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The application was declined. Neither Ms F nor the bank staff member could understand why it was declined and they agreed to resubmit it with further information. Shortly afterwards the staff member left the bank's employment.

Ms F heard nothing further about her application for a loan restructure. She bought the disability aid and over the next few weeks fell slightly behind with her loan repayments. She was then contacted by the bank's collection department who advised her she was \$160 in arrears. She was also told that because she was in arrears the bank would not accept her application for restructuring.

Over the next few months the situation deteriorated substantially. By mid year she was some \$9,000 in arrears. The bank had stopped her access to telephone banking and had stopped her card so that all transactions had to be made manually at a branch. This was difficult for her because she had limited mobility and also because her memory problems meant that she needed to seek frequent balances on her accounts.

Finally, Ms F received a formal demand for repayment of the arrears. With some difficulty, she arranged to cash in her ACC entitlement for the next five years. This was deposited with the bank and Ms F was advised that the arrears were now clear. On calling at the local branch shortly afterwards, she was told that she was in fact ahead with her loan repayments.

Very shortly afterwards, Ms F received a further letter from the bank explaining that it had made a mistake and a further \$3,000 was required. This meant that once again she was in an arrears position, and the bank would not assist her with any refinancing or other means of reducing her loan commitments. In desperation she approached a family member for a loan and paid the further sum demanded.

For the next four months Ms F met all her commitments to the bank and, as soon as she had a clear credit record, refinanced with another bank. She also complained to me. The complaint was not very clear at the outset, but after I had a meeting with her and heard the full detail of her complaint, it seemed that the bank had a case to answer and that a facilitated agreement should be possible.

I then discussed the case with a senior manager at the bank, who agreed that it had not treated Ms F well and that an apology was due. He suggested a letter of apology and some compensation for inconvenience.

Ms F was somewhat suspicious of the bank's offer and doubted the sincerity of the apology. However she considered she had reached the point where she now needed to put her problems with the bank behind her and move on. After further discussion I arranged a meeting between Ms F and the senior manager who had written to her. She explained the effect the bank's behaviour had had on her and the senior manager apologised in person for the bank's failings. After this Ms F felt able to accept the apology and the offer of compensation and the case was settled on that basis.

### **What do complainants expect of the complaints process?**

- To feel secure
- To be listened to and not judged
- To have their point of view understood and acknowledged
- To be treated with respect
- To be given an explanation
- To be given an apology
- To have action taken
- To be kept up to date with the action that is being taken
- To be treated fairly
- To be sure it will not happen again

**With thanks to Nina Harding**

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### **Introduction by Liz Brown, Banking Ombudsman**

Since the reviews of our procedures earlier this year, we have been working on measures to cut down the time taken to resolve complaints. These measures were put to the test when the second half of 2006 was marked by quite a substantial increase in complaints made to my office. Many of them were referred to banks' internal complaints procedures and resolved there, but there were more cases where the complaint was not resolved within three months of being made to the bank or where the bank and the customer could not reach agreement, and the complainant came to my office for help.

I am happy to report that more than half of these "deadlocked" complaints were resolved within three months of the complainant's approach to my office, many of them without the need for a formal investigation.

While there are always a few complex cases that require extensive and lengthy investigation, even those cases that did require investigation were almost all either resolved or had a preliminary determination within six months of arrival in my office.

It is understandable that customers who feel they have been treated unfairly by a bank may also feel some distrust of the bank's efforts to resolve the complaint. Even though the bank may be making a genuine effort to put things right for its customer, there is sometimes still a suspicion that it is merely seeking to "buy off" the complainant without acknowledging its fault or expressing any real concern for the damage done.

It is in cases of this kind that the Banking Ombudsman, as an independent third party, can often defuse the situation and facilitate an agreement that would have been difficult to achieve if left to the parties themselves. A case note later in this newsletter illustrates a case of this kind.

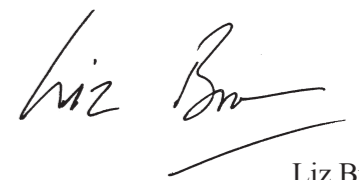
#### *Ten thousand complaints*

At the end of July 2006 I closed the investigation of the 10,000<sup>th</sup> complaint made to the Banking Ombudsman since establishment of the scheme. The Hon Anand Satyanand PCNZM, who had completed a wide-ranging independent review of the scheme in January of this year, and who was Governor-General designate by the time of the 10,000<sup>th</sup> complaint, kindly joined the Banking Ombudsman and staff at a meeting with Wellington media publicised in the *DominionPost* in early August.

The complaint in question highlighted the lack of accessibility of the Banking Ombudsman scheme: although the bank and the complainant had been deadlocked for some time, the bank had not informed the complainant of his right to take the matter up with the Banking Ombudsman. It was a neighbour who finally advised him to approach the local Citizens' Advice Bureau, which then referred his complaint to the Banking Ombudsman. This experience is consistent with what many complainants have told my investigators over the years.

This occasion also marked both the fifteenth anniversary of the scheme and the fact that banks had paid out just over \$8 million in reimbursements and compensation since December 1993, to persons who had complained to the Banking Ombudsman.

Although one may legitimately enquire about the appropriateness of celebrating complaints, one can just as validly wonder who would have been celebrating if all these complainants had been unable to take up their concerns with an independent and impartial complaint resolution agency.



Liz Brown

## Sir John Anderson looks back on 14 years with the Banking Ombudsman Commission



Sir John Anderson

In our previous newsletter we reported on the resignation from the Banking Ombudsman Commission of Sir John Anderson, formerly of the ANZ National Bank Ltd, who had committed himself to the Banking Ombudsman scheme since its inception in July 1992.

Now that Sir John has, for the time being at least, left behind the banking sector, we invited him to respond to a series of questions drawing on his considerable experience of the Banking Ombudsman scheme. Sir John responded with refreshing candour, ensuring that this interview will be carefully read by all those with a thoughtful interest in what makes the New Zealand Banking Ombudsman scheme tick.

**Q. Why did you so strongly support the Banking Ombudsman scheme from the very beginning, when it introduced a concept that was novel and challenging for both the banking and private sectors in New Zealand?**

**A.** When the concept and the scheme were introduced, I was very conscious of the antagonism and ill-feeling that the English and Australian Banking Ombudsman schemes had encountered with their banking systems.

If the banking system was part of the scheme and helped it succeed, the consequences would have far-reaching positive outcomes for customers and the image and standing of the banking industry.

**Q. If you look back over your fourteen years of service as a member of the Banking Ombudsman Commission, what would you see as the scheme's major achievements?**

**A.** The scheme and the Ombudsman had obtained an excellent record of integrity, fairness and objectivity. The Ombudsman and her staff have become highly skilled and have earned a high respect from the banking industry and the community at large.

**Q. Are there any anecdotes which spring to mind that cast an interesting or amusing light on your experience as a member of the Banking Ombudsman Commission?**

**A.** There are really no amusing cases, rather there have been some rather interesting and sad cases. Probably the worst was the customer who was thrown into jail in Poland for having counterfeit money given to him by his New Zealand bank. He was released after two weeks when the money was found to be authentic.

**Q. In what ways has the relationship between banks and the Banking Ombudsman scheme changed during your term with the Banking Ombudsman Commission?**

**A.** At first the relationship was a bit rocky, particularly around ATM complaints, however once the excellent standard and quality of the investigations by the Ombudsman were understood by the industry, then the scheme has since then had full support.

**Q. The recent independent review of the scheme conducted by the current Governor-General highlighted the need for banks to make the scheme known and accessible to many more bank customers than at present. Do you have any ideas on what can most usefully be done to implement this recommendation?**

**A.** Access to customers will always be an issue. The best advertisement of the scheme is to ensure that the frontline staff of all banks are regularly informed about the Ombudsman's activities and brochures are to hand.

**Q. If you look into your crystal ball, what do you see as the major factors that might influence the future of the banking industry and, with that, of the Banking Ombudsman scheme?**

**A.** Further regulation will be one of the major factors that will influence the industry over the next decade. This will require significant resource commitments from the industry as well as creating a cascade effect onto matters referred to the Ombudsman by customers.

### Case note 1

I continue to receive complaints from, or more often on behalf of, customers who have run into financial difficulties after being offered increased limits on their credit cards. I remarked in a previous newsletter that the Code of Banking Practice includes a commitment by banks only to increase credit limits when the information available leads them to believe that the customer will be able to meet the terms of the credit facility.

In my view the Code provision means that a bank must consider all information it holds about the customer and not simply part of it. The fact that the customer has a good repayment history is not on its own an indicator that the customer will be able to cope with a higher limit. Case 1 is a particularly unfortunate illustration of that fact.

### CASE 1

Upon the death of her elderly father (Mr D), Ms W discovered to her dismay that he had been allowed to incur large credit card debts with two banks. At the time Mr D's income was limited to National Superannuation and a small private pension. When the debts escalated out of control to a total of over \$40,000, and the bank started to threaten Mr D with debt recovery action, Mr D told his wife that he was in financial difficulty. They arranged a reverse mortgage over their previously debt free house to repay both credit card debts.

A few months later Mr D died. Ms W complained to my office about the banks' actions in allowing Mr D to have such high credit card limits in his financial position. She was sure that the stress placed on her late father as a result of the large credit card debts beyond his ability to repay had hastened his death.

The complaints were referred to both of the banks.

When bank A was unable to settle the complaint, I commenced my investigation. Bank A accepted that it had increased the credit limit on Mr D's card from time to time, based on the fact that he was paying at least the minimum monthly repayment due each month. However, payment of the minimum monthly payment on a \$5,000 credit limit is an entirely different proposition from payment of the minimum monthly payment on a \$10,000 or \$20,000 credit limit.

Bank A accepted that it did not fully take into account Mr D's financial situation under its old credit policy and thus may have breached its obligations under the Code of Banking Practice.

The bank offered to refund all interest and fees charged above the original credit card limit of \$10,000, which amounted to an offer of \$5,300.

After further negotiation between the bank and Ms W, with the assistance of my investigator, the bank increased its offer to refund all interest charged above a credit card limit of \$5,000, which amounted to a sum of approximately \$8,345 and to pay compensation of \$2,000 to Mrs D for inconvenience, that is the stress and anxiety that she had suffered as a result of learning of her husband's financial difficulties and of having to arrange a mortgage over her home. Rounded up, the offer amounted to \$10,500. Ms W accepted the increased offer.

The bank advised that it had since changed its credit assessment criteria so that it took into account repayments made in comparison to the potential new limit of a card.

Bank B was able to negotiate a satisfactory settlement directly with Ms W. The combined settlements enabled Mrs D to repay approximately half of what was owed on her mortgage.

### Case note 2

Case 2 is included as an example of the use of the facilitation process to obtain a speedy and satisfactory resolution of a complaint that would have been very difficult to resolve in any other way. It is quite likely that, throughout its dealings with Ms F, the bank was exercising its legal rights and that a full investigation would have found that to be the case. However, it was also clear that the bank was acting without making any allowances for the difficulty of her personal circumstances.

### CASE 2

Ms F was driving home from the beach with her children when her car was hit by a drunk driver and she suffered severe injuries. After a long period of rehabilitation she was able to resume part time work, but she still suffered from physical disabilities and also had some cognitive disability. This meant that she suffered from memory lapses and could be more easily confused than the average person.

During her period of rehabilitation, Ms F took out a home loan. Staff at the local branch of her bank knew about her disability and in the early days of the relationship, she felt she was well treated and appropriate allowances were made for her difficulties.

Towards the end of 2004 she was told that she should purchase a special disability aid that had to be imported from Australia. ACC would reimburse her for the purchase, once made, but she foresaw difficulties in covering the initial cost of the purchase. She went to her bank to ask for assistance. The staff member she consulted suggested that she should restructure her loan to reduce the weekly repayment amount. She helped Ms F fill in an application for the restructure and sent it away for approval.

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