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FINANCIAL OMBUDSMAN SERVICES IN NIGERIA:
PRACTICAL ISSUES FOR STAKEHOLDERS

- Implementing Office of the Nigerian Financial Ombudsman: Challenges and Way Forward
- Characteristics of the Financial Ombudsman Services
- An Appraisal of the Proposed Office of the Nigerian Financial Ombudsman Services
- Financial Conflict Resolution in Nigeria: Existing Platforms and the New Ombudsman Office
- Financial Ombudsman Services in Nigeria: Facilitating an Ethical Business Environment Through an ICPC/Banking Industry Initiative

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Contents

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From The Editor's Desk

Rukayat Yusuf

Effective and efficient resolutions of disputes in financial transactions between customers and financial services providers are critical for a healthy financial system. More importantly, an out-of-court complaints' management platform reposes consumers' confidence in their providers and promotes a win-win situation for the two parties. While this is the ideal, the reality in most cases is that customers and providers rarely find a common ground in settling their differences without the need for a recourse to litigation.

However, the bureaucratic bottlenecks and the attendant high cost of litigation discourage consumers, particularly those on the lower rungs of the social ladder, to seek redress through lawsuit. The impact of such reluctance in lodging financial malpractices and maltreatment through the channel of litigation has been a drag to the much desired inclusiveness in the financial sector. Most financial services consumers now become a "bank" unto themselves because of previous financial services providers' reluctance to address their complaints. Hence, they are deprived of the numerous advantages derivable from patronizing accredited financial institutions.

To address the aforementioned challenges, most countries now have Alternative Dispute Resolution (ADR) channels to resolving disputes out of court. Although these ADRs have operated for donkey years in some jurisdictions, albeit in a less formal form, it has now gained a wider acceptance and has become a veritable dispute resolution platform with governments' support. Prominent among these ADRs is the Financial Ombudsman Service that has gained currency in virtually all the continents of the world. Nigeria recently joined the list with the passage of the Bill on the Office of the Nigerian Financial Ombudsman by its 7th Legislative Assembly.

While the passed Bill is yet to be signed by the President, there are heightened concerns on its prospects and challenges. Questions have been raised on how to ensure that there are no duplication of functions between the new Office, if the Bill is eventually signed, and similar existing agencies/departments like the Consumer Protection Council of the country, the Central Bank of Nigeria's Consumer Protection Department and the CIBN/Bankers' Committee Sub-Committee on Ethics and Professionalism. Also at the front burner of the concerns are the qualifications of the Ombudsmen and the funding of the Office.

These challenges, notwithstanding, Nigeria would do well to take a leaf from countries that have successfully managed their Financial Ombudsmen Services without neglecting the peculiarities of the country's system. This would afford us the opportunity to effectively deal with the legitimate worries of the various stakeholders.

Implementing Office of the Nigerian Financial Ombudsman: Challenges and Way Forward

By A.A. Adeleke, HCIB

1.0 INTRODUCTION

A financial architecture is incomplete without an effective conflict/complaint resolution mechanism. Like in all aspects of human endeavour where there is regular economic and/or social intercourse, conflicts and complaints are bound to occur from time to time in the financial space between providers and consumers of financial services or even between providers of financial services themselves.

Thus, an effective conflict/complaint resolution mechanism in the financial services sector becomes imperative to smoothen the relationship between the providers and consumers of financial services. A smooth relationship amongst players in the financial domain is expected to have some positive rub-offs on the sector and, by extension, the economy at large, given the established high positive correlation between the fortunes of the sector and the health of the economy.

For instance, an effective conflict/complaint resolution mechanism is expected to deepen financial inclusion. This is especially so in a country like Nigeria where a large percentage of the citizens are still unbanked. It is expected that more of the unbanked citizens will be encouraged to imbibe the banking culture and also patronise other financial services once they are aware that the already banked regularly have their complaints speedily resolved. An effective conflict/complaint resolution mechanism in the financial domain is also expected to promote financial literacy because of the opportunities thus provided for both the providers and consumers of financial services to assert their rights.

It is noteworthy that regulators of the Nigerian financial sector, particularly the CBN, have, in collaboration with other stakeholders under the Bankers' Committee and the Financial Services Regulation Co-ordinating Committee (FSRCC), been actively promoting alternative effective conflict/complaint resolution mechanism in the financial sector outside the formal legal system.

Apart from being in tandem with practices all over the world, the promotion of an alternative effective conflict/complaint resolution mechanism by the CBN and other regulators is also informed by the need to make the cost of conflict resolution less expensive and complaint turnaround time faster, all in the bid to expand the frontiers of financial inclusion and financial literacy. In this regard, we can point at alternative conflict resolution arrangements like: The Ethics and Professionalism Sub -Committee of the Bankers' Committee and the Consumer Protection Department of the CBN.

Perhaps, a more recent initiative to further promote an alternative effective conflict/complaint resolution mechanism in the Nigerian financial space was the attempt to set up the Financial Ombudsman Services. Already, a bill entitled: 'Office of the Nigerian Financial Ombudsman, 2010', had been passed by the 7th National Assembly.

The rest of the paper is structured into four sections. Section two examines the nature of financial ombudsman services, their origin and their modus operandi. In section three, we give highlights of the Financial Services Ombudsman Draft Bill, 2010, while in section four, we examine the likely practical issues that stakeholders might have to contend with when the Office of Financial Ombudsman eventually takes off in Nigeria. Thereafter, we propose the way forward for addressing the likely issues. The last section of the paper contains our concluding remarks.

2.0 FINANCIAL OMBUDSMAN: ORIGIN AND MODUS OPERANDI

2.1 *Origin and Definitions*

Financial Ombudsman' was derived from the Swedish term: 'Ombudsman' whose origin could be traced to the nineteenth century. The term is now used worldwide to refer to an impartial and independent officer who receives inquiries and concerns from people and work to achieve fair solutions. Financial Ombudsman, as a variant of Ombudsman, is a financial expert who settles complaints between consumers and providers of financial services or between the producers of financial services themselves.

Although the Bill that was recently passed by the National assembly in Nigeria seeks to establish the 'Office of the Nigerian Financial Ombudsman,' what obtains in a jurisdiction like Malaysia, is 'the Financial Ombudsman Scheme', and in jurisdictions like the United Kingdom and the United States of America, is the 'Financial Ombudsman Services'. Whether 'Financial Ombudsman', 'Financial Ombudsman Scheme' or 'Financial Ombudsman Services', the main objective

is the resolution of complaints of consumers of financial services against the providers of financial services or complaints of a producer of financial services against (a) fellow producer(s) .

2.2 Features of Financial Ombudsman

The establishment of a financial Ombudsman should adhere to the following six underlying principles:

- ***Independence****:* The scheme should be established by an Act of Parliament and should be independent. To guarantee its independence, the scheme should also have an independent governing body while the enabling Act should further guarantee the independence of the Ombudsman through appointment, re- appointment and remuneration.

- ***Fairness and Impartiality***: The procedures that govern the investigation work of the Ombudsman must ensure commitment to the fundamental requirements of procedural fairness of right to be heard. Furthermore, there should be no conflict with either the consumer or the provider of financial services, and there should be clear procedures to inform all parties of the decision arrived at and the reasons for the decision.

- ***Accessibility****:* The procedures for adjudication by the Financial Ombudsman should be straightforward, clear and easy to understand by all parties.

- ***Accountability:*** The Office of the Ombudsman and its governing body should be accountable for their decisions and actions, including the stewardship of funds.

- ***Transparency:*** Information on the activities and modus operandi of the Ombudsman should be freely available. The decisions and the rationale for the decisions of an Ombudsman should be communicated to all parties while jurisdictions, powers and appointment of the Ombudsman must be publicly available.

- ***Effectiveness****:* To ensure effectiveness of the Financial Ombudsman, the adequacy of the scheme's coverage and available remedies must be guaranteed. The Ombudsman should also have sufficient powers to resolve disputes without interference. Furthermore, there should be compliance with the scheme's decisions and there should be a reasonable time frame to resolve disputes.

2.3 Modus Operandi

A Financial Ombudsman is expected to have well-defined operational procedures. Although there could be slight variations in the procedures across jurisdictions, the common process can be summarised as follows : A consumer or producer of a financial service lodges a complaint with the Financial Ombudsman after having lodged the same complaint with the affected financial institution and the complaint is not resolved by the financial institution within a specified number of days of receipt of the complaint or, alternatively, if the complaint had been rejected or handled unsatisfactorily by the institution in question.

However, the Financial Ombudsman may reject or refuse to inquire into such a complaint if, in the opinion of the Ombudsman, the complaint is frivolous, vexatious, or is made in bad faith or is without sufficient cause or the complainant has not pursued the complaint with due diligence or there was no real loss or damage or inconvenience to the complainant.

If the Ombudsman is convinced that the complaint is worthy of investigation, then it may request for all the necessary information and documents from the complainant and the affected financial institution. Thereafter, the Ombudsman will summon the parties or any other relevant person to appear before it.

Conventionally, the office of the Financial Ombudsman may award compensation, interest or cost to a successful complainant or give direction in respect of any complaint. The award or direction is always binding on the parties involved.

3.0 THE FINANCIAL OMBUDSMAN SERVICES ACT OF 2010

We understand that The Office of the Nigerian Financial Ombudsman Bill, 2010 had been passed by the 7th National Assembly and is at the time of writing awaiting presidential assent. However, The Draft Bill seeks to establish the Office of the Nigerian Financial Ombudsman, as an independent body charged with the responsibility for resolving financial and related disputes in the Nigerian financial services sector and for related matters.

The draft bill has twenty-five sections which are arranged in five parts. The bill contains provisions on matters like: the establishment, appointment, resignation, removal from office, functions and powers of the Nigerian Ombudsman and Adjudicators as well as complaints' procedure and award of remedies and enforcement of rewards, etc.

Given that we are not privy to the details of the passed Bill, we would not be able to do an objective review of it by benchmarking its provisions against the key universally acceptable principles of a Financial Ombudsman highlighted above.

4.0 FINANCIAL OMBUDSMAN SERVICES IN NIGERIA: PRACTICAL ISSUES FOR STAKEHOLDERS

Although the office of the Financial Ombudsman is yet to take off in Nigeria, it is in order for us to be proactive by identifying the practical issues that stakeholders may have to contend with from time to time when the office is eventually established. But before contextualising the likely issues that could become prominent when the scheme takes off in Nigeria, we should first identify the stakeholders.

4.1 Stakeholders

A guide to the identification of the stakeholders in the provision of Financial Ombudsman services in Nigeria is given by section 3 of the Draft Bill which provides that the Office of the Financial Ombudsman in Nigeria is empowered to inquire into and settle any complaint or dispute between: individual or corporate entities, financial institutions, regulators in the financial services sector, and financial institutions and regulators in the financial services sector. Another guide is provided by section 4 of the Bill.

The section identifies the transactions in which the office of the Financial Ombudsman in Nigeria can adjudicate as relating to: Banking, Mortgage, Insurance, Investment and Securities, Customer Credit, Pensions and other non-banking financial institutions.

Given the two guides, we can identify the stakeholders in the provision of Financial Ombudsman services in Nigeria as comprising consumers of all financial services, whether individual or corporate, financial institutions (the providers of the services, whether individual or corporate), the regulators of financial services and, of course, the government.

4.2 Practical Issues involved

The practical issues that stakeholders are likely to contend with when the Ombudsman scheme takes off in Nigeria are identified as follows:

- ***Implementation of the Act***

Perhaps the first and most critical practical issue that stakeholders are going to contend with in the provision of Financial Ombudsman services in Nigeria is the implementation of the enabling Act itself. We are optimistic that the passed Bill will be assented to by the President very soon to become law. But thereafter will come the challenge of the actual implementation of the enabling law.

To begin with, a lot of efforts will go into getting the office into an effective start. In this regard, the immediate issues will include: appointment of the Financial Ombudsman and the determination of the number of adjudicators as the Draft Bill does not specify a particular number of adjudicators to be appointed.

For the office of Ombudsman and the adjudicators, how do we ensure, as stakeholders, that we get the appointments right? How do we get the right people with the relevant academic backgrounds, appropriate practical experiences and temperament? How do we, as stakeholders, assist the Office to set up its head office in Abuja and its additional offices possibly in the six geopolitical zones in the country as provided by the Draft Bill? These are questions that we must find appropriate answers to, if we must ensure the smooth take-off of the scheme in Nigeria.

- ***Funding***

Another crucial issue is funding. How do we ensure that the scheme is adequately funded at all times, given the centrality of adequate funding to its independence? Although section 17 of the Draft Bill provides that the scheme will be funded by an initial take-off grant by the Federal Government, case fees and yearly contributions from donor agencies while 20 per cent of its annual budget will also be financed by the Federal Government, we are of the view that this funding strategy may not necessarily guarantee adequacy of funding for the scheme. For instance, no indication is given as to how much the Federal Government is going to provide as the take-off grant for the scheme.

Again, we consider the financing of 20 per cent of the annual budget estimate of the scheme by the Federal Government to be too little. Furthermore, we do not expect that the scheme will be able to attract much funds from the remaining specified sources of income, namely case fees, yearly contributions by the private sector and contributions from donor agencies, at least in the short run.

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- ***Need for Extensive Consultations***

We should also appreciate the fact that it is the responsibility of the Financial Ombudsman to make provisions, of course in consultation with the Governor of the Central Bank, on issues like:

proceedings and formation of quorum, as well as appeal and complaint procedures. In practical terms, making these regulations will involve extensive consultations not only with the Governor of Central Bank but other stakeholders as well to guarantee their effectiveness.

- ***What to do with the existing Alternative Conflict Resolution Mechanisms?***

When the scheme takes off, stakeholders will have to decide on what to do with the existing alternative conflict resolution mechanisms like: the Ethics and Professionalism Sub–Committee of the Bankers' Committee, the Consumer Protection Department of the CBN and the Complaints Desk of The NDIC, etc. Are we going to retain these mechanisms and allow them to work side by side the Office of the Financial Ombudsman because the Bill does not expressly state that these alternative conflict resolution mechanisms should cease to exist once the scheme takes off? If we are going to retain them, how do we ensure that the mechanisms do not work at cross-purposes with the scheme?

4.3 Addressing the Issues: The Way Forward

The practical issues that are likely to emerge upon the formal take-off of the scheme that we have raised, are by no means exhaustive. Other issues will definitely come to the fore once the office takes off. We cannot claim to have cure-all solutions to the challenges that we have identified. However, we are of the view that the identified likely challenges and the others yet unidentified will be effectively addressed if all stakeholders resolve to make the scheme work.

5.0 CONCLUSION

In this paper, we have examined the nature of financial ombudsman services, the principles driving the services and their modus operandi. We also provided highlights of the Office of the Nigerian Financial Ombudsman Draft Bill, 2010, and further examined the likely practical issues which stakeholders might have to contend with when the scheme eventually takes off in Nigeria. We argued that these issues will have to be effectively addressed, given their centrality to the success of the scheme in Nigeria. To achieve this, we have stated that the co-operation of all stakeholders is not optional but mandatory.

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Characteristic of the Financial Ombudsman Services

By Muhammed Dele Belgore, SAN, FCIArb

1.0 BACKGROUND

The Ombudsman concept is of Swedish origin. Naturally the word "Ombudsman" itself is also of Swedish origin and it literally means a person who has "an ear to the people". The first known Ombudsman was created in 1809 by the Riksdag (the Swedish Parliament) at the time when Sweden was ruled by a king. Parliamentarians considered it necessary to have an institution that was independent of the executive (essentially the king) to ensure compliance with the laws passed by parliament. The Swedish parliament had not just the autocratic rule of King Gustav III in mind, but was also inspired by Montesquieu's concept of separation of powers. The first Ombudsman was appointed in 1810 as a parliamentary Ombudsman and it has operated more or less along the same principles ever since and the concept has now spread to more than 125 countries.

Today, many persons and institutions call themselves Ombudsman when they are not, and many are not so called (they may go by names such as Public or People's Defender, Parliamentary Commissioner, Mediator, Public Complaints Commissioner, Consumer Protection Advocate, etc.), but they are in fact and by nature of their activities an Ombudsman.

2.0 DEFINITION

The International Bar Association has defined the Ombudsman as:

"an office provided for by the constitution or by action of the legislature or parliament and headed by an independent high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports".

From this definition and based on international best practices, at the very least an Ombudsman system must possess four characteristics:

a) Independence;
b) Impartiality and fairness;
c) Credible review process; and
d) Confidentiality.

We'll examine these characteristics and see how The Office of the Nigerian Financial Ombudsman Bill, 2011 ("the Bill") measures up to international best practices

Independence

The credibility and effectiveness of the Ombudsman is underscored by the extent to which he is seen to be independent. The stated objective of the Bill is contained in its short title –

"An Act to establish the Office of the Nigerian Financial Ombudsman, An "Independent Body" charged with responsibility for "Resolving" Financial and related disputes in the Nigerian Financial Sector and other related matters"

What factors support or increase independence?

- An extant constitution or law creating the Ombudsman – this is what the Bill does.
- A fixed tenure of office - section 8 of the Bill does this by providing for a term of 4 years renewable for another 4 for the Ombudsman or an adjudicator.
- Removal can only be for cause – by virtue of section 9(2) removal can only be for "gross incompetence or incapacity after due enquiry" and after he has been informed of the reasons for his removal and given an opportunity to be heard in respect of those reasons.

- Remuneration for the office – dealt with by the financial provisions of the Bill.
- Ombudsman must not be a political appointee – the requirements for who qualifies for appointment under the Bill ought to act as a safeguard to this.
- Control of its own staff and budget – this is covered by the financial provisions of the Bill (sections 16 & 17) dealing with its handling of its take-off grant from the Federal Government, case fees and maintaining its offices and staff.
- Immunity against civil and criminal prosecution for Ombudsman – the Bill does not provide for this.
- Ombudsman is only accountable to the court for his actions and the court's review ought to be very limited – the Bill is silent on this, but being a statutory creation of law, the Ombudsman's status is that of an inferior tribunal, and that being so, its decisions are reviewable by the courts.

Impartiality and Fairness

Ombudsman must be seen as neither fearing nor favouring government nor the complainant, even though at the conclusion of the case after he's given his decision or recommendation, the Ombudsman may advocate the cause of a complainant.

Factors Relating to Impartiality and Fairness

- Qualifications of the type of person who may be appointed has been set by legislation and (a) respected person(s) in terms of knowledge, expertise and integrity is/are appointed – section 6 & 7 of the Bill addresses this.
- Absence of conflict of interest on the part of the Ombudsman with regard to matters in the industry, subject matter of the complaints, parties before it. Ordinarily, one would not expect the Bill to expressly deal with this, but one assumes that the appointment process in sections 6 & 7 would ensure that persons of the right calibre and integrity are appointed and such persons would disclose any conflicts that they have if it arises or would recuse themselves altogether in the case of unacceptable conflict.
- How conflicts, where they exist, are to be dealt with – disclosures, disqualification, etc.
- Accessibility to the process by allowing every eligible complainant access - Section 11 deals with who may complain: a) a customer of a financial institution to which the Bill relates, and b) a person who has a good reason – this is to cater for transactions by and with financial institutions giving rise to complaints by non-customers of such institutions.
- Ease at which complaints may be brought by a complainant without the need for the services of a lawyer.
- The affordability of the fees to activate and complete the process – an expensive process would be disadvantageous to the small complainant and may be used as an instrument of oppression by a financial institution that ordinarily has a deeper pocket.

Credible Review Process

- Ombudsman has broadly legislative authority to investigate, report and make recommendations against government or other agency or institution.
- Authority to obtain access to records, to inspect documents, interview witnesses, etc.
- Authority to initiate complaints on its own and to investigate such complaints without the existence of a complainant.
- Authority to hold hearings, written or oral.
- Authority to make decisions and recommendations on complaints.
- All the foregoing are provided for by sections 13 & 14 of the Bill.
- Following a credible rule-based procedure that is well publicised and applicable to everyone – under the Miscellaneous provisions of the Bill (section 22), the Ombudsman in consultation with the CBN Governor can make regulations for its proceedings, making a complaint, appeals, fees, etc.
- Ombudsman may not be compelled by a court to testify or produce documents. – the Bill does not provide for this.
- Effectiveness in securing compliance with the findings and recommendations. – Section 15 attempts to address this by saying, "An award or direction made by the Office shall be binding on the parties and the parties shall comply promptly with the award". We shall return to this later.

Confidentiality

The service should be available to whistle-blowers, but they will not operate in the absence of confidentiality as to their identity. Also, ordinary complainants may require confidentiality of their proceedings for fear of industry-wide reprisals. Disclosure and publication should always be with the consent of both the complainant and the financial institution complained against unless there is an overriding public interest in favour of disclosure and publication

All these characteristics may not necessarily be present in any given system. No single model works everywhere. Local adaptation to make the system fit purpose is sometimes required. The overall legal and regulatory regime of the country in which the Ombudsman operates, the nature of the industry and the culture and attitude of its people would determine the extent of the powers and authority conferred on the Ombudsman by the enabling statute.

The Bill does not address the issue of confidentiality at all, but by virtue of the Ombudsman's power to make Regulations for the conduct of its proceedings it can and, in my view, should address these confidentiality issues.

3.0 GENERAL COMMENTS AND FURTHER PRACTICAL ISSUES

a. The Ombudsman's function is not only adjudicatory. It can be mediatory as well. Section 3 states that the Office shall inquire and "settle any complaint or dispute ..." The settlement need not be by deciding who is wrong or right, it could be by achieving a compromise for the disputants.

b. There will be a need for the Office to draw up procedural rules to govern the Ombudsman and his adjudicators' proceedings. The rules would provide for such things as to how the complaint will be filed and served, the manner of the response to the complaint, taking of evidence, procedure at the hearing, form of decision or recommendation of the Ombudsman and his adjudicators' proceedings, etc. The Bill has already empowered the Office to do this, so there will be no need for separate legislation for it.

c. The Ombudsman has no coercive powers and there are no sanctions for failure to comply with its decisions or orders. This is in spite of the forceful words of section 15 - "An award or direction made by the Office shall be binding on the parties and the parties shall comply promptly with the award". This is not a peculiar problem with the Bill. It is a problem with the concept of the Ombudsman system generally. The Ombudsman's decision is not a judgment with coercive effect like that of a court and it is not an arbitral award that can be converted into a judgment of a court through special procedures that facilitate speedy enforcement. In some countries like the U.K., special enforcement procedures have been created for enforcement of the decisions of certain Ombudsmen.

d. The status of an Ombudsman's decision is that of a valid contract that binds only the parties to it – the complainant and the financial institution complained against. To give effect to it, a successful complainant would need to go to court to enforce the contract. This means commencing a fresh legal action.

e. In so far as the decisions of the Ombudsman are of a quasi-judicial body, they are reviewable by the court for compliance with rules of natural justice (fair hearing, no man can be a judge in his own cause), public law concepts of reasonableness, proportionality, etc.

f. The gentle persuasion of the CBN and other regulators in the financial industry and an industry-wide recognition of the intent and value of the Ombudsman system can go a long way in making up for its lack of coercive powers.

g. Use of the Ombudsman system does not foreclose a complainant's right to seek the same remedy in court or through ADR. Indeed, it is arguable whether the Bill can validly prevent the exercise of such a right. One simple solution to this is to have both the complainant and the financial institution complained against to sign at the outset a consent and waiver form, consenting to the validity of the process and waiving rights to seek remedy elsewhere on the same subject matter. This of course does not extinguish the right, but provides a defence to its exercise should one seek redress before a different forum on the same subject matter as that of which the Ombudsman has been seized.

h. Under the power to make Regulations for the conduct of the proceedings, we have stated that provisions that ensure the confidentiality of the process could be made. But there must be recognition of the fact that in certain cases a wider public interest over and above that of the private interests of the parties to the proceedings may exist and that public interest may necessitate the publication of the decision of the Ombudsman for the benefit of the industry at large. This is not a contradiction of the system. Arbitral institutions, like the ICC, whose awards are meant to be private and confidential often for future guidance, publish some awards after editing and redacting them to protect the anonymity of the parties. The same can be applied to the decisions of the Ombudsman that are considered worthy of publication.

l. The absence of provisions for immunity and protection of the Ombudsman and his adjudicators from civil and criminal prosecutions is a major failing of the Bill. If they are to perform their functions effectively and without fear or distraction, Ombudsman and adjudicators must enjoy this immunity. Arbitrators operating under all established systems of arbitration enjoy such immunity. There is no reason why the enabling law should not confer it on the Ombudsman and his adjudicators too.

j. The Bill speaks of an appeal. Who does an appeal from a decision of the Ombudsman go to?

k. The competition for the Ombudsman system is the court and the ADR process. If the Ombudsman system is to thrive, it must be able to resolve and settle disputes in a qualitative way at a quicker, cheaper and less formal rate than its competitors. If it fails to achieve any of this, there will be no justifiable reason for anyone to use it.

Mr. Belgore (SAN) is the Chairman, Chartered Institute of Arbitrators (CIArb).

CIBN 2015 Annual Lecture

Thursday, June 18, 2015

CIBN 2015 Annual Lecture

The 2015 Annual Lecture of the Chartered Institute of Bankers of Nigeria's (CIBN) was held on Thursday, June 18, 2015 at the Ijewere Hall of the Bankers House with the theme: **"The Changing Global Retail Banking Landscape : How Competitive are Nigerian Banks".** The attendance was impressive with about 235 (Two hundred and thirty-five). Dignitaries present include **Mrs Tokunbo Martins, HCIB,** Director, Banking Supervision , CBN; **Mr. Bisi Onasanya, FCIB,** Managing Director/ CEO , First Bank of Nigeria Limited; **Prof Juan Elegido**, Vice Chancellors Pan Africa University; **Prof Haliso**, Vice Dean, Post Graduate School, Babcock University; **Prof. Akin Bamigboye,** Professor of O & G, University of Water strand South Africa; **Mrs. Olabisi Shittu**, SA to DG Economic Policy, CBN representing Dr (Mrs.) Sare Alade, FCIB; **Dr. Adeyeye Arigbabuwo**, representing President Nigeria Medical Association; **Dr. Okwu J. Nnanna** , DG, Financial System Stability, CBN representing the CBN Govorner; **Prof. J. A Kayode Makinde,** Vice Chancellor of Babcock University; **Mrs Eileen Shaiyen** , CEO , H. Pierson.

The Opening Remarks were delivered by **Dr. Segun Aina, OFR, FCIB,** the Immediate Past President and Chairman, Research, Strategy & Advocacy Committee while the welcome address was given by the President/Chairman of Council **Otunba (Mrs.) 'Debola Osibogun, FCIB.**

Chief Emeka Anyaoku, CFR, OON, GCVO, the Former Secretary General of the Commonwealth chaired the occasion. The Lecture **"The Changing Global Retail Banking Landscape : How Competitive are Nigerian Banks"** was delivered by the Guest Lecturer**, Mr. Michael Lafferty** Chairman ,Lafferty Group, UK.

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CIBNIGERIA

An Appraisal of the Proposed Office of the Nigerian Financial Ombudsman Services

By Osaro Eghobamien, SAN & Obi Ugochukwu

1.0 Brief Introduction

A robust financial services industry requires strong systems for support and sustenance. Equally germane are the people with real issues who are affected by the systems put in place. It is inevitable that consumers of financial services will have complaints and encounter unanticipated challenges that require quick resolutions not suited for adjudication by the regular courts. The practice in many parts of the world therefore is to lend support to structures that protect financial consumers as well as guarantee a sound development of the financial market.

Sustaining consumers' trust and confidence in the financial services of an economy is a key principle underpinning a dynamic, innovative and competitive financial sector. A principal way to increase consumer confidence in the financial services of an economy is to provide accessible and user-friendly arrangements to resolving disputes. The Financial Ombudsman Service (FOS) plays a pivotal role in this regard by providing an impartial, fair and efficient dispute resolution process.

The FOS is a statutory body

offering a dispute resolution service to consumers, thus reducing the burden on the courts. The FOS only becomes involved in disputes when a consumer feels that his expectations in relation to the bargain he has with a financial services provider has not been met and the service provider is unable to resolve a complaint arising from the loss of expectation. His dissatisfaction with the handling of the complaint by the financial services provider is itself a catalyst to escalate the matter to the Financial Ombudsman.

Effectively, what the consumers of the service are exhibiting by escalating a complaint is their discontent with the financial services provider's inability to keep a promise made about a product or service and its further inability to resolve the complaint raised in this respect. Understandably, the service provider is the party being accused, and therefore, a referral to the Financial Ombudsman buttresses the principle that a man may not be a judge in his own cause. The mechanism of the ombudsman gives the service provider the opportunity to remedy the situation before the matter is escalated. This is because the complaint might simply be a misunderstanding between the parties and this approach gives the service provider an opportunity to remedy same swiftly and effectively.

2.0 Development of the Financial Ombudsman

The modern use of the term began in Sweden, with the Swedish parliamentary Ombudsman instituted in 1809, to safeguard the rights of citizens by establishing a supervisory agency independent of the executive branch. In Africa, it has

been suggested that 'the Permanent Commission of Enquiry' in Tanzania, established in 1965 was the first ombudsman's institution in Africa and served to propagate the idea, especially amongst the Anglophone countries in Africa.

The task of the ombudsman generally is to conduct investigations and issue decisions arising from them. These investigations arise mainly from complaints made by the public about the activities of government agencies. In many countries, where the institution of the ombudsman exists, the office was made to function primarily in all ministries and departments of the Federal Government, as well as in many states or local governments, as an instrument for enforcing accountability both in governance and services delivery.

The introduction of the ombudsman is not an entirely new concept to Nigeria, even though its earlier activities were unrelated to financial services. The formal institution of a public complaints body is traceable to Section 274 (5) of the 1979 Constitution which prescribes the establishment of the Public Complaints Commission (PCC), through which the ombudsman in Nigeria operates. The work of the PCC covers all ministries, departments and extra-ministerial departments at all levels of government - federal, state and local. The PCC is empowered to investigate complaints lodged before it on administrative actions taken by such departments, including statutory corporations or public institutions set up by government, companies incorporated under or pursuant to the Companies and Allied Matters Act, and officers or servants of any of the aforementioned bodies.

The Commission also dealt with inquiries relating to wrongful dismissal, termination of appointment, non-payment of retirement benefits, seizure of farmlands, non-payment of pensions and gratuities, loss of parcels by NIPOST, complaints against NEPA (PHCN) and NITEL, etc.

The need to improve consumer confidence in financial services dictates the establishment of a financial ombudsman in many jurisdictions. Consumers have greater confidence in financial services (and are more likely to patronise financial products) when they know that unscrupulous businesses that act unfairly can be held to account by an independent body (at the instance of a complainant).

There is also the confidence in the fact that such independent bodies can resolve the issues raised quickly (at minimal cost) and, without the formality of instituting or prosecuting an action in a court of law. It is to this end that, quite recently, the Nigerian legislature (i.e. the Seventh National Assembly) approved and passed a Bill for the creation of an Office of the Financial Ombudsman as a body corporate with designated powers. In light of all said thus far, it is necessary to consider the current framework for resolving complaints, after which regard will be paid to some of the intricate issues pertinent to the Bill.

3.0 Initiatives by the CBN

One of the core functions of the Central Bank of Nigeria (CBN), as enshrined in section 2(d) of the CBN Act 2007, is the promotion of a sound financial system in Nigeria. Implicit in this function is the promotion of the safety and stability of the financial system to, among other things, engender and sustain public confidence in the system. Following the growing concerns about unethical and unprofessional practices in the Nigerian banking and finance industry capable of eroding public confidence in the industry, the CBN, through its Consumer Protection Department and The Bankers' Committee, sought to deal with threatened consumers' confidence in the sector and its products.

3.1 The CBN's Consumer Protection Department (CPD)

In furtherance of its statutory responsibility to promote confidence in the financial system, the CBN had over the years implemented a measure of consumer protection mainly in the form of customer complaints management. It provides a guide on how and where complaints can be lodged against Financial Institutions regulated by the CBN, such as Commercial Banks, Microfinance Banks, Primary Mortgage Institutions and Discount Houses.

Customers are required to first report the complaint at the bank/branch where the issue originated and where no response is provided or the issue remains unresolved for a period of two weeks, escalate the complaint to the Consumer Protection Department (CPD) of the CBN. In practice however, the framework does not accord a sufficient level of protection to the consumers.

3.2 The Bankers' Committee

The Bankers' Committee, in its resolve to sanitise the practice of banking and finance in Nigeria and instil discipline in the profession, established a Subcommittee on Ethics & Professionalism on December 19, 2000, comprising the Central Bank of Nigeria (CBN), the Nigeria Deposit Insurance Corporation (NDIC), the Chartered Institute of Bankers of Nigeria (CIBN), the Financial Institutions Training Centre (FITC) and eleven (11) banks.

The essence of the subcommittee was to identify practices and conducts considered unethical in the industry and develop an acceptable code of ethics and professionalism, as well as the machinery for enforcing compliance effectively. The subcommittee is to ensure the integrity of the banking profession in order to instil public confidence in the banking system. To this end, the Subcommittee produced a Code of Ethics and Professionalism in the Banking and Finance Industry. This code contains a list of acts, conducts, commissions and omissions classified as unethical and unprofessional, as well as the framework for addressing same in the business of banking and finance in Nigeria. It also provides the procedure for dealing with complaints and the sanctions for infractions of its provisions. The aim of the code is to enable financial institutions, regulatory bodies, employees of banks and members of the Institute to know in clear terms what acts, conducts, commissions, omissions and practices are considered unethical and unprofessional and the appropriate sanctions that would apply for non-compliance. It is expected that the code will bring about discipline and professionalism in the banking and finance industry.

Besides developing standards and codes for ethical and professional banking practice, the subcommittee considers complaints from bank customers, the general public and within the banking system, including complaints by banks against regulatory authorities or other banks and vice versa and complaints from bank staff against their employers or vice versa. As a condition precedent to performing its function in this regard, such complaints or issues in dispute must be brought within 6 years from when the cause of the complaint arose and should not be the subject of a pending litigation before a court of competent jurisdiction or one for which a determination/decision has been made by a court, the CBN or other statutory regulatory institution. Payment of a non-refundable deposit of N50,000.00 (fifty thousand Naira) or 5% of the claim (whichever is lower) is also required. A decision of the subcommittee as confirmed by the Bankers' Committee is final.

It can be said therefore that the idea of a financial ombudsman for the financial sector started by covering a single aspect of the industry (banking). However, there is now a trend towards a single financial ombudsman to cover all financial sectors, as is evident in the provisions of the new Bill, the Office of the Financial Ombudsman Bill.

The scope of the Bill is intended to apply to all Banking, Mortgage, Insurance, Investment and Securities, Consumer Credit, Pensions and other Non-Banking financial transactions. In some other sectors (and before the Bill comes into force), what is already obtainable is the use of alternative forms of dispute resolution (ADR) as against a financial ombudsman – such as a complaints department within the regulator body or complaints boards.

4.0 Issues from the Office of the Nigerian Financial Ombudsman Bill (the ' Bill')

4.1 Establishment and Functions of the Office

The bill established the Office of the Financial Ombudsman as an independent body corporate. The office is created to entertain inquiries and settle complaints/disputes between Individuals or corporate organisations; financial institutions; financial regulators

on transactions relating to banking, mortgages, insurance, investment and securities, consumer credit, pensions and other non-banking financial transactions.

It would appear from the context of its provision, that the bill does not contemplate dealings with complaints from micro-enterprises. Also, it seems that the ombudsman does not entertain complicated legal issues and other issues which are not appropriate for his inquiry or decision such as novel cases, determination of causes wherein the appropriate relief may only arise from a competent court (e.g. interim relief/preservative orders or an inquiry/decision into a matter which is the subject of a pending suit before a court of record, tribunal or arbitration).

4.2 Eligibility and Acceptance of Complaints

Consumers are (as a condition precedent) required to initially lay relevant complaints to the financial business/institution responsible for same and to give the institution an opportunity to rectify the complaint made. The financial institution is therefore

expected to look into complaints properly made and provide a prompt/clear response to the consumer. It is further required that relevant institutions will set up a formalised internal mechanism for dealing with disputes. For the sake of transparency, it is expected that such mechanisms should be published to ensure that they are easily accessible by every consumer of the financial service of that institution.

Pursuant to the bill, a person may make a complaint where he is a customer of the financial institution to which this bill applies and has good reason to complain. The Financial Ombudsman will not accept a complaint unless the complaint made to the financial institution is not resolved by the financial institution within 30 days of receipt of the complaint.

Where the complaint has already been made by the complainant to the financial institution and the financial institution has rejected it or handled same unsatisfactorily, the consumer may refer the complaint to the ombudsman for independent consideration. In this instance, the complaint must be made to the office of the ombudsman within 6 months of the financial institution's final response. The United Kingdom (UK) financial services ombudsman law allows a complainant to refer the complaint to the ombudsman service within 6 years of the event which caused the complaint or (if later) within 3 years of the time when the complainant should have become aware that there were grounds for complaint. It is important to note that if the complaint is one that could have been instituted in a superior court of record (i.e. Federal High Court or State High Court) it must be instituted in the appropriate court within 6 years of the date of the alleged offence. The fact that the complainant first instituted the complaint before the ombudsman will give no added advantage in connection with time. Consequently, if the complaint presented first before the relevant institution and then subsequently before the ombudsman takes anything close to 6 years, the claimant would have lost his right to institute the action before a court of law. There is considerable force in the argument that the legal limitation period (usually 6 years for contracts) ought to be suspended while the case is being handled and investigated by the ombudsman.

In the event that a consumer is eligible and his complaint acceptable (based on the specified criteria), the ombudsman will look into the circumstances of the case and see if it is possible to mediate a fair settlement between the consumer and the institution. If not, the ombudsman will take account of all the evidence/arguments and issue a decision/recommendation. Unlike the prevailing courts system, the ombudsman does not entirely rely on the parties to bring forward all the necessary evidence and arguments. The adjudicators (members of the ombudsman service's staff) are also saddled with the responsibility to actively investigate the case.

4.3 Appointment of the Financial Ombudsman

To secure the competence of an ombudsman, the bill also requires that only persons knowledgeable in the laws, regulations, norms and practices of the financial services sector in Nigeria are qualified for appointment by the Minister of Finance (on recommendations by the Governor of the CBN) as a financial ombudsman. This ensures that the consumer is not

placed at a disadvantaged position by the superior technical knowledge/resources of the financial institution.

The appointment must be made only after due consultations with the Financial Sector Regulatory Co-ordinating Committee, Bankers' Committee; Nigerian Insurance Association, and Capital Operators' Association by the Governor of the CBN. What does not seem apparent is whether the provision for appointment of the ombudsman is such that sufficiently secures the independence of the office from government control/intervention. The office is exposed to the risk of being politicised to the extent the appointment of the ombudsman and other adjudicators is the sole responsibility of the Ministry of Finance (executive arm) on the recommendation of the Governor of the Central Bank. In the UK for instance, the law provides for the ombudsmen (including a chief ombudsman) to be appointed by the independent public interest board of the ombudsman service, but says the ombudsmen must be appointed on terms that secure their independence from the board. The ombudsmen are appointed on permanent contracts. Perhaps it could be said that the character of the person appointed will, to a large extent, underscore its independence.

It should not be possible to remove the ombudsman early – except for incapacity, misconduct or other good causes. The decision should be in the hands of the independent body that appointed the ombudsman, or a body equally independent of the financial industry. The industry should not be able to bring pressure on the ombudsman by influencing any reduction or suspension of the ombudsman's salary. It may be helpful to link the salary to that of a particular salary grade of a judge or other public official. The ombudsman ought to be visibly and demonstrably independent from those whom the ombudsman has the power to investigate.

The persons who appoint the ombudsman should be independent of those subject to investigation by the ombudsman. Furthermore, the ombudsman alone (or someone acting on his or her authority) must have the power to decide whether or not a complaint is within the ombudsman's jurisdiction. If it is, the ombudsman must have the power to determine it. The ombudsman's determination should be final and should not be able to be overturned other than by the courts or an appeal route provided for by law.

4.4 Funding

A financial ombudsman can be funded by the government. However, given the huge pressure on public finances, it is the usual practice for the cost of the financial ombudsman to be borne by the financial industry from which the ombudsman's work arises. Again, pursuant to the bill, the office is expected to be funded from different sources, including an initial take-off grant by the Federal Government; case fees as may be prescribed in regulations; yearly contributions by the private sector; contributions from donor agencies; and 20% of the annual budget estimate of the office to be appropriated by the Federal Government. It is submitted that a take-off grant from the Federal Government as well as 20% of annual budget to be appropriated for this purpose might turn out to be ill-advised.

This is because many good initiatives have been terminated even before actualisation of the concept, the requisite budgetary appropriation not having been obtained. And even where it is successfully obtained, the institution is easily subjected to political manipulation. The structure, it is submitted, ought to be entirely funded by the private sector. In the UK, there is no charge for complainants. The ombudsman service budget is proposed by the chief ombudsman, adopted by the board and approved by the Financial Service Authority (FSA). Part of the budget is collected through a levy on all financial businesses by the FSA, broadly in proportion to market share. Most of the budget is funded in the form of case fees charged to those financial businesses with cases referred to the ombudsman service, such that funding is broadly in proportion to use; however, the initial three cases per business per year are free.

4.5 Enforcement and Award

In deciding whether or not to uphold a consumer's complaint, the ombudsman is enjoined to normally take into account what

the court will do in a similar case; available industry code and good industry practice. However, the decision/recommendation will be largely based on what the ombudsman considers to be fair and reasonable in the circumstances of the case and would be expected to give reasons forthe decision/recommendation.

If a consumer's complaint is upheld, the office of the ombudsman may award compensation, interest or cost to a successful complaint or issue further directives. Such award or direction is binding on parties and compliance is enforceable in a court of law (even though no indication is expressly provided as to the particular court with competence to enforce such award). The subject matter of the complaint and the issues that arise will, by and large, determine jurisdiction. If either of the parties rejects the recommendation (based on prevailing practice in developed jurisdictions), both parties are allowed to submit further arguments and evidence (for reconsideration by the ombudsman) – and then one of the ombudsmen will issue a final decision. However, the bill is devoid of any provisions to this effect.

4.6 Appeals from the Ombudsman's Award

The bill contemplates the existence of an appeal procedure without necessarily prescribing the appeal structure. The bill states that, the financial ombudsman shall, in connection with the Governor, make regulations to provide for appeals procedure against the decision of the office. Hence, whilst the bill empowers the relevant authority to make rules, it is silent as regards the institution to which an appeal lies. Put simply, no appeal is expressed to lie against an award of the ombudsman.

The decision of the ombudsman is said to be that of an inferior institution. In other words, it is a decision by an institution lower in hierarchy than either the State or Federal High Court. Consequently, any party can apply to any of the superior courts to review the decision of the ombudsman (i.e., to ensure that the ombudsman acts within its powers as prescribed by law in delivering its award).

The courts will only interfere if, for instance, the ombudsman has failed to follow a fair procedure or has acted irrationally – in which case the court would send the case back to the ombudsman to be decided again. The court has no business deciding the merits of the case. It is perhaps worth mentioning that the ombudsman does not compete with the exclusive jurisdiction of the Federal High Court in connection with banking matters.

This is an inferior tribunal whose awards should be subject to review by the Federal High Court. Effectively, once there is a mechanism provided for resolving disputes, the law recognises that such primary adjudicatory processes should be exhausted before approaching the courts.

5.0 Conclusion

The inadequacy of the existing framework for financial consumer protection has continued to impact negatively on the level of confidence in the financial sector. Rectification of these anomalies through the collective efforts of all stakeholders will go a long way in restoring investor and consumer confidence. Given the structures that have been created so far by the CBN as well as the bill amongst other measures, it is expected that consumer satisfaction in the financial sector in Nigeria would be greatly improved.

Our further recommendation therefore, in addition to those contained in preceding paragraphs, is that the Nigerian President should assent to the bill as soon as practicable, as the establishment of the Office of Ombudsman would help restore the trust and confidence of the Nigerian consumers in the financial services sector. Moreover, it would assist to reduce the burden on our courts and lead to speed and efficiency in dispute resolution in the sector. Though the bill may not be free from criticisms (some of which have already been noted above), such defects may be cured through amendments of the relevant provisions on testing its practicability when the same becomes law.

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FINANCIAL CONFLICT RESOLUTION IN NIGERIA:

EXISTING PLATFORMS AND THE NEW OMBUDSMAN OFFICE

BY UMMA DUTSE

1.0 Introduction

The Bill to establish the Office of the Nigerian Financial Ombudsman (ONFO) has been passed by the National Assembly and awaits presidential assent. The ONFO is proposed to serve as an independent body for managing and resolving complaints relating to banking, mortgage, insurance, investment and securities, pensions and other non-banking financial transactions. It will also handle complaints between financial institutions and regulators in the financial industry.

The establishment of ONFO is premised on the need to provide a robust financial dispute resolution mechanism between consumers and financial services providers without recourse to regulators and the courts in line with international best practice. The ONFO is therefore intended to improve complaints management not only in the banking industry but the entire financial industry.

2.0 Extant Complaints Resolution Platforms in the Banking Industry

The internal complaints management processes of banks represent the first and ought to be the most critical element in the banking system complaints management chain. However, the profit-motive of banks, underscored by competition and growing sophistication in financial products and services, offer little incentive to the banks to efficiently address customer complaints and embrace appropriate consumer protection philosophy in their institutions. This informed the establishment of the following mechanisms to address complaints of customers against their banks:

a. The Sub-Committee on Ethics and Professionalism of the Bankers' Committee:

The sub-committee was established in 2000 to, among other things, consider complaints from customers of banks with a view to resolving the complaints. For a complaint to be handled by the sub-committee, certain conditions shall be met, including: payment of a non-refundable deposit of N50,000.00 or 5% of claim, whichever is lower; complaints must not be before a court; complaints must not have been adjudicated upon by a court of competent jurisdiction, the CBN or any other statutory regulatory institution. Membership of the sub-committee comprised the CBN, NDIC, CIBN, FITC and 11 banks.

Three areas that have come under criticism regarding the operations of the sub-committee are: the payment of non-refundable deposit which negates global best practice that advocates free redress mechanism; presence of banks as members of the investigating panel which may impact on its independence in taking decisions; and the presence of regulators in a committee that is envisioned to be a self-regulatory organisation (SRO).

b. The Consumer Protection Council (CPC):

This is the agency established by law to protect Nigerian consumers against unfair treatment and abuses from providers of goods and services. This means that the Council was established to protect the interest of consumers in all sectors of the Nigerian economy, including the financial industry. However, it has been observed that, owing to the foundational underpinning of its creation, the Council possesses technical and budgetary limitations that make it ill-suited to address financial consumer protection. The Council has been collaborating with the CBN in this regard.

c. The Consumer Protection Department (CPD):

The Department was created in April 2012 as part of the 4-Pillar Banking Reform initiated by the CBN to safeguard consumer rights, including providing an effective redress mechanism for aggrieved financial consumers. The overarching mandate of the CPD is to develop and implement an effective consumer protection framework that promotes consumer confidence in the financial system. One of the specific objectives of the Department is to develop redress mechanisms to address complaints lodged by consumers against banks and other financial institutions.

The Department had resolved complaints from aggrieved customers of financial institutions and facilitated the refunds of **N18.65 billion; $3.06 million and €83 to customers** as at 30th April, 2015. These figures include refunds facilitated by the Complaints Management Office (CMO) in the Financial Policy and Regulation Department (FPRD) between March 2010 and April 2012, when the CPD was created.

Additionally, a helpdesk circular ref FPR/DIR/CIR/GEN/01/020 dated August 16, 2011 mandated banks to expand their existing ATM Helpdesk to handle other complaints and other financial institutions to establish helpdesks to handle all consumer complaints within 14 days (complaints on excess charge and loan were later extended to 30 days).

To enhance effectiveness, the Department's complaints management process was automated by deploying a Consumer Complaints Management System (CCMS) to handle complaints from consumers.

3.0 Nexus between Nigerian Financial Ombudsman and Consumer Protection Department/CBN

Three years after its creation, the CPD continues to resolve complaints between FIs and their consumers, even when these complaints ought to have been resolved by FIs that often created the complaints. This development tasks the resources and inhibits the ability of the Department to concentrate on proactive functions, like market regulation and consumer education which would potentially reduce complaints. The establishment of the ONFO as a 'one-stop shop' to address complaints relating to the financial system, is, therefore, expected to enable the CBN concentrate on providing strategic direction and developing appropriate policies to improve financial literacy and engender responsible business conduct in CBN-regulated FIs instead of resolving complaints. It is envisioned that, in the short term, the ONFO will provide financial consumers with an alternative channel of handling complaints, while, in the long term; the CBN may cede handling complaints to the ONFO.

Instructively, the CBN is at an advanced stage in the development of a Consumer Protection Framework (CPF) to provide regulatory context and direction for consumer protection initiatives of CBN-regulated institutions. The framework will provide the basis for the CBN to channel resources on the development of proactive policies to regulate the conduct of FIs in the area of competition, protection of consumer assets and privacy, fair treatment, consumer education, as well as disclosure and transparency, among others.

For improved efficiency, it is expected that the CBN and the ONFO will form a strategic partnership in the areas of information sharing, technical expertise and capacity building.

4.0 International Principles of Financial Ombudsman Services

The financial ombudsman system, which is steadily assuming a global dimension, could take different forms or shapes. In the UK and Australia, it is referred to as The Financial Ombudsman Service; the Office of the Ombudsman for Financial Services Providers in South Africa, and the Financial Ombudsman Service's Bureau in Ireland.

Regardless of the difference in nomenclature and nuances, each financial Ombudsman services operates as an independent, out-of-court dispute resolution mechanism in the financial sector and provides dispute resolution services for consumers who are unable to resolve complaints with their financial services providers. The financial independence of financial ombudsman services is largely guaranteed because they are funded by levies from financial institutions.

Generally, areas covered by the Ombudsman system include: banking, credit, insurance, investment, financial advice and pension. Where a consumer does not accept an ombudsman's decision, his legal rights remain unaffected and he can take the matter to court.

Globally, the operations of financial ombudsman services are guided by the international network for financial services ombudsman scheme (INFO), a network for member schemes to collaborate to develop expertise in dispute resolution by exchanging experiences and information. According to INFO, all member financial ombudsman services are expected to comply with six fundamental principles listed below.

a. ***Independence***: Financial ombudsman schemes are an alternative to the courts and should be free from the influence of parties to disputes, regulators and governments. They should not only be, but also seen to be independent by resolving complaints without fear or favour.

b. ***Clarity of Scope and Powers***: The financial ombudsman scheme should publish necessary details of its operations, including its powers, scope of its jurisdiction; complaints' handling processes, confidentiality issues; and any effect on the complainant's legal rights of using the ombudsman scheme.

c. ***Accessibility:*** The financial ombudsman scheme should be easily accessible to complainants at no cost and make appropriate provision for vulnerable complainants. It should provide detailed information about its existence and operations in the most appropriate ways.

d. ***Effectiveness***: Financial ombudsman schemes should be properly resourced both financially and technically and should also have a flexible and informal process, such that complainants do not need professional advisers.

e. ***Fairness***: The financial ombudsman scheme should be prompt, impartial and tell disputing parties in writing justifications of its decisions.

f. ***Transparency and Accountability***: Financial ombudsman schemes should pay due regard to public interest

and seek public input to improve their operations. They should publish a report (at least yearly) detailing their activities within the period under review.

5.0 ONFO: Some salient issues

Some issues regarding the ONFO are highlighted below to elicit discussions:

- The ONFO is billed to serve the entire financial industry and, as such, should be adequately resourced with experts in different sectors of the financial system, including banking, insurance, mortgage, and pension.

- The Bill provides that 20% of the ONFO funding will be provided by the Federal Government, unlike what obtains in other jurisdictions where the sources of funding are statutory levies and case fees from institutions regulated by the ombudsman. In this regard, the provision of the section may compromise the independence of ONFO.

- The ONFO is proposed without a board but with a loose oversight by the Minister of Finance and the Governor of the CBN. This may compromise provision of strategic direction and effective oversight.

- Non-representation of consumers in the ONFO structure which means inputs of a major stakeholder group is not considered in the ONFO structure.

6.0 Conclusion

The financial ombudsman is a valuable free service for consumers and has great potential for reducing the number of complaints in the financial system. It is envisaged that it would provide incentives to financial institutions to be more consumer-centric since financial institutions would try to avoid the payment of case fees as may be prescribed in regulations.

To the regulators, it offers a fillip to enable them focus more on proactive consumer protection initiatives, like market conduct regulation and consumer education, which ultimately enhance consumer confidence. Together with an effective redress mechanism, provided by a financial ombudsman, a consumer protection tripod is created which is expected to improve financial system stability.

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Financial Ombudsman Services in Nigeria: Facilitating an Ethical Business Environment Through an ICPC/Banking Industry Initiative

By Dame J.N. Onum-Nwariaku

1.0 Introduction

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) was established by the Corrupt Practices and Other Related Offences Act, 2000 (the Act). The Act "seeks to prohibit and prescribe punishment for corrupt practices and other related offences" and vests the Commission with the responsibility for investigation and prosecution of offenders thereof.

The Act charges the Commission with three mandates, namely; enforcement of the Act; prevention of corruption; and public education and mobilisation on and against corruption. In the execution of these mandates, the ICPC focuses on preventing and combating corruption, promoting the environment for transparency and accountability and sustaining corruption control.

2.0 What is Corruption?

Broadly speaking, corruption is "dishonest or illegal behaviour, especially of people in authority," according to the Oxford Advanced Learner's Dictionary. Other offences include fraud, unethical behaviour, failure to meet the standards in a contract, etc. Businesses thrive in an environment of good governance, in government and corporations alike. Corruption and unethical behaviours such as forgery, insider dealing, identity theft, embezzlement, bribery, deceit and abuse of position, tax evasion, etc, impact heavily on the business climate; they add to the cost of doing business and place honest businesses at a disadvantage.

Businesses thrive on trust. This implies honesty and reliability; this means guarantee of contracted expectations. Failure to meet the obligations in any given contract is tantamount to a breach of trust and this may have happened due to corruption. Organisations must be alive to their responsibilities of meeting contractual obligations to customers, even to the least customer. This is particularly important in the banking/financial sector where customers' confidence can easily be shaken by poor performance, in the face of threat to the safety of their funds (deposits). Apart from safeguarding its bottom line, customer confidence is a major reason why banks must be interested in maintaining a zero tolerance environment for corruption.

The banking industry is bedevilled by a deluge of fraud cases, impacting negatively on the bottom line of many banking sector organisations. Total fraud cases reported in the banking sector in 2013 stood at 3,756 compared to the 3,380 in 2012. The amount involved in the fraud incidences also grew to N21.79 billion in 2013 from N18.05 billion the previous year.

The increasingly easy global communication system and the enthusiastic embrace of e-banking in Nigeria have helped to drive fraud in the financial sector. Also, according to the International Compliance Association of the United Kingdom (UK), the financial sector is vulnerable to fraud 'due to the often complex nature of financial services; detecting and preventing fraud within the financial sector poses an almost insurmountable challenge'. The threats may come from within or outside the organization, and the organisation or the customer may be the victim.

As the Australian Crime Commission has declared, the impacts of financial fraud are varied and debilitating for an organisation and a country. They include damage to the country's financial reputation, loss of customer confidence in businesses, reduced ability to attract foreign investment, increased cost of security and regulation, and negative effect on economic growth.

Obviously, no investor will put his money in a venture or in a clime with an extremely high risk factor. When it comes to exercising an option, the investor will certainly prefer a "safe and conducive investment climate with clearly defined rules with certainty within which to operate". (Russell Duke and Michael Tichareva of National Standard Finance).

In executing its mandate, the ICPC recognises that achieving an enduring success in the war against corruption requires the concerted effort of all stakeholders. Therefore, it places a high premium on establishing and nurturing strategic partnerships with all major segments of the Nigerian society for the overall restoration of the Nigerian economy and the age-old national ethos. One of such segments is the banking sector. The commission acknowledges the collaboration of some banks so far in its effort at checkmating and apprehending fraudsters and money launderers, and calls for more collaboration.

3.0 ICPC's Ethical Intervention

The ICPC is engaged in ethical interventions in the following areas:

I. The National Values Curriculum: An intervention, in collaboration with the National Educational Research Commission (NERC), to re-introduce values into the subjects taught at the basic, post-basic and tertiary levels of education;
ii. Infusion of integrity values and elements of the ICPC Act into the Codes of Professional Ethics of Business Membership Organisation (BMOs) and Professional Associations (Pas);
iii. Interventions at the tertiary institutions to capture the youths who will go into the mainstream economy as well as restore integrity in the university system;
iv. Youth Integrity Camp at National and Regional (West African) levels;
v. The Anti-Corruption Academy of Nigeria (ACAN) is the ICPC Training and Research Institute on ethics and anti-corruption;
vi. Remodelling of Systems and Processes in Institutions and Agencies through Systems Study and Review.

4.0 Collaboration with the Banking Industry

4.1 Systems Study/ Corruption/Fraud Risk Assessment

The Act charges the ICPC "to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences".

In pursuit of the above mandate, the ICPC has developed expertise in the field of Systems study and Corruption Risk Assessment. In Systems study, the Commission examines existing policies, systems and processes and identifies those that are corruption/fraud-prone and advises that they be changed to block leakages and plug all loopholes.

Similarly, the Commission has a corps of well-trained and certified Corruption Risk Assessors. Corruption Risk Assessment is proactive and futuristic. It involves anticipating the moves of would-be fraudsters and putting measures in place to stop them.
In this regard, the ICPC and the banking industry could collaborate, harnessing their different internal expertise to tackle all corrupt practices and tendencies in the banking industry.

4.2 Ethical Intervention in the Polity

The collaboration between the banking industry and the ICPC will aim at sanitising the entire business environment by enthroning integrity and professionalism and restoring morality in the polity at large. It is proposed that the different actors in the banking industry, either individually or as a group, support the ICPC in the following areas:

a. Endowment of a Research Chair on "Building an Ethical Culture in the Banking Industry" at the Anti-Corruption Academy of Nigeria (ACAN) or any other Chair at the Universities with Departments of Anti-Corruption Studies;
b. Funding periodic ethical training for youth groups from tertiary institutions about to go into the labour market;
c. Funding the development of textbooks on the National Values Curriculum for use at the primary and secondary school levels;
d. Supporting the process of inculcating positive values in Nigeria's youth through the sponsorship of integrity-themed short films; and
e. Sponsorship of youth-focused competitions to give young Nigerians a voice in instituting good governance.

5.0 Benefits to the Banking Sector

The benefits that would accrue to the banking industry following a realisation of the proposed collaboration are immense.
I. The industry will be assisted to put in place effective systems and controls that will mitigate financial crime risks and tackle issues of poor corporate governance culture.
ii. User-friendly platforms would be designed to encourage the reporting of fraud and other unethical infractions.
iii. The banking industry will be a direct beneficiary of the efforts to build integrity in the nation's youths because they constitute the present and future workforce. An ICT graduate conscious of his ethical obligations on the job and the consequences of negative actions will very likely desist from fraud.
iv. Support from the industry will be branded, giving due acknowledgement to sponsors.
v. When the business environment is ethically sound, local and foreign investments will soar and the banking industry will benefit.
vi. Collaboration with ICPC on building integrity in the system will enhance the Corporate Social Responsibility (CSR) profile of the contributing sponsors.

6.0 The Financial Ombudsman

The protracted delay in the resolution of financial disputes in the Nigerian financial services sector undermines trust on the part of aggrieved parties. Part of the cause of the delay is the fact that lawyers and judicial officers (judges and magistrates) are not usually conversant with financial matters. As an alternative financial dispute resolution mechanism, the Office of the Financial Ombudsman will help avoid the delays usually experienced in such disputes going through conventional courts.

The ICPC is optimistic that the establishment of the Office of the Financial Ombudsman will help decongest the courts, but more importantly, it will bring about greater integrity, confidence and trust in the finance sector.

It must be borne in mind, however, that the Office of the Financial Ombudsman, as proposed by the law, does not have an enforcement power. The office would still seek enforcement by the courts and this may prove to be yet another bottleneck. With a robust collaboration between the ICPC and the finance sector, the Commission could easily fill the enforcement gap, since it is already so empowered by its Act.

The establishment of the Financial Ombudsman service will certainly be a welcome development which will most certainly make the investment climate in Nigeria more attractive.

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