory experience
Board	4 members - Chair is former judge	7 members - Chair is from non-financial regulator	6 members - chair is exminister, holds industry and ombudsman experience
Who appoints			
Decision-maker	The board; But MoF appoints the chairperson of the committees	The IFSO commission appoints	The chairman and the board appoints
Board	Chair - MoF; Members-board with the consent of MoF	Chair - Commission; Members - Commission	Chair - HM Treasury; Members - FCA
Terms of appointment			
Decision-maker	Most are not employees of Kifid, receive a fee for their contribution to procedures	Appointed for a fixed term of 2 years and can be re-appointed, removal only on specific grounds	Specific terms not available in the public domain, but law guarantees independence in terms of appointment
Board	The Board is independent of the dispute resolution stages	Appointed for 3 years and can be reappointed, removal only on specific grounds	Independence is ensured in terms of appointment and removal

Staffing

As necessary support to the governance structure, the design of the redress agency should also ensure that the staffing needs are met for satisfactory performance. Internationally records and statistics of past complaints show that majority of the complaints are fairly straightforward but some are complex disputes that need financial expertise (INFO Network, 2018). This implies that the staffing should be designed to ensure two needs: first, have experts covering the financial sectors and products under the jurisdiction of the agency including experts on bundled/interconnected products. Second, have sufficient support staff to handle the volume of the complaints within reasonable time limits and workload per employee. Both these have to be designed within the cost and resource constraints of the agency.

Decisions and Principles

1. Decision: How to ensure sufficient subject expertise?
   The need for experts depends predominantly on the jurisdiction of the redress agency. For example, a unified finance industry agency receives complaints from all sectors and for all products and would need diverse experts. Having enough skilled staff to resolve disputes in a timely manner may become more challenging depending on the volume of complaints, as well as the diversity of the expertise required. Developing in-house expertise in all sectors may not be feasible, hence it may help to have a pre-approved panel of external experts familiar with the needs of the redress agency. The redress agency can either get external experts based on need or have experts on fixed-term contracts rather than on permanent contracts.

2. Decision: How to ensure sufficient support staff?
   Staff members who handle the complaints perform a key role. They are referred to as caseworkers, investigators, assessors, case analysts (INFO Network, 2018). While the level of education needed depends on the context, it would be ideal to have professional qualifications or accreditation in conciliation/ mediation or dispute resolution, communication. One of the key decisions to make is whether to have caseworkers specialised in part of the complaints scope or not. INFO Network (2018) recommend a degree of specialisation, if the size of the redress agency allows, based on the agency's past experience of complaints and the training the staff undergoes.

5 Funding

Key points
Source: Financial service providers rather than the regulator are the most common source of funding of the redress agency. The main issue is to ensure independence from the funding body. It is possible that redress bodies may fail to deliver the public services (dispute resolution) if their activities are unduly influenced, whether by the regulated industry, government, politicians or outside interest groups. As a result, autonomy is an essential dimension for the success of the agency even though it might be completely dependant on the government grants or collect fees from the regulated entities. Precisely, the source of funding should not have a bearing on the agency's manner of functioning. In essence, autonomy should be agnostic to the source of funding.

Structure: The structure of the funding usually comprises a levy, case fees, and budgetary public grants. Attention should be paid to how each is calculated.

This chapter looks at the funding of the redress agency through the lens of the source of the funding (i.e., complainants, regulator, FSP funded) and the structure of the funding (i.e., levy, case fee, and their calculation). It also covers details on how the funding structure should be operationalised for an operating regress agency.

Decisions and Principles

1. Decision: Should complainants be charged?

   Complainants should not be charged to file a complaint. Ideally, this should be stated in the law or the rules. A fee could be charged at later stages of the redress process. To meet the core principles of effectiveness and accessibility it is essential that filing a complaint is free and the cost is not a barrier to seeking redress. This could also be helpful for a FSP to deal with 'persistent complainants' (i.e. complainants who complain repeatedly to the FSP), as they can encourage such complainants to take the complaint to the redress agency for no fee (INFO Network, 2018). Only when the national context demands, there could be an argument for a fee, in which case the fee should be as low as possible.[22] For example, in the complaints boards in Denmark consumers pay a fee of 20 Euros to file a complaint, but this is refunded to the consumer if the complaints board upholds the complaint (Thomas and Frizon, 2011). There could be a discussion about the use of a fee to discourage 'spurious/frivolous' complaints at later stages of the redress process if those stages are costly. For example, if there is a stage in the process where complainants can dispute the decision reached, there could be a low fee to file an appeal.

[22] A suggested upper limit is 5% of the average weekly salary in the country (INFO Network, 2014).

2. Decision: Who should fund?

- **Options:**
  - Financial Service Providers
  - Regulator
  - Government/MoF/Public sources
  - Combination of above

Our study of international experience suggests that the most common source of funding for the redress agency is by directly charging fees from the FSPs.Even in the cases where part of the fees is collected by the regulator, the fee allocated to the redress agency is stated transparently. This has the benefit of building the reputation of the FSP and financial services in general, plus the indirect benefits like increasing consumer trust and confidence. Funding through the FSPs is also more likely to ensure sufficient funding than public finance sources which has their own set of limitations. However, the main concern with this design is ensuring the independence of the redress agency from the FSPs.[23]

While there is no easy way to ensure this, some common principles can help create a better funding process. All FSPs should be charged in a fair manner and the funding structure should be fixed through a transparent process. The benefits to the business of the FSP could be highlighted. Attention should be paid to where the liability to pay arises from. This usually comes from the law or the financial services regulator's rules or the redress agency membership conditions. In any case, what is key is that the source and details of the funding structure should be clear to the service providers.

While the FSP could yield power over the redress agency simply by virtue of being the source of funding irrespective of the GRM framework, it is worth highlighting the interaction of funding with two features - competing redress agencies and a unified redress agency. If an FSP can choose to become a member of competing agencies, then the FSP could potentially use the threat of taking its funding to another redress agency to exert control. If the negotiating power is proportional to the relative size of an FSP's funding contribution compared to the total budget, then a unified GRM might help reduce few FSPs having a large relative funding as the total budget will be higher for a unified redress agency than separate ones.

Other concerns are that funding by FSPs could be affected during times of financial crisis and it is possible that the GRM costs are indirectly passed by the FSP to the consumer.

Funding through government/public sources or regulators has its own concerns.

[23]Kisin and Manela (2018) study the effect of bank fees on the regulator independence in the USA using a regression kink design methodology. They find strong evidence that banks that pay higher levy fees to the regulator get more lenient regulatory treatment. They conclude that financial incentives of regulatory agencies matter for the implementation of the regulation.

Again the main concern is of maintaining independence from the funding body. In particular, Government of India (2016) highlights a potential perverse incentive - *it would be sub-optimal for the FRA to entirely depend upon the regulators for budgetary support. This might present a risk, that the regulators may tweak their regulations to restrict grounds for redress in order to minimise the operational costs to be incurred on FRA. The consumers would benefit from having a system that permits as many grounds for redress as possible.* Another concern could be that the funding is constrained given other pressures on public finance (Thomas and Frizon, 2011). Most of the public funds would be channelled through the regulator or MoF, in which case there is a danger of conflating the role of a funder with that of oversight, which is often provided by these bodies.

Even if the redress agency is funded by the government or regulator, it must enjoy operational autonomy. For instance, the redress agency should have the prerogative to decide its priorities for spending the resources, like hiring staff or adopting new technology for its functions, etc. While there could be checks and balances to ensure financial transparency, like the agency's financial statements are annually audited and proper disclosures are made in the annual report, the operational decisions should be left to the agency.

Apart from the source of the funding, the other key decision is the funding structure and how to decide the various fee rules. These decisions should not be subject to approval by the industry and are usually defined in the laws or rules, with the details decided by the redress agency and regulator together.

3. Decision: What should be the funding structure?

- **Options:**
  - Levy on FSPs
  - Case fee on FSPs
  - Budgetary grants by public body or regulator
  - Combination of above

The levy fee structure has the advantage of providing predictability to both the FSP and the redress agency in their budgeting. For the FSP it gives a degree of stability in the amount payable, and for the redress agency, a reasonable degree of certainty about the amount of funding it will receive. A levy is also more likely to increase consumer trust in the FSP than the case fee. A potential concern could be that a levy based on market share penalises a 'large' provider that has low complaints. However, this can be avoided by adjusting the share of funds coming from the levy compared to the case fee and how the levy is calculated (e.g., using a flat levy).

Case fees, on the other hand, reflect the workload of the redress agency created by the FSP. However, it creates a degree of volatility in the amounts which will be payable by providers, and a significant degree of uncertainty for the redress agency about

the amount of funding. A potential concern could be that it penalises 'more used' providers like banks that might have smaller market share but many consumers.

While complete funding from a public body or the regulator, comes with many concerns, if a country's GRM framework is centred around the regulator, then it might be hard to disentangle costs incurred by the redress agency and the regulator. For example, if the redress agency utilises any administrative, technology, or expertise resources of the regulator. Hence, budgetary grants along with other fees could be allowed based on the national context. Using a combination of the funding structure options has the benefits of balancing the workload, uncertainty, and consumer confidence. However, how much of it should come from levy compared to case fees or grants is not obvious. For example, in the FOS, in 2019-20, case fees made up 85% of the Ombudsman Service's income, whilst the general levy covered the remaining 15%. The plan for 2020-21 is to collect 60% of the budget through case fess and 40% through the levy. Their logic for this change is to strike a balance between the stability of income from levy and the incentive to reduce complaints from the case fee.

4. Decision: How should the levy and case fee be calculated?

The levy rate and case fee amount is usually decided by the regulator based on many considerations, especially the budget estimate of the redress agency. The levy rate is often based on the market share of the FSP. However, this needs an official record of the relevant market data which is not available in some national contexts. If market share is used, then it could be simpler to assess market share within a particular sector (such as banking or insurance) than across sectors (INFO Network, 2018). Another option is to base the levy on the volume of customers or earnings of the FSP. And finally, the simplest option is to have the same flat rate for all providers or a flat rate based on the type of provider. INFO Network (2018) points out the case for levy exemptions or reductions, for example, for some socially useful smaller financial services businesses such as microfinance and microinsurance.

The case fee is usually based on the number of complaints against an FSP. Other options are based on the stage of the process, the complaint outcome, and on the FSPs handling of the complaint. Often the same case fees are charged on all complaints, except a small number of 'free' complaints. Each FSP may be allowed a small number of 'free' cases per year, to protect smaller providers from spurious complaints (Thomas and Frizon, 2011). The argument to charge the other cases uniformly is to ensure all types of cases are filed. A high case fee could affect how FSPs approach complaints, for example, either by trying to suppress complaints or by paying out unjustified complaints in the internal dispute resolution process to avoid the case fee.

It is common to charge the same case fee, irrespective of the stage at which the complaint is resolved. An increasing case fee by stage could be unfair to the FSP if only the consumer pressed on with the complaint, for example to the appeal stage

of the process. It could also make the FSPs pay their complainants off at the early stages of the process to avoid higher fees of the later stages. However, such a case fee could be used to *incentivise* FSPs to resolve disputes at an earlier stage of the process (e.g., in the New Zealand Banking Ombudsman as described in Box 2).

Case fee based on complaint outcome is not advisable as it could lead to perverse outcomes. On one hand, it could lead to potential additional disputes by the FSP to question the fee. On the other hand, the redress agency would derive financial benefit from certain outcomes, i.e. the complaint resolution outcome with the higher fee could be favoured by the redress agency, which could compromise the fairness principle. Also, there might not always be a clear winner or loser (INFO Network, 2018). Finally, a higher case fee could be charged if the FSP failed to handle the original complaint properly. However, this would increase the redress agency's workload — because, in addition to deciding the merits of the complaint, it has to make a second decision about the quality of the FSP's complaint handling (INFO Network, 2018).

Box 2: Case Study - Fee structure of Banking Ombudsman, New Zealand

The New Zealand BO uses a case fee structure based on the stage of the process to incentivise early resolution. Gill et al. (2014) note that while it can lead to early resolution, it can drive some FSP to pay their complainants off to avoid the higher later stage fee. They summarise the structure as - *75% of the NZ BO budget comes from case fees which are calculated in two ways. First, 8% (of the 75%) based on the number of complaints received by the ombudsman that had to be referred back to FSP. Second, 67% based on cases resolved by the ombudsman, classified according to a seven-point scale depending on how far they had to be escalated. For example, point 1 on the scale referred to a straightforward closure based on jurisdictional grounds, point 2 to a facilitated outcome, while point 5 referred to initially written assessments and point 6 to formal decisions and recommendations.*

5. Decision: How to operationalise the funding structure?

Decisions on the source and structure of the funding are important given that the aim is to maintain independence of the redress body from the FSPs and the regulator. However, how the funding process is operationalised and managed is also key, especially in the setting where the GRM framework is centred around the regulator.

The budget: To operationalise the funding structure, the first step is to estimate the budget. The budget should be prepared by the decision makers of the redress agency as it is the executive body. Good practice requires stakeholders consultation before adopting the budget. Ideally, the budget should be approved by the redress

agency board, however, depending on the board structure, it may be appropriate for the final budget to be approved by an impartial third party, such as a financial regulator. This may help to ensure the budget is neither too little for the workload nor too much for the industry (Thomas and Frizon, 2011). After finalising the budget estimate, it is essential to decide the split between the funding sources and the case fee, levy rates need to be calculated to ensure all budgetary costs are met.

Finally, it is important how the budget is managed. The redress agency should have total control over its budget. Ideally, the budget of the redress agency should be separate from the budget of any other bodies like regulator, MoF to ensure independence. However, if a country's GRM framework is centred around the regulator, it may be hard to disentangle some costs. In such a case, these costs could be transferred to the redress agency as a budgetary grant. The budget amount sourced from levy and collected by the regulator and budgetary grants should be handed over to the redress agency.

The levy: While the redress agency could exercise the levy directly on the FSPs, this could potentially expose it to pressures from the FSPs and threaten its independence. Since the regulator already collects levies from the FSPs, logistically it could be easier for the regulator to exercise the levy. The regulator could exercise the levy in two ways. The redress agency can share the budget amount to be funded by the levy on FSPs with the regulator. The regulator can add this to its own budget and collect the amount as a part of its levy. This has the advantage of no calculation of explicit levy rates and potentially providing a further layer of distance between the FSPs and redress agency. However, this has the drawback of reducing transparency. It is strongly recommended to communicate the levy rates clearly to the FSPs to ensure a transparent funding process. Hence, it would be better for the regulator to set an explicit levy for the redress agency.

The case fee: Case fee could be collected upfront or stage-wise as the dispute progresses or at end of redress process. Lot would depend on the financial need of the redress agency and what portion of the funding comes from the case fee. Every institution needs working capital to meet the recurring expenses. For example, FOS whose major funding comes from case fees, have an arrangement where the largest business groups pay an amount based on the expected volume of complaints in advance every quarter. These are called 'group account case fee arrangement'. Smaller service providers pay at the end of each case.

Box 3: Case Study - Case fee and levy of FOS, U.K.

The FOS estimates and proposes the budget for the financial year ahead. Each financial year, the FCA and FOS consult on the split of raising the budget through the levy and case fees. They also hold public consultation on the proposed case fee and levy rates. The flat rate case fee are to be paid by the FSP in the month after a case has been resolved. However, FSPs with a large number of annual cases are part of a group account fee firms and pay the estimated case fees each quarter. Any difference between the estimate and actual is settled at the year-end.

The collection and calculation of the levy is more complex. All FSPs covered by the FOS service are subject to the Ombudsman Service general levy that has to be paid even if no complaint is received against the FSP. The levy is collected by the FCA for FSPs that fall under the *compulsory jurisdiction* (if regulated by the FCA) and by the FOS for FSPs that fall under the *voluntary jurisdiction* (if not regulated by the FCA) of the FOS. In both cases, the levy is calculated on a similar basis. The FCA collects the levy as a part of its supervision levy but the FSP can see the FOS total general levy and its breakdown in the invoice.

For fixing the levy, the financial industry is divided into industry fee blocks and each firm falls into one or more of the industry fee blocks based on the business activities. The FCA will determine, following consultation, the amount to be raised from each industry block. This will be based on the budgeted costs and numbers of FOS staff required to deal with the volume of complaints which the FOS expects to receive against the firms in each industry block. Within each block, the levy is divided among businesses in that block according to a tariff rate. The levy comprises of a flat minimum competent and a variable component that increases in proportion to the amount of 'relevant business' (i.e. business done with customers/private individuals) the firm does. For example, for block 4: Insurers - life, the minimum levy is £130 and the variable levy is £0.01064 (tariff rate) per £1,000 of gross written premium for fees purposes (tariff basis). The FSP has to submit the tariff basis data.

Country Experience

Except for the CFPB which is funded through the budget of the Federal Reserve Board, the three redress agencies are funded by the FSPs. However, each has a unique levy and case fee structure.

Table 5 Implementation of the decisions

	NL - Kifid	**NZ - IFSO**	**UK - FOS**	**US - CFPB**
1) Complainant	Disputes Committee- free; Appeals Committee- 500 Euro	Consumers- free	Consumers- free	Consumers- free
2) Who funds	Service providers	Service providers	Service providers	Funded through the Federal Reserve Board
3) Liability	Who- Statutes of Kifid; Rules- MoF	FSP Act and IFSO constitution	FSMA Act and FCA Rules	-
4) Funding Structure	Levy only; No government grant	Fees and levy	Fees and levy	Budgetary grants
5) Budget	MoF approves estimated annual budget	Board/Commission	FCA	-
6) Levy exercise	Industry divided into 6 categories; Rate set each year (fixed and variable amts); within a category based on the measured value of each provider	IFSO's schedule of participant fees revised from time to time (basis of calculation not given)	Each firm is put under a fee block based on type of activity, annual fee requirement or AFR is then allocated between fee blocks based on tariff base of each block	None
7) Case fee exercise	None	1000 $	First 25 cases free; £650	None

Part III

GRM Process

To achieve an efficient GRM the redress process both inside the redress agency and the FSPs has to be well defined and designed. Globally GRMs usually follow a two-tier architecture — internal dispute mechanism of the FSP and external dispute resolution mechanism of the redress agency (INFO Network, 2018). Internal dispute resolution refers to the process of the FSP settling the dispute within a fixed timeline as per its policy. On the other hand, external dispute resolution involves the negotiation and adjudication machinery of the redress agency in which it hears both parties and arrives at a decision.

This two-tier architecture raises the question of when a complaint goes to the FSP and when to the redress agency. The standard practice for a dispute arising between the consumer and the FSP is to *first* resolve it between themselves before triggering the external process of dispute resolution (Organisation of Economic Cooperation and Development, 2011). There is no hierarchy or division of complaints between FSPs and the redress agency, and the default design is all complaints are routed to the FSP. Although this does not prohibit a consumer from approaching the redress agency first who may direct the complaint to the concerned service provider. Such an option would be beneficial in markets where consumer awareness is low.

The reason why most GRMs require consumers to first approach the FSP is that it is primarily the responsibility of business to settle complaints (INFO Network, 2018). This also gives reasonable opportunity to both parties to amicably settle the problem without getting into a dispute. Although some argue that complainants may not want to pursue a genuine complaint because this design would involve dealing first with the same FSP who had treated the consumer badly (Ferran, 2002). Given that the business of a FSP in a competitive sector may hinge upon its relationship with the consumer, an efficient internal resolution could be a better practice over third party settlement. However, in the insurance business, usually, insurers may not be inclined to preserve the relationship since the insured's loss is a business risk and the insurer's interest lies in not settling the claim. In such cases, aligning competing interests could be a challenge (Schwarcz, 2008).

A healthy internal dispute resolution is expected to save time and cost for the complainant and FSP, and reduce the burden on the redress agency. Schwarcz (2008) notes based on an internal survey of consumers in the U.K. that complainants filing complaints directly with the service providers end up seeking less assistance from the FOS. However, this would require genuine efforts by the FSP which may depend on the incentive structure. Only when the complaint remains unresolved or not addressed to the satisfaction of the consumer, it is appropriate to approach the redress agency. A redress agency is expected to deliver an impartial decision in a time-bound manner. It is also argued that the redress agency can redress the imbalance of powers between a complainant and a service provider in representing the case for want of technical knowledge and resources (Thomas and Frizon,

2012a).

Finally, we discuss the policy decisions to be taken in designing a two-tier GRM architecture. Also, we focus on the principles behind different approaches of dispute resolution available to a redress agency.

6 Internal Dispute Resolution

Key points

Standard practice suggests that first the FSP should attempt to resolve the complaint before the redress agency gets involved. To ensure FSPs resolve the complaint effectively, there could be options like compulsory framework, incentives (like higher case fee, reporting obligations) or a combination of both.

Some of the essential features of internal dispute resolution are:

- Clear process
- Definite timeline
- Free of cost
- Impartial process (separation of business from complaints handling)
- Consumer-centric approach
- Easy access

Relaxations from some of these standards could be provided to small-sized financial firms based on a defined threshold.

Decisions and Principles

1. Decision: How to ensure the FSP engages effectively with consumers?

   Options:

   - Compulsory structure
   - Incentive structure
   - Combination of regulation and incentives based structure

   To achieve this, it is essential to determine what behaviour we expect from the FSP at the different stages of the redress process. The principal expectations could be — a consumer-first approaches the FSP and the FSP provides a resolution to the complainant.

Option: Compulsory structure

Depending on the design of GRM framework, a compulsion for a FSP to administer an internal dispute resolution mechanism can flow either from the statute or rules framed by the redress agency or terms of a contract between the FSP and the agency. In New Zealand, the members of the IFSO are obliged to run an internal dispute resolution mechanism under the terms of reference and the participation agreement entered between the redress agency and the FSP (Insurance and Financial Services Ombudsman Scheme Incorporated, 2015). In the case of FOS, the regulator – FCA has framed rules which makes it compulsory for the FSPs to operate such a dispute resolution process (Financial Conduct Authority, 2020). Whichever be the form, global experience suggests that compulsory framework seek to promote FSPs to resolve complaints (Organisation of Economic Cooperation and Development, 2013).

In other words, there is an obligation on the FSP to first address the complaint before it is directed to the redress agency.[24] Also, some minimum/essential standards may be laid down which can help to achieve a certain level of uniformity and certainty in the manner of internal dispute resolution. Some of these standards could be timeliness, accessibility to the resolution mechanism, impartiality and free of cost (see, section 6) (World Bank Group, 2017b).

A compulsory framework can also require disclosure of the annual performance of FSPs as it can lead to behavioural changes and help track the performance of the businesses. This may include complaints referred to the redress agency and the complaints resolved *directly* by the FSP. For instance, in the U.K., regulated firms have to file with the FCA a complete report on the internal dispute resolution like the number of complaints closed, upheld, cause of complaints, and the total amount of redress paid. Firms are required to report this once or twice per year depending on its revenue/size (Financial Conduct Authority, 2020). Such disclosures may act as a reputational mechanism and nudge the providers to engage more effectively with the consumers.

For example, ranks may be assigned to FSPs based on performance on each metric, like how many complaints were resolved through the internal dispute mechanism, at what stage the complaint was resolved when referred to the redress agency, etc. However, big firms can face more number of complaints which may result in more number of pending or complaints rejected. Reporting would have to factor in such concerns to avoid any misleading conclusions.

Option: Incentive structure

In a competitive sector, it is expected that FSPs have an inherent incentive to maintain a healthy relationship with customers for business and reputation. Doing so may influence the prospect of acquiring a new customer and retaining acquired ones.

[24]Whether the redress agency or regulator should frame the rules has been discussed in Chapter 1.

Keeping this in mind, it is in the interest of the FSP to sort out the complaints in a quick manner without compelling the complainant to approach the redress agency. Greater consumer awareness of their redress rights and highlighting such benefits to the FSPs could help make this incentive salient.

In addition to this, some measures may influence the decision of the FSP to engage with its consumers more effectively. For instance, a significant case fee for the external dispute resolution could be fixed to incentivise the FSP to run a fair and effective internal dispute resolution. However, a certain number of cases are usually kept *free* so consumers do not arm-twist the FSP by misusing the process. For e.g., in Singapore, consumers are charged a nominal fee when a complaint is escalated to the adjudicative stage to deter frivolous complaints (Ali and Roza, 2012).

Once a dispute reaches the redress agency, a sliding fee structure may be designed. The fee may increase as the dispute moves up the scale from informal negotiations to formal adjudicative processes. For instance, New Zealand Banking Ombudsman follows a 'moral suasion' technique to incentivise the resolution of complaints at an early stage. It has adopted a sliding scale of annual fees structure where 75% of the fees is dependant on complaint handling performance of the providers (Gill et al., 2014).[25] However, this design can have its limitations. For instance, an increasing case fee by stage could be unfair to the FSP if only the consumer pressed on with the complaint, for example to the appeal stage of the process. It could also make the FSPs pay their complainants off at the early stages of the process to avoid higher fees of the later stages. In practise, most financial services redress agencies charge the same case fee irrespective of the stage or manner used for resolution of disputes (INFO Network, 2018).

Finally, the redress agency can refer back cases to the service providers in case they find that the internal process is not exhausted. The aim of all these is to bring a change in the attitude of the businesses to accept that it is their prime *responsibility* to resolve disputes. But the use of such incentives should be designed carefully as while they can lead to early resolution, they can drive some FSP to pay their complainants off and create distorted incentive to file complaints.

Option: Combination of regulation and incentives based structure Being a hybrid option, this design may derive benefits from both compulsory and voluntary structure.

In addition to the above options, there could be more factors that may affect how the FSPs perceives and handles the internal redress resolution. Some of these are whether the redress agency is located within or outside the regulator or whether the

[25]Complaint handling performance is judged based on two parameters. First, how many complaints have been referred back by the redress agency to the service provider. Second, at what stage of the dispute resolution the case was resolved. Scoring/rating is done on the basis of the stage starting from negotiation to formal decisions. This creates an incentive for the firms to resolve complaints.

redress agency is established by law or voluntary. The pros and cons of these options have been discussed in Part I Chapter 1.[26]

Further, the question of whether the redress agency engages with providers and has a transparent process can play a role. The redress agency and FSPs need not maintain an adversarial relationship. A strong feedback loop where FSPs can interact with the redress agency and a transparent decision-making process can create a cooperative ecosystem. E.g., in New Zealand IFSO gives priority to webinars where they conduct professional development programs for scheme participants. In 2018-19, 29 webinars were held and attended by 1900 participants. Also, they have launched a *root cause* analysis initiative for insurance service providers where they identify the cause of complaints for overall business development (Insurance and Financial Services Ombudsman, 2019).

Process of internal dispute resolution

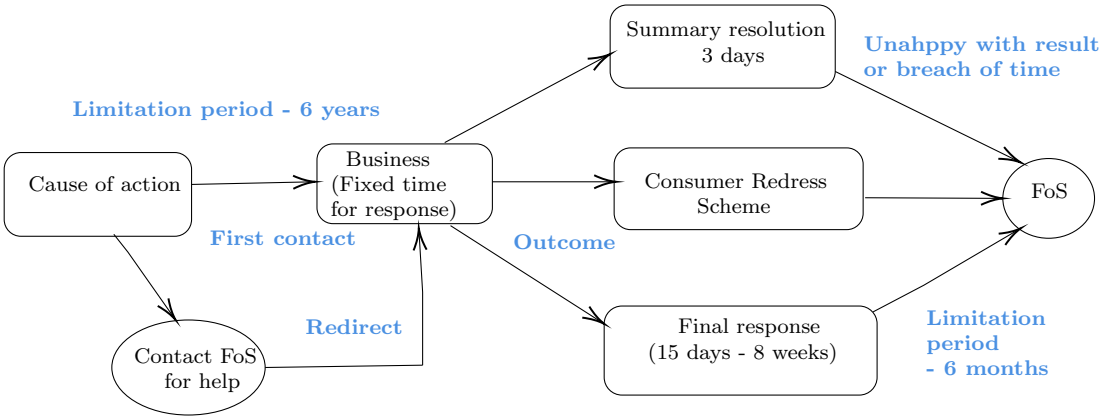
Just as important as ensuring that FSPs engage with consumers, is to ensure that there is a clear and efficient process for this engagement. While there is no one process structure for all internal dispute resolution mechanisms, we detail the essential rules/principles for the design of any internal dispute resolution mechanism. The process followed by FOS is also presented as an example of well defined internal dispute resolution process.

[26]For instance, redress agency established within the regulator may command more authority among the FSPs due to their existing relationship with the regulator, but it can create independence issues. On the other hand, a redress agency created under the law may enjoy a greater ability to compel cooperation by FSP and be perceived by the consumers as having more authority.

Box 4: Case study - IDR process FOS, U.K.

Based on the Handbook Financial Conduct Authority (2020):

- Once a cause of action arises, a complaint has to be filed with the FSP within a limitation period of 6 years. Sufficient time has been provided so no consumer is deprived of remedy for want of awareness.
- Firms have to maintain a single point of contact for the entire period of the resolution, so it is convenient for a complainant to pursue the matter.
- FOS allows an option where the consumer can approach it directly if they are not sure how to approach the concerned FSP.
- Within the pre-defined timeline, a firm has to settle the matter. Timeline differs depending on the nature of complaints ranging from 15 days to 8 weeks. If no resolution is given within 15 days, *holding response* must be given to complainants.
- If the timelines are breached, a complainant need not wait for the firm to provide remedy and can approach FOS. For e.g., Mr. A has received a holding response but 35 days have elapsed since the day of receipt of the complaint, Mr. A can directly approach the FOS.
- There could be three possible outcome - *first*, summary resolution within 3 days of receipt of the complaint, *second*, remedy under the Consumer Redress Scheme and *third*, final response.[a] The final response could be of three kinds — complaint is accepted and remedy is given, complaint is not accepted but remedy is given; and complaint is rejected with reasons.
- If the complainant is dissatisfied with any of the outcomes, the complainant has the option to approach FOS within 6 months from the date of receipt of communication.
- Firm has the obligation to inform the complainant in writing the reasons for not making a final response and when is it expected to be given. Also, it has to inform the complainant when the complaint can be referred to the FOS.



[a]FCA under its rulemaking power can require firms to frame Consumer Redress Schemes to remedy consumers.

Essential standards for internal dispute resolution

The design of an internal dispute resolution can differ depending on the national context like statutory landscape, level of awareness of consumers, size of firms, etc. However, some minimum benchmarks/standards are necessary for designing an effective system. The standards discussed below are not high-level principles, but based on successful practices from different countries (World Bank Group, 2017c) and (INFO Network, 2018).[27]

[27]World Bank's Good Practices for financial consumer protection assimilates experience from its member countries and international principles from bodies like G20/OECD Task Force on Financial Consumer

- *Clear process:* Every service provider should clearly define the process to be followed for dispute resolution preferably with a process map on its website. Given the varying level of awareness of consumers, the process should be simple and sufficient details must be provided to reduce the scope of confusion and uncertainty. For example, how a complaint is initiated through multiple channels like phone, letter, email and social media, how it can be tracked like allotment of an unique number, how it is escalated, and how and when decisions are given.

- *Timeline:* Definite timeline provides confidence and clarity to complainants and encourages accountability of FSPs. Therefore, each stage/event starting from acknowledgement of complaint to final response/decision must have a pre-defined timeline. In addition, the status of the complaint must be provided to the complainant periodically and reasons to be communicated for breaching a timeline. For instance, firms registered with the FOS must provide a holding response to complainants after 35 days from the date of receipt of the complaint before the final response is given. World Bank Group (2019) suggests any complaint should be resolved within 10-15 working business days and this timeline may be stretched in complex cases to a maximum 20-30 days.

- *Free of charge:* On request, every service provider must provide written information of its process at no charge to the complainant. The same information should be automatically provided at the time of acknowledgement of the complaint (INFO Network, 2018). Also, no charges or fees should be imposed on the consumers for complaints handling, either upfront or in the cost of financial products and services.

- *Decision making:* To avoid conflict of interest and give priority to dispute settlement, it is necessary to maintain an impartial process. As a result, a division between sales and decision making function is desirable. Firms can also choose to avail services of independent experts/arbitrators (like retired judges, lawyers) not connected with the firm and representatives of the consumer interest to settle the disputes. Doing this can enhance confidence among the consumers which may have a positive impact on its business prospects.[28]

- *Final outcome:* The final response to a complaint could be one of three situations — complaint is rejected with reasons, complaint is not accepted but remedy is given, or complaint is accepted and appropriate remedy is given (INFO Network, 2018). Irrespective of the nature of response, it must be in writing with reasons stated in simple language. Having a written response with reasons can also help the redress

Protection, Basel Committee for Banking Supervision, International Organisation of Securities Commission and many others. Further, the guide is used as a diagnostic tool to identify financial consumer protection issues in client countries of the World Bank Group.

[28]Small firms have more linear structure and a separate department will be an additional cost burden. In some cases, small firms can also approach the industry association for settling the disputes (World Bank Group, 2019). Rules can make exceptions for firms below a certain threshold, like annual turnover, number of employees, size of capital employed.

agency if the complaint gets escalated.

- *Reporting:* Information provided by the service providers can help the redress agency or regulator to track their performance. Further, as discussed earlier in this Chapter, this may act as a possible incentive for FSPs to address consumer complaints sincerely. Depth of reporting can be decided based on the size of firms.[29]
- *Consumer centric approach:* While settling disputes is essential, it is equally important to understand the cause of complaints so they can be avoided in the future. For instance, in the U.K., every firm who is a member of FOS needs to have a process for *root cause analysis* as part of the complaint mechanism. Also, it should have a process to decide whether the root cause can be rectified and how it is to be done (Financial Conduct Authority, 2020). For example, whether any modification is needed to the product design, marketing process, etc. Such reports should be provided to the board/senior management of the organisation on a quarterly basis (World Bank Group, 2019). Adopting these practices can also address systemic concerns.
- *Access:* Commonly understood languages must be used for dissemination of information, like complaint process, final response, etc along with an option of translation. For instance, a complainant will feel comfortable communicating in the local language for registering complaints (World Bank Group, 2019). Also, the entire process should be inclusive so it is easily accessible to people with special needs.
- *Awareness:* Finally, unless there is awareness among the consumers, the dispute resolution system will not serve much purpose. Hence, it is essential that FSPs repeatedly communicate to consumers their rights with respect to the complaint process, at different points of interaction like point of sale, sending promotional materials, issuing advertisements, and during internal resolution of disputes. Similarly, consumers should be explicitly informed that if their complaints remain unaddressed after the internal dispute resolution, they can approach the redress agency within the exact stipulated timeline and how they can do so (Thomas and Frizon, 2012a). For instance, World Bank Group (2019) noted that the use of 'template' by the Bank of Ghana is an effective way of spreading awareness among customers, as seen in Figure 2.

[29]Some jurisdictions have demarcated the depth of information sought and periodicity of reporting based on the number of complaints received per year and size of the firm. For example, in the U.K. firms that receive more than 500 complaints in a year have to adhere to more granular reporting twice a year compared to smaller firms (Financial Conduct Authority, 2020).

Figure 2 Posture template used in Ghana

Source: Bank of Ghana

7 External Dispute Resolution

Key points

Traditionally redress agencies have followed an inquisitorial approach to settle disputes, where they strive to address complaints at the threshold and avoid converting them into a full-fledged dispute. Rather than through an adversarial approach in which the focus is on who argues the case more persuasively. The inquisitorial approach demands active involvement of the decision maker in resolving the issue to create an alternate dispute resolution mechanism and not replicating the more rigid court system.

Some redress agencies have also adopted the *preventive approach* where they provide tools like an inquiry or screening system, and a technical desk which caters to inquiries of both consumers and service providers. Informal guidance is also provided to parties.

Usually, the stages of complaint handing begin with informal resolution through mediation and negotiation, followed by investigation and provisional assessment, and finally leading to formal adjudication.

1. Decision: What are the possible approaches to dispute resolution?

   Options:

   - Adversarial
   - Inquisitorial
   - Preventive

   Often design choices are not binary and can be a combination of approaches depending on the organisational goal (Gill et al., 2014). For instance, whether the redress agency wants to reconcile and facilitate the relationship between the parties for long term benefits or it wants to confine to the merits of the case and arrive at an objective decision.

   Option: Adversarial
   In this approach, parties may engage through legal representatives with a single focus to prove their respective cases. The decision-maker plays a passive role. A lot of emphasis is given to procedural fairness akin to the court system, like the exchange of written submissions and oral arguments. No prior attempt of conciliation is made and the process starts with formal adjudication. For instance, a redress agency may follow a court like procedure for settlement of disputes where parties argue on affidavits

(Gill et al., 2014). The European Commission Recommendation sets the standard for bodies engaged in an out of court settlement for consumer disputes (European Commission, 1998). One of the standards is 'adversarial principle', where parties should be allowed to present their viewpoint and arguments before the authorities.

While this method may prove to be beneficial for resolving complex cases, having the same approach for all cases may have limited benefits. A traditional critique of the adversarial approach is that passive decision-making can polarise issues and promote confrontation, whereas redress agencies are meant to reconcile (Verkuil, 1975). Another challenge could be its inability to redress the balance between parties where service providers are usually better equipped than complainants to represent a case (Gill et al., 2014). To overcome this hurdle, the balance of burden of proof could be shifted to the FSPs. Like in the U.K., the Advertising Standards Authority puts the burden on businesses in relation to complaints of misleading advertisements (Gill et al., 2014).

Option: Inquisitorial

While the settlement of disputes remains the chief role of a redress agency, *traditionally* redress agencies have been inquisitorial (Gill et al., 2014). Most of them strive to address complaints at the threshold and avoid converting them into a full-fledged dispute. So while in adversarial, the focus is on who argues the case more persuasively, inquisitorial demands active involvement of the decision-maker in resolving the issue. The aim is to create an alternate dispute resolution mechanism and not replicate the rigid court system. Having an easy and informal process can save time and cost. Active involvement of the decision-maker may also help in striking a balance between the consumer and businesses which is otherwise left to the parties in an adversarial setup.

For example, the FOS provides the following clarification on their website to explain its role:

> *Unlike the courts we are not limited to looking only at the issues the consumer has focused on in their complaint. Our approach is "inquisitorial" - rather than the "adversarial" procedures of the courts, where the lawyers for the two sides "fight it out.*

However, this approach may face perception of reduced transparency due to the lack of formal procedures and less participation of parties (Gill et al., 2014). Also, the complex nature of the case or deadlock between the parties may demand investigation, expert advice and formal adjudication. As an optimum strategy, even inquisitorial redress agencies like FOS and IFSO have processes like investigation and formal decision making to provide optimum solutions. For instance, the International Network of Financial Services Ombudsman Schemes, which is an association of several financial redress agencies, recommends both informal and formal tools as

an effective approach of dispute resolution (INFO Network, 2014).[30]

Option: Preventive
Gill et al. (2014) position the preventive approach as a 'value addition' over the usual dispute resolution services. The goal of the prevention approach is to generate behaviour changes in the long run to reduce the cause of disputes. Also, since disputes involve cost and time and add to the workload of the redress agency, an organisation may choose to prevent problems than just cure them. From the classical reactionary approach of settling disputes, a preventive tool could be a step towards the identification of mistakes so they can be avoided in the future (Gill, 2014).

To prevent disputes, the approach needs to be both consumer and service providers facing. On the customer end, tools like inquiry/screening system could be used. For example, the FOS maintains a technical desk that caters to inquiries of both consumers and service providers. Informal guidance is provided like whether an issue amounts to a complaint or any other general information before the matter is formally taken up by the redress agency. Thomas and Frizon (2012a) suggest in some countries only a quarter of enquiries brought before the financial redress agency translated into disputes.

With growing instances of the preventive approach adopted by redress agencies, the traditional role of dispute settlement seems to be evolving. However, with limited resources, personnel and other institutional capacity, an organisation would have to prioritise based on the involved costs and benefits. Further, while diversification of the redress agency's role is desirable, caution must be exercised that it is not at the cost of the core function of the redress agency (Stuhmcke, 2010).

2. Decision: What are the different stages of dispute resolution? Options:

   - Early resolution
   - Provisional decision
   - Adjudication

   Financial redress agencies broadly follow a common theme where they first attempt to settle the dispute through informal means before going into formal decision making process (INFO Network, 2018).[31] Choice of stages may also depend on the organisational approach to settle disputes. A pure adversarial approach would go straight for the adjudication stage, whereas an inquisitorial design can have multiple stages, starting from negotiation to adjudication.

   Option: Early resolution

[30] Reserve Bank of India is a member of INFO network.

[31] International experience suggests that different redress agencies have varying design of stages with varied names.

Tools used: Negotiation/Mediation
In this stage, efforts are made to resolve the issues at the beginning through an informal and less time consuming process. The aim is to exhaust options of settlement before getting into conflict and confrontation. Tools like mediation/negotiation are used which allows the parties to be in charge with the mediator or negotiator intervening only when there is an impasse.[32] Experience of several jurisdictions shows mediation remains the preferred choice for dispute resolution in financial markets given its speed and simplicity (INFO Network, 2018).

The staff at the redress agency who is allotted the matter does the coordination work with the parties. Such negotiations can be held in person or over the telephone and even separately with each party when they do not want to meet. This is also called 'shuttle diplomacy' (INFO Network, 2018). In the FOS, the case manager does the informal review before getting to the redress agency level. Similarly in the IFSO, a team of case managers use methods like mediation, negotiation, and conciliation to reach an agreement where possible. However, it is upto the parties to not participate or withdraw from the early resolution process. For example, the mediation stage in Irish Financial Services and Pensions Ombudsman (FSPO) is voluntary and parties can withdraw at their will.

Although a complaint that has not been remedied by the service provider to the satisfaction of the consumer or held against the consumer may generate stress between the parties. Even then there is a scope of using early resolution tools to arrive at a mutually agreed outcome since it allows the flexibility of devising innovative and creative solutions (Gill et al., 2014). The success of the early resolution stage may depend on several factors, like skills of the negotiator, complexity of the grievance, the existing relationship between the parties, need of the parties, and the possibility of settlement. Investment in high-quality front end staff would be needed as they are the first officers to deal with the parties. Also, the incentive of the front end staff/case manager needs to be carefully designed. For example, incentive linked only to the metric of number of cases disposed of without escalation to adjudicative stage, may give rise to a conflict of interest. To avoid such situations, an in-built periodic review mechanism may be useful. Some redress agencies have a panel of case managers or senior case managers to make the process transparent and accountable.

Option: Provisional decision
Tools used: Investigation and assessment/evaluation
Some financial redress agencies give an option of a provisional decision where formal adjudication is not triggered. Instead, investigation is conducted and a potential result is provided to the parties, indicating the possible result if the parties opted for adjudication (INFO Network, 2018). [33] While an investigation is carried out to arrive

[32]Terms like mediation and negotiation are interchangeably used in different jurisdictions.

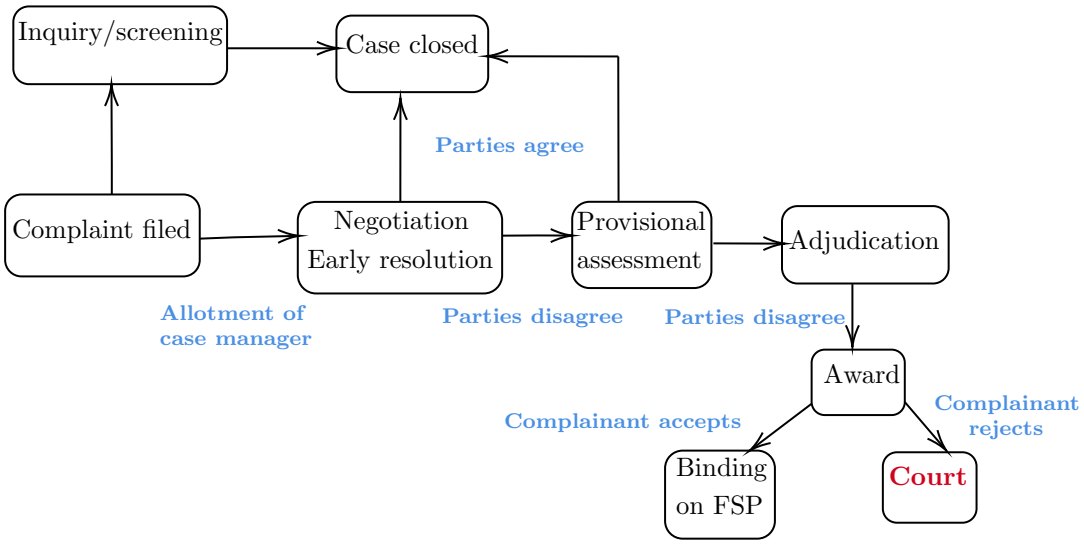
[33]Different expressions could be used to refer to this stage, like recommendation, assessment, and neutral evaluation.

at the possible decision, no formal review is triggered. Hence, this could be considered as a middle stage or extension of the early resolution stage, where parties are given a reality check before they opt for final adjudication. INFO Network (2018) suggests that in the experience of several financial redress agencies, the parties usually accept 65 to 90% of the provisional decisions. This stage of provisional decision is the last attempt to pursue the parties to settle disputes. In the U.K., the FOS gives a time limit to the parties to respond to the provisional assessment and if either party rejects the outcome, then the redress agency proceeds to adjudication (Financial Conduct Authority, 2020). Similar practice is also followed by the FOS Australia.

Option: Adjudication
Tools used: oral hearings, opinion of external experts, written submissions
When a complaint cannot be resolved through earlier settlement strategies, it is finally escalated to adjudication, which is the last stage of dispute resolution within a redress agency. Depending on the organisational design, either a single decision maker or a panel of decision makers may adjudicate the matter. At this stage, formal processes like oral arguments, written submissions, and admissibility of evidence is adopted, as priority is given to procedural fairness. Some redress agencies also seek opinion from external subject depending on the complexity of the case.

Once the decision is delivered, a stipulated time is given to the complainant to accept or reject the decision. Usually, this option is not available to FSPs and if the consumer accepts the decision within the allotted time, it becomes binding on the FSP. While a consumer has an option to appeal, a similar option is usually not given to the FSP. As a matter of good practice, a redress agency is required to explain to the complainant the effect of accepting the decision and the option of appeal if the decision is less advantageous to the complainant (INFO Network, 2018). Post adjudication or even during the intermediate stages, depending on the design of the redress agency, a complainant may go to the court if she is not satisfied with the outcome (see, Box 5).

The different stages of the dispute resolution as explained above can be seen in the diagram below:



Box 5: From redress agency to the court

At the end of adjudication, if the complainant is not satisfied with the outcome/remedy provided by the redress agency, she can go to court. However, if she accepts the decision within the given timeline, the decision becomes binding on her. A similar option is not available to the FSPs and it has to abide by the outcome. Whether a complainant or FSP can approach the court during the middle of the dispute resolution process depends what the legislation or rules state in a given jurisdiction.

For instance, in New Zealand, the IFSO (redress agency) allows the complainant to take court action at any stage of the proceedings, including if the complainant rejects the outcome. Whereas the service provider may make an application to the redress agency on specific grounds like when a complaint involves an issue that has important consequences for its business or a novel point of law. Additionally, the FSPs can notify the redress agency before the award that it intends to institute a declaratory judgement in the High Court within a specified timeline, ready to bear complainant's cost of the proceedings and any subsequent appeal proceedings commenced by the FSPs and pursue the complaint expeditiously (Insurance and Financial Services Ombudsman Scheme Incorporated, 2015).[a]

In the U.K, it is not clear whether FOS allows the complainant to take recourse to court at any stage during the redress proceedings. Once the final decision is given and accepted by the complainant, it becomes binding on the FSP. While the final decision cannot be appealed in a court, either party can go for judicial review. However, a judicial review can be filed only on the grounds that FOS has failed to follow a fair procedure or acted irrationally (Thomas and Frizon, 2012b).

Further, there is a *test case procedure* in FOS where the FSP may write to the redress agency before the award has been passed that the complaint involves an important question of law with important consequences on its business. In such a case, the agency with the consent of the complainant may refer the case to the appropriate court. Further, the FSP has to give an undertaking that it will commence the court proceedings within 6 months and will bear all the complainant's cost of the proceedings along with interim payments on account of such costs (Financial Conduct Authority, 2020).[b] Additionally, the redress agency with the consent of the complaint can refer the matter to the court if it involves an important question of law. Whether the complaint is referred suo-motu by the redress agency or the FSP, the consent of the complainant is necessary.

[a] Clause 15.4 of Terms of Reference of IFSO.
[b] Regulation 3.4.2 of FCA Handbook on dispute resolution.

3. Decision: Who decides the stage — opt for early resolution or adjudication?

Usually, the redress agency design dictates the first stage with the complainant hav-

ing the voluntary choice to participate or withdraw. Also, the decision maker may vary between different agencies depending on factors, like legal obligations and organisational perspective. For example in the U.K.'s Furniture Ombudsman, case worker decides whether a dispute is to be resolved through negotiation or adjudication and parties have no role to play (Gill et al., 2014). However in Ireland, the governing statute of Financial Services and Pensions Ombudsman makes it compulsory for the ombudsman to first attempt mediation before proceeding to a formal adjudication, but it is voluntary for the parties to participate or withdraw (Government of Ireland, 2017).

While allowing the parties to decide can give them a better sense of participation and control, staff of redress agency are trained to manage expectations more effectively. This can help them to choose a suitable approach to settle a given dispute. Another hurdle that may arise in letting parties control the affairs is their choices could be affected by conflicting interests or bad relationships. As a result, they may end up choosing disproportionate measures, like adjudication in a low value complaint, when the possibility of early resolution exists. Hence, there is a need for an objective decision which the redress agency is expected to make.

Country Experience

The redress agencies use a combination of regulation and incentive based structure to ensure that the FSPs perform their IDR role. The dispute resolution approach of all the agencies is inquisitorial with an emphasis on early resolution through mediation. There are procedural differences in the details of the dispute resolution stages even though the principles followed are very similar.

Table 6 Implementation of the decisions

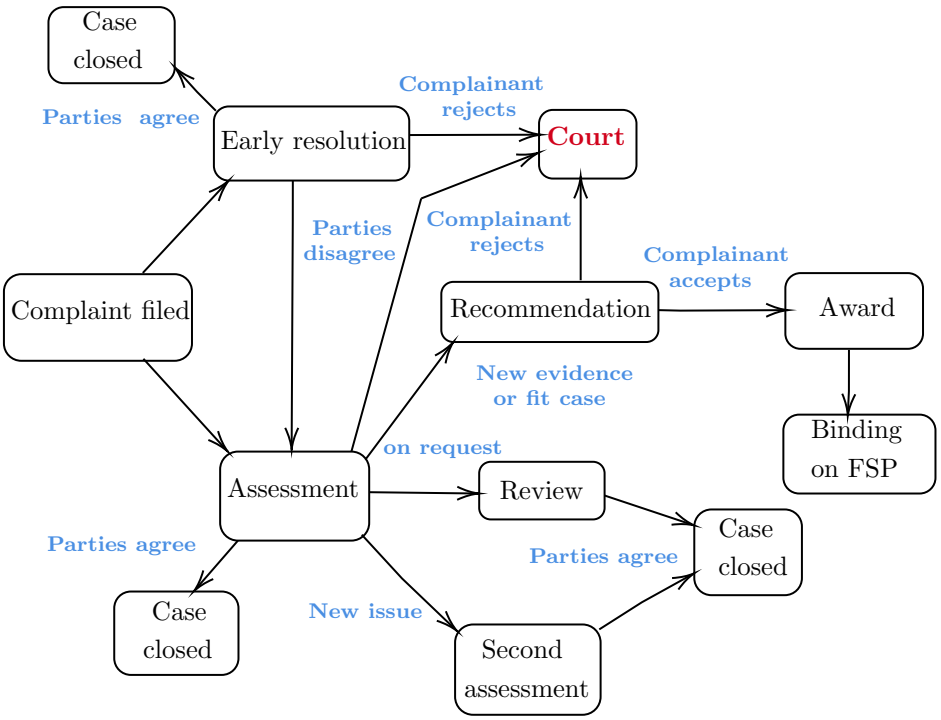
	Netherlands - Kifid	**NZ - IFSO**	**UK - FOS**	**US - CFPB**
1) IDR: FSP engagement	Combination of rules and incentive based structure	Combination of rules and incentive based structure	Combination of rules and incentive based structure	-
2) IDR: Rules	Need to respond within 8 weeks after complaint submission, free of cost	No timeline, free of cost service, more specific obligations prescribed in the contract between FSP and IFSO [34]	Timeline for resolution: 15 days - 8 weeks, free of cost, process for root cause analysis of complaints, records of complaints and decisions	-
3) EDR: Dispute resolution approach	Inquisitorial	Inquisitorial	Inquisitorial	Inquisitorial*
4) EDR: Stages of dispute resolution	Early resolution (mediation by case handler through writing or phone), Mediation by Disputes Committee through hearing adjudication, Determination (award) by Dispute Committee, Appeal	Early resolution (mediation), assessment, and recommendation (award)	Early resolution (mediation), provisional assessment and determination (award)	Give 15 days (extendable to 60) to FSP to review & respond to complaint, complainant can accept in 60 days, if not resolved open an investigation by consumer response unit, if not resolved then involve enforcement unit
5) EDR: Stage decider	Redress agency	Redress agency	Redress agency as prescribed in rules	Redress agency

CFPB: We were unable to obtain verified information on the IDR process of CFPB.

*The process starts with an inquisitorial approach for individual complaints but can become adversarial if they file a case in the federal district court or initiate administrative adjudicating proceedings before an administrative law judge.

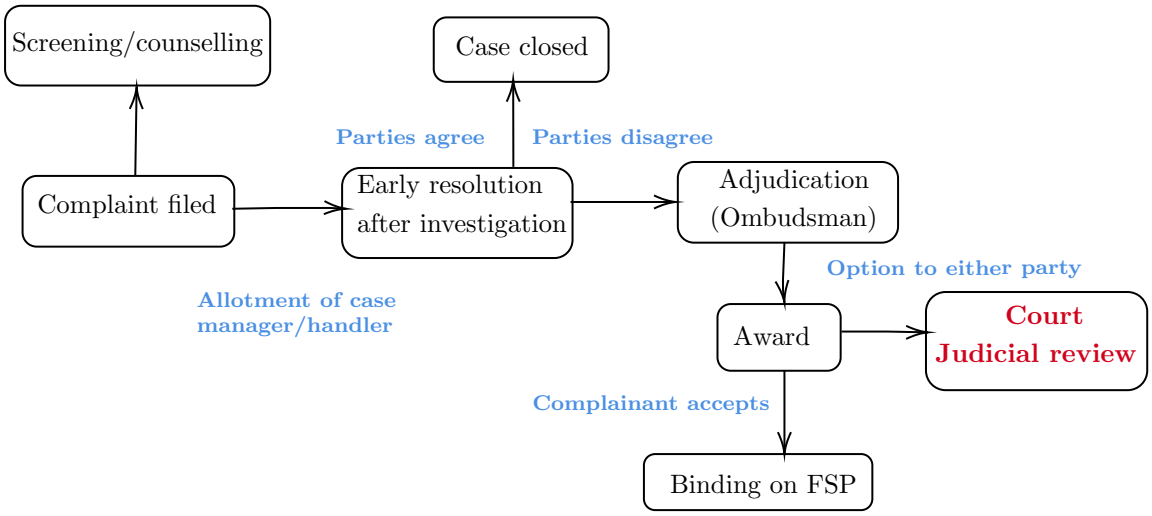
Below is the schematic presentation of the EDR process followed by the IFSO in New Zealand and the FoS in the U.K.

Process: Insurance and Financial Services Ombudsman, New Zealand



The redress agency (IFSO) has the discretion to use methods of early resolution like negotiation/mediation/conciliation. If early resolution fails, agency may proceed to assessment. Parties may agree to settle the dispute in accordance with assessment. However, either party can request for a review of the assessment. If there is a significant new issue, a second assessment may also take place. In the event the ombudsman thinks there is any new evidence or the complaint is fit for recommendation, then a formal recommendation (adjudication) may take place. If the complainant accepts the outcome of the recommendation within 30 days, the ombudsman will pass the award which will be binding on the FSP. At the end of recommendation or at any prior stage, the complainant has the discretion to withdraw from the proceedings and approach the court. If the award is passed and the service providers fails to comply with the award, it would amount to breach of the membership agreement which can lead to cancellation of the membership. IFSO may also inform the regulator about such non-compliance.

Process: Financial Ombudsman Services, U.K.



Once a complaint is filed, the FOS will ensure whether the complainant has been filed first with the FSP. At times if the complainant is unable to contact the FSP, FOS can help. Further, the first step involves screening of complaint which determines whether it is a complaint or a misunderstanding. Often issues are settled at this stage. However, if there is a genuine complaint then a case manager/handler is assigned. Depending on the complexity of the issue, time to allot a case handler may vary. For instance, 4 months to 9 months (fraud cases) incase of banking products and 5 months incase of insurance products (Financial Ombudsman Services, 2021).[35] After this initial assessment is carried out, which if not agreed by the parties, agency proceeds to formal review by the ombudsman. The ombudsman may fix and extend time limits for any aspect of consideration of a complaint.[36] Usually it gives decision within 90 days in line with the EU directive on Alternative Dispute Resolution. Once the complainant agrees with the final outcome, it becomes binding on the FSP. While this decision cannot be appealed in a court of law, either party can go for 'judicial review' of the decision given by the ombudsman (Thomas and Frizon, 2012b). This means court would not reconsider the facts of the case but can review the decision only if the ombudsman has not followed a fair procedure or acted irrationally.

[35]FOS has provided indicative timeline for different financial products and type of comlaints on its website.

[36]Section 3.5 of the FCA Handbook on disputes resolution.

Part IV

GRM Performance

Key points

It is essential to build-in performance evaluation mechanisms into the redress agency functioning to ensure that the outcome is aligned with the goals and to demonstrate the relevance of the agency. Most redress agencies follow similar mechanisms - annual reports, complaints against the redress agency, complainant satisfaction survey, independent evaluation, special evaluations. The independent evaluation is key and should be carried out by an external party every 3-5 years.

However, it is just as important to build in the incentives to ensure that the redress agency implements the evaluation mechanisms in a regular and unbiased manner. Ideally the law and accompanying rules governing the redress agency should mandate this.

Any evaluation should be designed with a clear aim, i.e., the goal or function of the redress agency being evaluated. Most evaluations check the performance of the redress agency with respect to its - access, process, dispute resolution quality, principles met. Any evaluation needs two essential inputs - a measure of performance and a benchmark to compare the performance against.

Performance evaluation is an essential element of governance - one which aims to assess the outcomes and relevance of an action in light of its initial objectives and expected effects. Evaluation is also crucial for accountability and public policy as this is how governments and agencies learn. In the context of a redress body, it is essential to review its performance to see whether it is rendering the goal of dispute resolution function effectively.

In this Part, we deal with the aspects of 'performance evaluation mechanism' and 'performance evaluation implementation' which have been divided into two chapters. The first chapter provides various tools of performance evaluation like annual reports, satisfaction surveys, external audits, and complaints against the redress body. While evaluation has merits like it can help the redress body in course correction, it could also reflect the shortcomings of a body and subject it to criticism. Therefore, the chapter also deals with building correct incentives (like legal mandate, stakeholder pressure) to ensure that the performance evaluation mechanism is a part of the institutional design and not left as a discretionary exercise.

In the second chapter, we discuss the details of how to implement performance evaluation. For instance, the first logical question which needs to be addressed in any evaluation

exercise is the goal or function of a redress body that has to be assessed. In the absence of clear and quantifiable targets, evaluation exercises may not offer useful results.

8 Performance Evaluation Mechanisms

The redress agency is established to serve specific roles, ideally independent of the regulator and the industry. To ensure that it is fulling these roles and performing satisfactorily, it is key to build-in performance and accountability mechanisms (Roy et al., 2018). Periodic disclosure of information based on pre-decided metrics is a common performance evaluation strategy used across several redress agencies. For instance, disclosure of information on complaints received and their resolution can have two benefits. First, it can help consumers make an informed decision while choosing a service provider. Second, it can help the service providers to compare their complaint experiences against firms engaged in similar businesses. In this chapter we detail the performance evaluation mechanisms that have been adopted internationally, which institution is in charge of the evaluation, and how can the redress agency be incentivised to do the performance evaluation. While we have not found studies analysing the impact or effectiveness of these mechanisms in driving the redress agency performance, these are standard practise across redress agencies.

Decisions and Principles

1. Decision: What are the common evaluation mechanisms?
   The four redress agencies covered in this paper implement these mechanisms to ensure that performance is measured and thereby potentially achieved:

   (a) Annual Report
   It is standard to have an annual report produced by the redress agency that reports the past year's activities and engagements. The reports give raw statistics (like number of enquires, number of complaints, time taken to resolve the complaint) and sometimes have performance measures like resolution ratio (i.e., number of complaints resolved out of the number of complaints received).[37] Ideally, the report should explicitly compare performance measures with the benchmarks and targets set in the last report, and if not met discuss the reasons for that. The financial reporting of the redress agency can be covered in the annual report or as a separate report with the annual budget.

   (b) Complaints against the redress agency
   As with any service provider, the redress agency should have a mechanism for the complainant to complain against the agency. This is usually handled by a separate member or department of the agency. While this is not a specific performance evaluation, it provides continuous feedback to the agency on its performance. Redress agencies publicly share the data on these complaints

[37] See Box 6 for the performance measures disclosed by the Australian Financial Complaints Authority.

either as a separate report or as a part of the annual report. In the U.K., FOS allows an option to the consumer to file a complaint against the agency if she is not happy with the dispute resolution services provided (like process followed, time taken, behaviour of the case manager), but not on the merits of the case or outcome of the resolution.

(c) Complainant satisfaction survey
At the end of the redress process, the complainant can respond to a satisfaction survey on the redress process and outcome. This is another source of continuous feedback for the agency on its performance. In Kifid the survey is handled by an independent external party and not the redress agency itself.

(d) Independent evaluation
The above three mechanisms are often conducted by the redress agency itself. Hence, every 3-5 years the redress agency has an independent evaluation by an external party. These evaluations are usually in-depth and cover the performance of the redress agency with respect to various principles and functions. The push to evaluate a specific goal often comes from the stakeholders like the ministry, FSPs, or if any of the other performance mechanisms show bad performance in a particular area.

(e) Non-periodic, special evaluations
If an urgent need arises for a specific evaluation, then the redress agency or the ministry or regulator can organise a one-off activity. For example, in 2011 the FOS invited the National Audit Office to conduct a review of the efficiency of its operations (National Audit Office, 2012). The audit was prospective and carried out before the implementation of the major change to transform all aspects of their operations. The aim was to evaluate whether the change programme was being delivered in a way that could address the efficiency challenges of the agency.

Box 6: Case study - Performance measures of AFCA, Australia

The Australian Securities Investment Commission (ASCI) regulatory guide provides an exhaustive list of information the Australian Financial Complaints Authority (AFCA) has to provide on complaints and dispute information (Securities and Commission, 2013). Some of these are:

- Number of complaints and inquiries received
- Demographics of complaints who have lodged complaints
- Number of complaints fell outside jurisdiction with reasons
- Identification of root cause of complaints
- Case load with age and status of pending cases
- Comparison of time taken to resolve a complaint with the specified timeline
- Number of disputes closed and an indication of the outcome
- Comparison of remedies awarded with the relevant laws
- Monitoring enforcement of decisions and time taken

2. Who is in charge of the evaluation mechanisms?

   For each of the performance evaluation mechanisms, the law or rules should specify who or which type of institution can execute the performance evaluation. Usually, it is one of these:

   - Redress agency
     The annual report is prepared by a department in the redress agency. Ideally, the department preparing the report or involved in any evaluation should be separate from the decision-makers. Similarly, complaints against the redress agency should be collected by a separate department of the agency. In the CFPB there is an Ombudsman who handles the complaints against the CFPB while in Kifid this is done by a complaints coordinator. In 2018, the Kifid complaints coordinator received 111 complaints about Kifid (KWINK, 2016). The majority of concerns were slow handling of complaints and inadequate communication about treatment time.

   - Independent body
     An independent evaluation is undertaken by an individual or institution that is not connected to any of the GRM stakeholders. In Kifid it is done by a private consultancy firm (see Box 7), in FOS by a qualified individual, and in Canada by a university. In Kifid the complainant satisfaction survey is also outsourced

to a private company and not undertaken by the redress agency itself.

- Another public body
  Audits and other non-periodic evaluations are usually performed by a conduct authority or public auditors. For example, the National Audit Office in the UK audits the FOS.

Box 7: Case study - Independent Review of Kifid, Netherlands

The statutory requirement in the Netherlands mandates an independent review of Kifid every four years. In 2016, it was conducted by a policy evaluation firm (KWINK Group) (KWINK, 2016). The report was submitted to the Ministry of Finance and published on the Kifid website. It clearly defines the goals it aims to evaluate.[a] They evaluate these goals using three methods and explicit benchmarks. First, official documents are studied to see if the expected goals are met. Second, qualitative interviews of a small sample of different stakeholders. Third, two quantitative surveys of a representative panel of Dutch consumers and a survey among lawyers. For example, to judge the accessibility, the firm uses various measures created by checking the website and benchmarking them against external standards, as well as recording these measures in the consumer surveys.

[a]Effectiveness, Efficiency, Independence, Unified, Safeguarding consumer interests, Costs

3. How to ensure that the performance mechanisms are followed?

A redress agency can adopt a combination of these mechanisms to ensure performance, but the key question is - what is its incentive to adopt and implement these? Given that the outcome of a performance evaluation can be critical of the redress agency, it is essential to build in a mechanism to ensure that the performance is measured in a regular and unbiased manner. These three levers are essential to ensure that performance standards are enforced:

- Statutory mandate
  Ideally the law and accompanying rules governing the redress agency should mandate the performance standards. The law should broadly set up a performance-oriented framework and could mandate specific mechanisms like annual reports and independent evaluations. For instance, in New Zealand, the governing statute mandates independent review of IFSO atleast once in every five years (Government of New Zealand, 2008).[38] Similarly the statute also lays down the requirement of the annual report containing prescribed information about the agency and requiring submission to the concerned Minister.

[38]See, Section 63(1)(q) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

- Incentives
  The redress agency should see the direct benefit it derives from the performance evaluations. For example, it is one of the main tools that the agency can use to demonstrate its value, accountability, and transparency, and to raise public awareness of its existence. The performance evaluations can be used to show the GRM stakeholders that the redress agency is providing a necessary and valuable service, as well as, promoting and motivating more financial consumers to avail the redress services. Further, in a competitive setup, i.e., where there exists more than one redress agency, there may be an incentive to measure performance well to bring maximum consumers and financial service providers on board.

- Stakeholder pressure
  Occasionally the stakeholders could put pressure on the redress agency board to do a performance evaluation. For instance, consumer associations may nudge the redress agency to perform well. If the performance improves, for instance, quicker and more efficient resolution of disputes, that can make the consumer feel confident to buy a product of the FSP expecting remedy in case of a dispute.

Country Experience

Table 7 Implementation of the decisions

	Netherlands - Kifid	**NZ - IFSO**	**UK - FOS**	**US - CFPB**
1) Performance Evaluation Mechanisms	All four - Annual report, complaints against agency, complainant survey, independent evaluation	All four	All four	All four
2 Who does independent evaluation	Private consultancy firm in 2016. Done every four-five years.	Individual or consultancy firm. Done every five years.	Individual or consultancy firm or National Audit Office or Research Institution. Independent assessment is done every year, independent review is done periodically.	Private consultancy firm in 2015*
3) How to ensure evaluation	Statutory mandate	Statutory mandate	Board driven	Statutory mandate

*This was an independent audit of selected operations and budget of the CFPB and not exclusively of its redress role

9 Performance Evaluation Implementation

In this part, we have described the various activities redress agencies undertake to measure performance, in this chapter we describe the details of how the measurement is done. Summarising the best practices of different countries, we propose a set of design principles that should be used when designing a performance evaluation. Detailed evaluation guides that can be used to develop the precise measurement tools and strategy, e.g., Carmona (2011), Office of the Toronto Ombudsman (2015).

Decisions and Principles

1. Decision: What goal or function of the redress agency is being evaluated?
   The first step is to define what is being evaluated because the inputs and methods will depend on this. There is no universal standard on what should be evaluated to judge the performance of the redress agency. Based on the country studies we highlight four aspects that are commonly discussed in the literature. The measures of access and process are more tangible, while the others are arguably bigger picture indicators that focus more on the overall impact of the redress agency. Carmona (2011) recommend a balance of both these types of measures such that productivity, as well as overall impact, are accessed.

   1. Access
   This pertains to everything before the start of the complaint process. As it is hard to have a measure of the true number of grievances, it is common to use other indirect measures of accessibility like website accessibility and information, communication comprehensibility, number of public engagement activities.

   2. Process
   This pertains to everything related to process and efficiency. Carmona (2011) provide a detailed literature review of a broad range of criteria and key performance indicators (KPI) that redress agencies have developed across the globe as well as how to interpret these criteria. Some common examples of process measures are - resolution ratio (i.e. number of complaints resolved out of number of complaints received), appeal ratio (i.e. number of appeals out of the number of resolutions), backlog measure (i.e. number of complaints on hand in excess of the number allowed under the time standards).

   3. Dispute resolution
   This pertains to the outcome of the redress process, an aspect of the redress agency that is hard to evaluate. The Independent Review of the Kifid (KWINK, 2016) provides a framework to measure performance on this function. The two dimensions to measure are - the legal 'correctness' of the outcome and the perceived fairness. The latter is based on the social psychology phenomena of

'perceived procedural justice', i.e., the same outcome can be perceived as less or more fair by different complainants depending on the process they experienced. This can be measured using the complainant satisfaction survey. With respect to legal correctness, the goal is to minimise errors in judgement but it has to be balanced against the cost of a perfect dispute resolution. Carmona (2011) suggest measuring the quality of the investigations instead of the outcome. They detail the set of eight principles of excellence adopted by the Ombudsman of Ontario, Canada.[39]

4. Principles and goals of the redress agency
This pertains to any other goal than the above three like independence, accountability, effectiveness etc. The push to evaluate a specific principle usually comes from the stakeholders like the ministry, FSPs, or if an evaluation shows bad performance. For example, the Australian Financial Complaints Authority is evaluated with respect to the principles detailed in Box 1.

Box 8: Case study - Evaluation criteria of AFCA evaluation, Australia

According to Securities and Commission (2013), the ASCI periodically evaluates the external dispute resolution scheme, i.e., AFCA, with respect to the following principles:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency and effectiveness

Each principle is broken into specific indicators which can be measured or evaluated. For instance, for the principle of independence, some of the indicators are - whether the agency is a separately incorporated entity or a subset of the industry, whether the representative from the industry appointed on the board has veto power on the amendment of the terms of reference of the agency, etc.

2. Decision: What inputs are needed for an evaluation?
Any evaluation needs two essential inputs - a measure of performance and a bench-

[39]These eight principles of excellence are - The investigators must be as independent as possible. The investigators must be trained and experienced. All potentially relevant issues must be identified and, where appropriate, pursued. The investigation must have sufficient resources. All relevant physical evidence must be identified, collected, preserved, and examined as necessary. All relevant documentation must be secured and reviewed. All relevant witnesses must be identified, segregated where practical, and thoroughly interviewed. The analysis of all the materials gathered in the investigation must be objective and based solely on the facts.

mark.[40] While there may be numerous ways to create a measure, here we highlight two essential points:

- Factual vs Subjective
  Most performance evaluations use multiple measures, often a mix of qualitative and quantitative, to access performance of a single goal or function. While this makes sense, it is useful to distinguish between measures that are factual or objective, and measures that is subjective or a perception. This will allow cleaner interpretation of the performance. For example, if we want to measure the independence of the redress agency, then a factual measure is - does the board have majority of members representing consumer interest, while a subjective measure is - customer feedback on their perception of the independence.

- Static vs Dynamic performance
  Most performance evaluations study the evolution of the measure over time, for example, how do the number of complaints evolve over time. However, even when there is only one data point of the measure, the aim is to evaluate it in the context of the evolution of the redress agency. For example, the number of complaints this year is low given it is the first year of the redress agency.

After a measure has been fixed, it is essential to explicitly record the benchmark or criteria it will be evaluated against to ensure transparency of the evaluation methodology. The benchmark can come from a statutory requirement (e.g. the board must have majority consumer interest members), external standards (e.g. Kifid uses a website quality certification as a benchmark for the website access measures), international or nation-best practices, or a comparative review to peers agencies.

[40] Benchmark could be based on the legislative obligations, rules and domestic or international best practices.

Box 9: Case study - Independent review of the IFSO, New Zealand

The independent review, Mcmillan (2018), was carried out as a part of the statutory requirement that mandates an independent review every five years. It was conducted by a single independent reviewer, Professor John McMillan AO, who has served in redress agencies and is an administrative law researcher and academic. The report was submitted to the Ministry of Finance and published on the IFSO website. It clearly defines the goals it aims to evaluate, which are based on the benchmarks for industry-based customer dispute resolution by The Treasury of Australia.[a] In terms of measures and benchmarks, the review broadly maps the goals to qualitative measures but does not define clear benchmarks. They use a variety of methods with three predominant ones. First, qualitative interviews of a small sample of all stakeholders. Second, the IFSO website to create measures like website features not found, number of clicks, etc. Third, goal compliance check, for example, accountability is mapped to four key practices and for each of these, the IFSO practice is detailed.[b]

[a] Accessibility, Efficiency, Independence, Fairness, Accountability, Effectiveness.

[b] Publish guidelines and policies for dealing with complaints, written report and letter of advice on the final decision, take account of comments from complainants, publication of annual report.

Conclusion

The purpose of this paper is to provide a high-level principles guide to the design of a financial redress agency. It combines the literature on principles and practical guidance for setting up a redress agency with international experience of four specific redress agencies — Financial Ombudsman Services Scheme (U.K.), Consumer Financial Protection Bureau (U.S.), Insurance Financial Services Ombudsman Scheme (New Zealand), and Kifid (Netherlands).

Using first principles and this rich mix of sources, we study the key decisions along four dimensions of the redress agency:
Part I: consists of chapters on Establishment of redress agency, Coverage, and its Roles and Powers. The establishment chapter deals with choices of establishing a redress agency i.e., by law, industry, or a combination of both, and the challenges associated with each option. We discuss questions like, whether the redress agency should be positioned within the regulator or be positioned at arms' length, whether the incentives of the regulator and redress agency align or do they have competing interests? Understanding these issues is necessary before deciding the design of GRM framework. In the coverage chapter, we look at whether there is merit in creating a unified redress body for the financial sector and in what context can such design succeed. Under the roles and powers chapter, the essential features i.e., – decision making, giving awards, binding decisions and enforcement of the decision, of any redress agency are discussed. Also, it briefly touches upon the evolving role of redress bodies which now includes strategies to prevent disputes and flagging systemic risks to the financial regulator.

Part II: comprises of chapters on GRM Body and Funding. In the chapter on GRM body, we discuss operational and administrative issues pertaining to the governance structure. The discussion stems from the question of whether it is essential to separate the decision making function of the redress body from the administrative activities. We discuss relevant operational issues like whether there should be a single decision maker or a panel, the need for a governing board structure, the eligibility criterion for the appointment of decision makers and the board, and how the appointment is to be made. The next chapter is on funding which constitutes a critical analysis of various aspects of the sources of funding and the influence it can have on the independence and effective functioning of the redress body. We also explore different options of funding like the industry, regulator, government or a hybrid option and options of funding structure i.e., case levy, case fee, budgetary grants.

Part III: consists of two chapters on internal dispute resolution and external dispute resolution. Global practice suggests that dispute resolution is a two-tiered process that starts at the level of financial service providers, and if needed, the dispute is taken to the redress agency. As a result, we deal with both the components of the grievance redress process. The chapter on internal dispute resolution lists out the factors that may influence a service provider to effectively engage with the complainant. We cover some of the essential attributes an internal dispute resolution process must possess like access, costs, simplicity,

timeline and impartiality. On the aspect of external dispute resolution, the chapter deals with different approaches and tools adopted by the redress bodies. Interestingly, some redress bodies have also adopted a preventive approach as part of the resolution strategy to induce behaviour changes in the long run to reduce the cause of disputes. In both chapters, we have diagrammatically represented the process of internal and external dispute resolution citing practices from different redress agencies.

Part IV: comprises of chapters on - performance evaluation mechanisms and performance evaluation implementation. Just like any other institution, a redress body aims to perform certain roles. Therefore, it is essential to build-in performance evaluation mechanisms into the redress agency functioning to ensure that the outcome is aligned with the roles and to demonstrate the relevance of the agency. To evaluate the satisfactory performance of the roles, it is necessary to design pre-decided metrics for accountability and measuring performance. For instance, some of the parameters could be accessibility, independence, fairness, and effectiveness. But the principal question is what is the incentive for a redress body to evaluate its performance – whether it should be governed by law or driven by benefit or due to stakeholder pressure. As far as measurement tools are concerned there could be several options like annual report, complainant satisfaction survey, independent evaluation. Also essential to this discussion is the transparency of the evaluation methodology and the results which must be accessible to stakeholders at large.

Two topics not covered in this paper which are of future research interest in the design of a sound GRM are the role of GRM in broader consumer protection, and the interaction of non-judicial redress agencies with courts. We think a similar approach of principles based analysis and international experience can contribute to the understanding of designing sound grievance redress mechanisms.

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