



ADR Chambers Banking Ombuds Office

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TERMS OF REFERENCE*

PURPOSE

1. The **ADR Chambers Banking Ombuds Office** Terms of Reference are the standard protocols we will follow throughout the course of assessing and investigating complaints. These Terms of Reference describe the scope of the mandate of the ADR Chambers Banking Ombuds Office (“ADRBO”), its process upon receiving complaints, and the authority and responsibilities of ADRBO’s Banking Ombuds and Investigators.

DEFINITIONS

2. Defined terms used throughout the Terms of Reference are as follows:
 - **ADRBO** means ADR Chambers Ombuds Inc. and its affiliates;
 - **Banking Ombuds** means the individual designated by ADRBO to handle Complaints and coordinate ADRBO’s activities in accordance with these Terms of Reference;
 - **Complainant** means any customer (either individual or small business) of one of our Member Banks who is making a Complaint to ADRBO. This can include a personal representative, guardian, trustee, or executor;
 - **Complaint** means a written expression of dissatisfaction about the provision of a Financial Service to a Customer by a Member Bank in Canada;
 - **Customer** or **Client** means an individual or small business who requested or received a service from a Member Bank;
 - **Financial Service** means a financial product or service, or advice about it;
 - **GIO** means the General Insurance OmbudService;
 - **Industry OmbudService** means any of the OBSI, the OLHI, the GIO, and any other

* Effective July 24, 2015

external complaints body (“*ECB*”) approved by the Minister of Finance pursuant to s. 455.01(1) of the *Bank Act*;

- *Initial View Letter* means a letter sent to the Complainant and Member Bank when the Complaint is outside of ADRBO’s mandate, as defined in these Terms of Reference, or when section 24 of these Terms of Reference applies. An Initial View Letter will provide the Complainant with the reasons for the determination that the Complaint is either outside ADRBO’s mandate or that section 24 applies, and will be sent by ADRBO within 30 days of ADRBO’s receipt of all the information necessary to make that determination;
- *Investigator* means the individual performing an investigation;
- *Member Bank* means a financial services provider that uses ADRBO’s services as its federally-regulated external complaints body;
- *OBSI* means the Ombudsman for Banking Services and Investments;
- *OLHI* means the OmbudService for Life & Health Insurance;
- *Party* means either the Complainant or Member Bank involved in the Complaint; and
- *Standards* means any standards established by ADRBO for the conduct of the investigation and resolution of the Complaints.

3. References to the male gender include, where the context allows, the female gender, and vice versa. References to the singular number include, where the context allows, the plural number, and vice versa.

4. References to “sections” and “paragraphs” within these Terms of Reference are to sections and paragraphs within this document.

AUTHORITY AND RESPONSIBILITIES

5. ADRBO is regulated federally by the Financial Consumer Agency of Canada (“FCAC”), and is incorporated pursuant to the *Canada Business Corporations Act*. It is mandated to:

- adhere to these Terms of Reference;
- provide information to the public about the process for submitting and commencing Complaints;
- receive Complaints for assessment;

- assess incoming Complaints to determine whether they are within its mandate;
 - review Complaints in order to ascertain whether a full investigation is warranted;
 - determine where an investigation is warranted, investigate Complaints with a view to resolving them either by agreement, or by issuing a report with analysis and recommendations;
 - alert the FCAC in writing if it determines a Complaint raises a systemic issue;
 - not disclose confidential information about Complaints; and
 - not provide legal or financial representation or advice to a Complainant or a Member Bank.
6. ADRBO must always act independently and impartially, and not advocate on behalf of the Member Bank or the Complainant.
 7. The Banking Ombuds may delegate responsibilities to Investigators and ADRBO staff in the investigation and processing of a Complaint. The Banking Ombuds may not act as Investigator.
 8. ADRBO and its staff will act in compliance with privacy rules, privacy legislation, and applicable codes of conduct. ADRBO will ensure that all of its staff are aware of and comply with these obligations towards both the Complainant and the Member Bank.
 9. If ADRBO receives any information regarding any threat to the Member Bank's staff or property that becomes apparent during its performance of its duties, ADRBO will report it to the Member Bank.

MANDATE

10. ADRBO is not deemed to commence a file until all of the information necessary to determine whether the Complaint is within its mandate has been received. In order for ADRBO to assess a Complaint for completeness, all of the following conditions must apply:
 - the Complaint is submitted by the Complainant for whom the financial service in question was provided by a Member Bank. It is desirable that all persons with an interest in the Complaint (such as joint account holders) make the Complaint. Nevertheless, ADRBO may decide that the non-participation of a person with an interest in the Complaint does not prevent it from considering the Complaint, provided that all necessary consents to release confidential information have been obtained.
 - the Member Bank's internal ombudsman has either (1) rejected the Complaint in writing or (2) made a recommendation for resolution of the Complaint, but the Complainant has not accepted it. ADRBO may also investigate a Complaint, upon

a Complainant's request, if more than 90 days has passed since the Complaint was received at the Member Bank's second level of complaint handling, no rejection or recommendation has been made, and the Member Bank has sent a letter to the Complainant specifically advising that the 90-day period has expired and the Complainant may raise their Complaint directly to the ADRBO if they wish ("90-day letter").

- investigate the Complaint if it believes the Complaint has been made to ADRBO within 180 days of the Member Bank's rejection of (or recommendation for resolution of) the Complaint, or within 180 days of the date of the 90-day letter referenced above. Where no rejection or recommendation has been made, ADRBO may receive and commence an investigation of a Complaint for a period up to one year after the Member Bank's rejection of the Complaint if it is fair and reasonable to do so.
- the subject matter of the Complaint by the same Complainant was not previously considered by ADRBO or another ECB (e.g., OBSI). Where a Complaint has been previously considered but, in ADRBO's opinion, relevant new information is available, a Complainant may request that the Member Bank reconsider the Complaint in light of the new information. After the Member Bank considers the Complaint (or if it refuses to), the Complainant may request that ADRBO reconsider the Complaint.
- the subject matter of the Complaint by the same Complainant has not been, or is not, the subject of any proceedings before any court of law, tribunal, arbitrator, or any other independent dispute resolution body, unless the Member Bank consents to the investigation in such circumstances.
- ADRBO has received appropriate consents concerning the release and treatment of confidential information from all necessary parties, and any other agreements or releases that are considered appropriate in the circumstances.
- the Complaint is being pursued reasonably and not in a frivolous, vexatious, or threatening manner.

11. ADRBO will not investigate, or shall cease to investigate, Complaints:

- To the extent that their subject matter materially relates to:
 - a. the general interest rate and risk management policies and practices of the Member Bank,
 - b. the pricing of Financial Services by the Member Bank,
 - c. the scale of fees or charges the Member Bank generally levies applicable to Financial Services offered in similar circumstances, or
 - d. the commercial judgment of the Member Bank, unless it was biased, incomplete, or otherwise unfair.
 - e. a Member Bank's decision to not maintain the complainant as a customer going forward ("demarketing"), where the proper internal procedure was followed.
- Made by unrelated Complainants based on different facts that raise similar issues with the object of making a "class action"-type recommendation; or
- Where ADRBO decides that there is a more appropriate forum for the Complaint to be dealt with—such as a court of law, a regulator, an arbitration procedure, or

any other dispute resolution process.

12. ADRBO may proceed with an investigation of a Complaint that is also being investigated by any regulatory body having authority over the Member Bank. Should ADRBO defer consideration of (or decline to consider) the Complaint, it shall notify the Complainant and the Member Bank of its decision, any further steps that ADRBO may consider following the regulatory investigation, and any other dispute resolution alternatives that may be available to the Complainant.
13. ADRBO may investigate a Complaint for any monetary amount, provided that it falls within its mandate under these Terms of Reference.
14. Complaints relating to the Member Bank's insurance business should be referred to GIO and OLHI. Complaints relating to the Member Bank's securities dealers or mutual fund subsidiaries should be referred to OBSI. Where, in ADRBO's opinion, the subject matter of a Complaint is one in which the Industry OmbudService for insurance, securities, or mutual funds has expertise, and the Complainant and the Member Bank consent, ADRBO may cooperate with that Industry OmbudService in the investigation of the Complaint and, if appropriate, make a recommendation jointly with the other Industry OmbudService for the resolution of the Complaint. Similarly, ADRBO may cooperate with another Industry OmbudService in the investigation and resolution of a Complaint referred to ADRBO by that Industry OmbudService.
15. ADRBO shall determine the procedures for filing a Complaint and for assessing and investigating Complaints. ADRBO is not bound by the rules of evidence that would apply in a court of law. ADRBO and its investigators shall use their judgment to evaluate the quality of the evidence, the relevance and weight applicable, and its effect on the final outcome of the investigation. ADRBO will determine if a Complaint falls within its mandate, and may consider representations from the Parties on this point.
16. Where ADRBO undertakes an investigation, it will make a recommendation on a Complaint within 120 days of receiving all of the information necessary to make the recommendation. ADRBO will acknowledge receipt of a Complaint within 3 business days of receiving it, and will notify the Member Bank within 30 days of receiving it.
17. Each Member Bank will appoint a final arbiter of unresolved customer complaints (typically an Ombudsman or similar), and shall:
 - fully cooperate with and assist ADRBO in the investigation of a Complaint that ADRBO has accepted;
 - provide all non-privileged information (such as notes, correspondence (including emails and facsimiles), account statements, customer records, transaction records, opening agreements, internal policies, etc. relating to the Complaint) in its possession/control, as soon as is reasonably practical, *unless* the Member demonstrates to ADRBO's satisfaction that disclosing this would likely place it in

- breach of the law or its duty of confidentiality to a third party (where consent to disclose has not been obtained, despite its best efforts to obtain that consent); and
- communicate to Complainants its internal Complaint handling processes and the right to escalate unresolved Complaints to ADRBO.
18. The ADRBO process is confidential. The discussions and correspondence involving the Complainant (and/or representatives), the Member Bank, and ADRBO that form part of the ADRBO process cannot be disclosed or used in any subsequent proceedings, legal or otherwise. ADRBO's files are confidential and protected from disclosure for all purposes. In addition, none of ADRBO, ADR Chambers or their officers, employees, or contractors can be called to testify in any subsequent proceedings. A Consent and Confidentiality Agreement attesting to this must be signed by the Complainant when ADRBO agrees to review the Complaint.
 19. If any person discloses information to ADRBO and requests that it not be disclosed to another person, ADRBO will not disclose it except with the consent of the person who disclosed it. If consent is not given and the information is prejudicial to the other Party, ADRBO will not use that information to make a recommendation adverse to the person to whom the information is denied (except as provided in Section 20 below).
 20. ADRBO may take account of the Member Bank's proprietary systems and security measures of which ADRBO is informed, even where no disclosure of those systems and measures has been or will be made to the Complainant.
 21. If ADRBO becomes aware of systemic issues or a pattern of complaints, ADRBO will raise the issue with the Member Bank concerned so that it can be addressed and resolved. ADRBO is also mandated to bring such matters it becomes aware of to the attention of the Financial Consumer Agency of Canada.
 22. In exercising its functions and responsibilities, ADRBO will have due regard to its effective, economic, and efficient operation.

RECOMMENDATIONS AND REJECTIONS OF COMPLAINTS

23. ADRBO may only make recommendations or reject Complaints in accordance with the provisions of sections 24 to 31 below.
24. ADRBO will review each Complaint to determine whether it can simply be addressed on the basis of the information provided by the Complainant and information/documentation obtained from the Member Bank. Where ADRBO believes that it is highly unlikely that an investigation would either yield a different conclusion than the Member Bank's position, or result in any compensation to the Complainant, ADRBO may issue an Initial View Letter. In cases in which the Member Bank has made a settlement offer that the Complainant has found unsatisfactory, ADRBO may attempt to facilitate a settlement by discussing the matter with the Complainant and the Member Bank.

25. After investigating a Complaint, ADRBO may recommend for compensation if it is in the opinion that the Complainant has suffered loss, damage, or harm because of an act or omission by the Member Bank in its provision of Financial Services.
26. While ADRBO is investigating a Complaint, the Banking Ombuds and/or Investigator may seek to promote a mutually-agreed resolution of the Complaint between the Parties. During ADRBO's investigation of a Complaint, the Parties may also continue to seek to resolve the Complaint themselves. In such cases, if the Parties do not resolve the Complaint, ADRBO will complete the investigation and make a recommendation for the resolution of the Complaint.
27. ADRBO's recommendation:
 - will be in writing;
 - will include a summary of the Investigator's reasons;
 - will first be provided to the parties in draft, subject to a party-neutral review process (i.e., an unsuccessful party will have the first opportunity to review and comment);
 - may be made jointly with another Industry OmbudService in the circumstances described in Section 15; and
 - is not binding on the Member Bank or the Complainant.
28. ADRBO will make a recommendation or reject a Complaint based on what is, in ADRBO's opinion, fair and reasonable in the circumstances to the Complainant and the Member Bank. In determining this, the Investigator will take into account general principles of good financial services and business practice, law, regulatory policies, professional body standards and any relevant code of practice or guidance applicable to the subject matter of the Complaint. To identify "principles of good financial services and business practice", the Investigator may, as appropriate, consult within the financial services industry or elsewhere. Decisions must also be in accordance with accepted standards of fairness, independence, and competence—tenets of procedural fairness will be followed, and relevant rules will be applied to the facts of case reasonably and justifiably, taking everything into account that ought to be. ADRBO will not be bound by any of its previous recommendations.
29. ADRBO's recommendation should seek to achieve a satisfactory resolution of the Complaint. ADRBO will not recommend compensation that would be greater than an amount appropriate to compensate for loss, damage, or actual harm suffered by the Complainant by reason of the relevant acts/omissions of the Member Bank.
30. If the Member Bank does not accept ADRBO's recommendation, ADRBO will post its recommendation and the Member Bank's refusal to accept it on the ADRBO website, as well as describing the Complaint in a general way that does not reveal any confidential information of either the Party (except to the extent the Parties agree to such disclosure of their respective confidential information). The Member Bank's refusal to accept the recommendations, and the general circumstances of the case, shall also be reported in the ADRBO annual report referred to in Section 31.

31. ADRBO maintains a publicly-available website that describes the Complaint review process, its mandate, contact information, and other information which ADRBO deems appropriate. ADRBO is also mandated to prepare and make available to the general public an annual report containing:
- statistics and other general information of the Complaints it has processed in the year (with all Party identifiers removed);
 - any recommendations referred to in Section 30; and
 - any information required by law or regulation.

GOVERNANCE

32. ADRBO is governed by its Board of Directors, which oversees ADRBO's business and administration, and establishes and monitors its standards of performance. The Banking Ombuds provides regular reports to the Board of Directors, which contains aggregate status updates on Complaints received by ADRBO. However, the Board of Directors does not consider specific Complaints—the final decision concerning Complaints rests with the Banking Ombuds, subject to ADRBO's Dual Review Process, through which all decisions are reviewed for reasoning and consistency by two members of ADRBO's senior management.
33. The Banking Ombuds and the Deputy Ombuds appointed by the Board of Directors constitute the senior management of ADRBO. Information on ADRBO's senior management can be found on ADRBO's website. ADRBO's Investigators are experienced professionals with diverse backgrounds in law, financial services, dispute resolution, and regulatory compliance. Information on ADRBO's Investigators can also be found on ADRBO's website.

MEMBERSHIP

34. Any bank or authorized foreign bank, as defined in the *Bank Act*, that provides Financial Services to Canadian customers is eligible to become a Member Bank. Member Banks must comply with these Terms of Reference, as well as any contract it enters into with ADRBO. A full list of Member Banks can be found on ADRBO's website.

FEES

35. ADRBO charges its Member Banks an annual administrative fee, and also charges the Member Bank involved on an hourly basis for any investigations conducted. Information on the hourly rate for investigations can be found on ADRBO's website. There is never any charge to Complainants for ADRBO's services.

THIRD-PARTY EVALUATION

36. ADRBO is mandated to undergo third-party evaluations of its operations at least once every five (5) years, per regulation. The outcomes of these reviews are available on ADRBO's website.