



FUTURE GOVERNOR-GENERAL COMPLETES INDEPENDENT REVIEW OF BANKING OMBUDSMAN SCHEME

“The Banking Ombudsman scheme has operated well with high standards of professionalism and integrity. With some relatively minor adjustments to its structure and approach, it has a durable future in providing help for the banking industry and its consumers”.

This was the fundamental finding by Judge Anand Satyanand (soon to be New Zealand’s Governor-General) in his independent review of the Banking Ombudsman scheme. Although the Banking Ombudsman’s investigative process is regularly examined by an independent reviewer, this was the first comprehensive review of the scheme’s structure and substance. Public submissions were invited, with some 45 being received from individuals and organisations.

Those recommendations requiring only administrative action have already been implemented. For example, the time targets for completing investigations have been reviewed and revised.

Consultations on the reviewer’s recommendations

Members of the Banking Ombudsman Commission and of the Council of the New Zealand Bankers’ Association have already begun their consultations on other recommendations requiring action on the part of banks (either individually or through their association), or joint action on the part of banks and the Commission.

Judge Satyanand’s recommendations include the following:

- the scheme should have more and better publicity;
- the Commission should be invited to consider incorporation;
- the process for making changes to the Banking Ombudsman’s Terms of Reference and the Rules of the Commission should be improved;
- the practice of referring dissatisfied complainants to the Chairman of the Commission should cease;
- the Banking Ombudsman should be encouraged to have a public education role;
- the Banking Ombudsman should be encouraged to adopt time targets for the completion of cases;
- the Banking Ombudsman’s jurisdiction should be increased to a limit of \$200,000 for amounts in dispute and to \$10,000 for inconvenience; and
- the Banking Ombudsman’s Terms of Reference should be rewritten in a more accessible and contemporary style.

The report is an interesting and thoughtful study, compiled by a respected reviewer with a comprehensive understanding of the role of ombudsmen in contemporary society. Judge Satyanand expands on the idea that an ombudsman is akin to a conscience, and must possess both flexibility and discretion. With that concept in mind, the reviewer provides us both with confirmation that the existing scheme is sound and with ideas for maintaining and improving on it in future.

The report can be downloaded from the publications section of our website at www.bankombudsman.org.nz. It can also be ordered by calling freephone 0800 805 950.

AN OMBUDSMAN’S EYE VIEW OF RECENT MONTHS

By Liz Brown

The independent review of the Banking Ombudsman scheme discussed above has been the dominant event of recent months, and has commanded my attention, and that of the Banking Ombudsman Commission and the Council of the New Zealand Bankers’ Association. The reviewer’s report, which was confidential until recently, is now out there on our website for everyone to read (see article above). It is well worth reading, as it will play a key role in influencing



Liz Brown,
Banking Ombudsman

the further development and refinement of the scheme. The reviewer's recommendations about improving the accessibility of the scheme, enhancing its independence, and possibly extending its jurisdiction are particularly important.

Transition and continuity

Transition has also been reflected in changes in the membership of the Banking Ombudsman Commission and of the staff of my office. The departure of Sir John Anderson from the Commission is commented on later in this newsletter in a valedictory by Sir Ian Barker, the Chairman of the Commission. Sir John has quietly and effectively advocated for the scheme since its inception. His wise counsel will be greatly missed.

I have been happy to welcome three new investigators to my staff in recent months: Jane Ireland, Bob Welsh, and Pat Caughley. Their diverse and interesting career backgrounds have strengthened our work in certain areas, and have enriched and enlivened our working environment.

Mulish behaviour

Our caseload has been constant recently, with a noticeable increase in complaints about internet banking in general and "mules" in particular. Ordinary people are being recruited by international crime groups to serve as unwitting collaborators — referred to as mules — in internet scams. Through the internet they are offered the chance of employment accepting money into their bank account and then for a commission moving it to a foreign address, often in Eastern Europe. The money has been fraudulently transferred from other bank accounts in New Zealand, with the "mules" becoming part of a money laundering process. When the money is eventually repaid to its rightful owner, it is usually the mule who suffers financially, with considerable amounts often being involved. Remember, if it sounds too good to be true, it probably is!

Community outreach and networking

I have also been actively engaged in what have become known internally as roadshows, which are an ongoing exercise in community outreach. We continue to be seriously concerned about the low proportion of bank customers who know of the Banking Ombudsman scheme, and for this reason specially welcome the independent reviewer's findings in this regard. In particular, we are concerned about those bank customers who a) do not know about us and b) most need to know. We are now liaising closely with a diverse range of community based organisations that are providing advice and support on budgetary/financial matters, and have succeeded in establishing links with community advice bureaux, community law centres, regional social services networks, student advisers at tertiary institutions, budgetary advice groups and organisations, local body development officers, and Maori and Pacific Island groups. As we go along, we are getting better at reaching out to and involving an ever more diverse range of such groups.

I am fortunate to be able to work together on these roadshows with Judi Jones, the Electricity and Gas Complaints Commissioner, and Karen Stevens, the Insurance and Savings Ombudsman. Last year we participated in well-attended meetings in Manukau City and Clendon in South Auckland, as well as Waitakere City and Whangarei. We also arranged a meeting for staff from all Citizens' Advice Bureaux in greater Auckland. This year we will visit Hamilton, and will make a sweep through Cromwell, Dunedin, and Invercargill. We are getting better at tapping the potential of these visits to raise awareness of our schemes in the communities that we visit. It is particularly pleasing that bank staff have taken the opportunity to come and learn more about the services we provide by participating in these events.

We also aim to improve our networking through the publications and regional and national meetings of a number of community groups, and are now maintaining contact with those who attend our roadshow meetings, as an important part of community relationship-building.

A HEARTENING PROPORTION OF COMPLAINTS ARE BEING RESOLVED SOON AFTER WE RECEIVE THEM

Complainants sometimes tell us that they were reluctant to bring their complaints to us because they feared that the investigation would take too long. Although a small number of cases involving complex issues can indeed take a great deal of time, the majority are resolved speedily.

We were delighted to learn from our most recent statistics that we had managed to facilitate the speedy resolution of 16% of cases categorised as disputes in consultation with the complainant and/or the bank, in less than 29 working days. Some

of these cases were relatively complex. A similar picture has emerged in relation to complaints. The following two case notes are examples of such cases.

CASE 1: MISTAKEN IDENTITY, AND A GENEROUS OFFER OF SETTLEMENT

A bank had taken legal action against the complainant to recover a debt incurred in his name by another person making unauthorised and unlawful use of his identity. The complainant, who had never been a customer of the bank in question, eventually succeeded in having the judgement set aside, but had to take time off work to deal with the problem, and was naturally very worried and distressed about it.

With the assistance of a Community Law Centre, the complainant approached the bank claiming that it had failed to take proper steps to identify its account holder. The bank investigated the complaint and made an offer of settlement of \$10,000.

The complainant considered that his loss exceeded \$10,000, and agreed to submit a schedule explaining how his loss was calculated.

Nothing happened for some months and the complainant then approached my office.

The bank was still willing to negotiate, but had not received the schedule. With the assistance of my investigator, details of the claim were provided. It turned out that a large part of the claim was based on the complainant's loss of employment, which was only indirectly connected to the debt recovery action. The investigator discussed with the complainant's solicitor the provisions of my Terms of Reference and the sort of compensation that might be expected if I investigated his complaint and found in his favour. The complainant then decided to accept the bank's offer of settlement.

CASE 2: OMBUDSMAN AND BANK NEGOTIATE A PRACTICAL SOLUTION TO A TRICKY PROBLEM

Mr G and Mr K went into business together and set up a company. A bank account was opened for the company and the bank was instructed that all cheques had to be signed by both Mr G and Mr K.

Some time later, Mr K issued a cheque for \$1,500 over his signature only, leaving only a little over \$200 in the company's account. Shortly afterwards, the account was closed.

Mr G complained that the bank ought not to have processed the cheque, and that by doing so it had deprived him of money due to him for work done for the company.

The bank agreed that it should not have accepted the cheque signed by Mr K only, but refused to reimburse Mr G. It said its customer was the company, and any reimbursement would have to be made to the company's account. As the company no longer had an account, matters reached an impasse.

Mr G wrote to my office with his complaint, and an investigator discussed it with the bank's complaints officer. They agreed that while payment ought to be made to the company, it could also be made as the company directed. Mr G obtained the signatures of both the directors of the company to a form authorising payment to be made to him, and payment was duly made.

HOW TO LOSE \$20,000 BY INCORRECTLY CROSSING A CHEQUE

Although fewer and fewer bank transactions involve cheques, many bank customers still make use of this traditional method of payment.

Whenever you want to ensure that your cheque will be paid with absolute certainty into the account of the intended recipient, and especially if large amounts are involved, you must take particular care to cross each cheque correctly. If you fail to do so, you can, in a worst case scenario, discover that the amount you paid has gone into the wrong account, and is lost to you forever, as a recent case has shown.

We have just finished considering a case involving an amount of \$20,000 where the name of the intended recipient was written on a cheque crossed with parallel lines, without the words “not transferable”. The cheque was intercepted, apparently by illegal means. The name of a third party was written over the original name, and the money was then deposited into the account of the third party - a person of no assets or means. An amount of \$20,000 was withdrawn, and proved unrecoverable. The loss of such an amount is enough to destabilise many a household or small business.

How to cross a cheque correctly

If you want to avoid ending up in such a situation, how do you “cross” a cheque correctly?

If you want your cheque to be paid only to the recipient to whom it is made out, write “not transferable” or “account payee only” within parallel lines across the face of the cheque. The greater the amount involved, the more scrupulously should this requirement be observed. Such cheques can be neither cashed nor deposited into the account of any other recipient.

If you write “not negotiable” on a cheque, this will not prevent it from being paid to an unintended recipient, although it does ensure that the cheque will be paid into an account and may not be cashed.

Although almost all banks provide helpful information on this subject, some provide clearer warnings than others. It might be useful if all banks could, on the inside cover of cheque books, clearly state that only cheques made out to a specific recipient and marked “not transferable” or “account payee only” within parallel lines are safeguarded against abuse or fraud by third parties.

If you want further information on “not transferable” cheques, click on the following link to the New Zealand Bankers’ Association website

<http://www.nzba.org.nz/Not%20Transferable%20Cheques.htm>

SIR JOHN ANDERSON – A VALEDICTORY

By Sir Ian Barker, Chairman, Banking Ombudsman Commission



Sir John Anderson

In his recent independent review of the Banking Ombudsman scheme, Judge Satyanand found that it has operated well since its inception in 1992, and is characterised by high standards of professionalism and integrity. Such a finding is an affirmation both of those who set up the scheme, and of their vision and foresight.

Pre-eminent amongst those who inaugurated the scheme was Sir John Anderson, who retired at the end of 2005 from his roles as Chief Executive of the ANZ National Bank and as a member of the Banking Ombudsman Commission.

Since the inception of the scheme Sir John had served the Commission as a nominee of the New Zealand Bankers’ Association. He had the foresight to see that the interests of both banks and their customers would be served if customers could have their complaints considered by an independent entity, thus relieving them of the burden of litigation. By convincing his banking colleagues of the wisdom of setting up such a scheme, which was to be financed by the banks, he played a key role in establishing New Zealand’s first ever private sector ombudsman scheme.

Throughout his lengthy term of office, Sir John provided leadership for the Commission’s banking members and wise counsel for its consumer members, as well as for its independent Chair. He regarded the Banking Ombudsman Commission as embodying a partnership between banks and their customers. Thanks to his enduring guidance, all banks have supported the scheme.

On behalf of all Commission members and Banking Ombudsman staff past and present, and of the current Banking Ombudsman Liz Brown, I would like to express my warm appreciation to Sir John for his leadership and support during the life of the Banking Ombudsman scheme so far. His example will ensure that the scheme continues as he helped to fashion it.