



Newsletter

June 2008

The main event of the past few months has been an influx of complaints about investment advice, almost all from investors in two funds provided by ING (NZ) Ltd. The funds began to decline in value from mid-2007, and withdrawals from the funds have been suspended since March 2008. Some complaints come from investors who withdrew from the funds before March and are concerned about the decline in value, while others come from investors whose investments are now inaccessible.

ING (NZ) Ltd is not a bank and is not a member of the Banking Ombudsman scheme. I therefore have no power to consider complaints about its management of the funds, its communication with its customers or the decision to freeze the funds. However, a substantial number of investors made their investment on the advice they had received from a financial adviser employed by their bank, and have since complained about the quality of that advice. Subject to the usual limitations of my Terms of Reference I can investigate any complaint about the process by which banks sell such investments or about any acts or omissions on their part or on that of their employees.

We have been doing substantial research on the background to these complaints, and I will soon be in a position to issue some assessments of the earlier complaints. In the meantime we have assisted the banks in question to identify customers who are suffering financial hardship as a result of the freeze on their funds, in order to arrange some relief on a goodwill basis. I set out below two examples of such relief.

Many of the investment-related complaints coming to me are from customers who were approached by their banks with an offer of investment advice, rather than from customers who had actively sought such advice. In such circumstances, it is particularly important that the adviser carefully assesses the customer's investment needs and attitude to risk, and also makes sure that the customer understands the nature of the recommended investment.

Liz Brown
Banking Ombudsman

RELIEF FOR CUSTOMERS SUFFERING FINANCIAL HARDSHIP

Example 1

Mr A had been advised to invest in one of the funds that was later frozen. He said that, while he was prepared to take some investment risk, he had to have ready access to his money. His wife was very unwell and he needed to pay for her hospital care, and he also had expenses associated with his own medical problems. Mr A was very happy when the bank offered him an interest free loan to tide him over until there was more certainty about the future of his investment.

Example 2

Mrs J had invested on behalf of her elderly mother, and the investment was now frozen. Her mother was in a rest home and her condition had recently deteriorated so that she needed more intensive (and more expensive) care. No other funds were available to pay the rest home fees. Once again the bank made an interest free loan to enable the fees to be paid.

BANKS' PERFORMANCE IMPROVING, SURVEY SHOWS

The Banking Ombudsman has organised a mystery shopper exercise annually for the last five years, to monitor the extent to which banks are complying with their obligation, under the Code of Banking Practice, to display in all of their branches brochures about their complaints procedures and the Banking Ombudsman's services.

The Code also requires banks to make sure that their staff are aware of the Code and of the minimum standards of good banking practice that are relevant to their area of work, including possible recourse to the Banking Ombudsman. This means that bank staff should be able to respond appropriately to customers wanting information about the complaints process.

Individual banks are not identified in the reports on these exercises, although each bank receives a confidential detailed breakdown on the performance of its own branches.

An encouraging improvement in banks' general performance

The year 2007 marked an encouraging improvement in the performance of most banks. Performance was better right across the banking industry, and it was particularly good to see all the larger banks recording an increase in the number of branches where the Banking Ombudsman information leaflet was found on display. With a couple of exceptions, the Code was also found more often, with a quite dramatic

improvement in its availability in some cases.

Need for some banks to review their staff training to match the high standard achieved by others

The survey showed that several individual branches achieved across-the-board perfect scores, including some branches of banks whose overall performance was less positive than most. Three out of five larger banks rated highly. This can probably be attributed to their commitment to raising awareness among branch staff of the importance of identifying and resolving complaints at the earliest possible opportunity.

One larger bank scored results not surpassed by any bank since this survey began. Two other larger banks also achieved very high ratings. The more mixed performance of the remaining two larger banks and some smaller banks perhaps attests to the less effective implementation of their training programmes.

And some bad news for banks as well

It was, however, not all good news for the banks, with the 2007 report finding that banks' own information leaflets were absent from the display stands of 31% of branches surveyed. If there is a demonstrable lack of available information about the complaints process, the quality of the process itself will suffer. This is an area that urgently needs to be addressed.

SET-OFF AND LOW INCOMES

We have recently been seeing a recurrence of a type of complaint or enquiry that was fairly common in the mid 1990s. The customer is reliant for living expenses on a benefit or low-paid employment, and all income is direct credited to his or her bank account. An overdraft occurs on the account, sometimes through no fault of the customer (a dishonoured cheque or other payment may be the cause), and the bank deducts the whole of the next week's income payment by way of set-off to repay the overdraft, leaving the customer no funds for living expenses.

Particularly if the payment is due on a Thursday or Friday, just before a weekend, customers and their families can be left in desperate circumstances for several days.

While the bank may have a legal right of set-off, it is unfair and unethical to deduct the whole of a customer's income in this way. The appropriate action is to arrange a repayment programme with the customer, or if the customer is difficult to contact, to deduct a proportion of the income payment. A reasonable proportion would normally be 10-20%, and should not exceed 30%.

DISPUTE RESOLUTION FOR ALL

The Financial Service Providers (Registration and Dispute Resolution) Bill was introduced towards the end of 2007 and is currently before a select committee. If it becomes law, it will require all financial service providers (including banks) to belong to an approved dispute resolution scheme.

Every week we receive enquiries and complaints about a wide range of financial service providers who are not members of the Banking Ombudsman scheme and who do not offer dispute resolution services to their customers. We can refer some to the Disputes Tribunal, but for many there is no accessible remedy. For this reason the Bill is very welcome.

It is also very pleasing to see that the Bill affirms the ombudsman core values of accessibility, independence, fairness, accountability, efficiency and effectiveness. It is important that any new dispute resolution schemes should offer a genuine alternative to litigation, and one that is speedy with no cost to consumers.

A BALANCING ACT

Running the Office of the Banking Ombudsman is a task that often demands a careful balance of interests. This was very well articulated by Lord Hunt of Wirral in his recently published review of the Financial Ombudsman Service (FOS) in the UK:

“In order to command trust and do its job effectively, the FOS must be competently and efficiently run; and it must be seen to be competently and efficiently run. It must also be demonstrably even-handed in its processes and judgements, and it must achieve balance between a series of seemingly competing objectives: exercising discretion in its decisions without falling prey to charges of arbitrary or capricious behaviour; adhering to consistent, fair and reasonable principles whilst always treating every individual case on its individual merits; offering an informal alternative to the courts whilst also operating within the rule of law; and playing its full part in the statutory and regulatory landscape, without ever falling into the trap of attempting to usurp or supplant lawmakers, courts or regulators.”

The full text of Lord Hunt’s review is available at: www.thehuntreview.org.uk/updates/FOS_Report.pdf

DEFAULT LISTINGS ON JOINT DEBT

We have recently received several complaints from bank customers who were distressed to find a default listing on their credit record for a debt which they thought had long ago been paid by their former personal or business partner. Case 1 is an example of this.

These cases can raise several issues. In the first place they highlight a recurrent problem, which is that parties to joint financial arrangements do not always understand that their bank is not bound by any agreement they may reach between themselves about responsibility for joint debts. Unless the bank has agreed that one of the parties will take responsibility for the debt, it remains a joint debt. If there is a default, the bank is entitled to take collection action against either or both parties.

In the more complex circumstances of case 2, all purchases or cash advances that the complainant had made using the

card had been repaid, but because it was still a joint card, the complainant was legally liable to repay debt that had been run up by his former partner.

Case 2 raises another issue, which is that when banks decide that they are not going to be able to recover a debt from the primary debtor and turn to the joint account holder, they do not always have regard to their obligations under the Code of Banking Practice to tell the customer about the proposed action. In many circumstances a bank will fulfil its obligation to give information to joint customers by contacting only one of them. However, where the joint account holders are unlikely to be in touch with each other and the information is as important as impending debt collection action, it is only fair that both parties should be told about it.

Case 1

In March 2008, C contacted my office about an urgent complaint. Some years ago, C had a joint bank account with her former husband. When they separated in 2004, the bank told C that her husband wanted her name removed from the joint account. C was happy with this, as she had a protection order against her husband and did not want anything more to do with him. C wrote to the bank and asked it to remove her name from the account. C had nothing more to do with the account.

Four years later, C discovered that:

- her name was still on the account
- the account was overdrawn and the debt was with a collection agency.

To make matters worse, the collection agency was calling C to demand that she pay the debt, as it had not been able to contact her former husband.

C found the situation very stressful, especially as she was having treatment for cancer at the time.

C said she had complained to the bank, but had been told by the branch that the joint account remained in both names, and that she was therefore liable for the debt.

My office contacted the bank's complaints department. After a quick investigation, the bank advised that it was going to:

- remove the listing against C's name at the credit reference agency
- advise C that she would not be liable for payment of the debt.

The bank's prompt action resulted in a satisfied customer and a quick settlement of the complaint.

Case 2

Mr B was very concerned when his application for a personal loan was declined because of a default listing on his credit record. A credit check had shown a listing of an unpaid credit card debt owed to another bank. Mr B could not remember even having a relationship with that bank.

It turned out that Mr B and his former wife had jointly applied for a credit card account many years previously. The application had been accepted and a card issued to his former wife, but he had never had a card on the account. After they separated, his former wife continued to use the card and made all repayments until she ran into financial difficulties in 2006. At that point the debt began to mount up and she was eventually declared bankrupt. The debt was then listed as a default against both her and Mr B.

Mr B did not find out about the debt until more than a year after his former wife's bankruptcy.

Mr B understood the legal position and was prepared to repay the debt. However, he was very concerned that it had not been brought to his attention earlier so that he could make payment arrangements and avoid a default listing. Although he was the only person of his name in the telephone directory for the area in which he had always lived and therefore was easily traceable, it seems that neither the bank nor the collection agency had made any attempt to contact him.

Mr B was told by his bank's complaint officer that, where there was a joint account, the bank only needed to contact one of the card holders and that, as his former wife was bankrupt, the debt was his.

My investigator contacted the bank, and after some discussion it was agreed that the bank would

- recall the debt from the collection agency
- remove the default listing
- write off the collection charges
- reduce the debt by about 12%.

For his part, Mr B would repay the remainder of the debt by instalments. The complaint was settled on that basis.