



Banking Ombudsman

# Memorandum of Understanding

between

**the Commerce Commission**

and

**the Banking Ombudsman Scheme Limited**



## This memorandum of understanding

**Between** the Commerce Commission (**the Commission**)

**And** the Banking Ombudsman Scheme Limited (**the Banking Ombudsman**)

together, the “Parties”

### Background

1. The Commission is an independent Crown entity established under section 8 of the Commerce Act 1986 with statutory functions under that and other statutes including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003 (the **CCCFA**), the Telecommunications Act 2001, the Fuel Industry Act 2020, and the Dairy Industry Restructuring Act 2001.
2. The Banking Ombudsman is a company constituted under the Companies Act 1993 and is an approved dispute resolution scheme under section 50 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**). Its purpose is to investigate and resolve disputes between customers and their banking service providers. Under the FSP Act the approved dispute resolution schemes are intended to be accessible, independent, fair, accountable, efficient, and effective.
3. Both Parties collect a wide range of information in order to give effect to their responsibilities. The Parties may work together where they are considering matters where they have a mutual interest, which are specifically:
  - 3.1 the conduct of the consumer credit market in New Zealand, where it is regulated by the Commission under the CCCFA and matters related to the consumer credit market; and
  - 3.2 other matters that the Parties may agree, from time to time, where they are properly within the regulatory mandate of the Commission and the Banking Ombudsman’s Terms of Reference (**TOR**).
4. The Parties wish to record the operational protocols regarding cooperation between the Parties and the provision of information.
5. The Parties understand that how they collect and use information is fundamental to fostering trust and confidence in their services. The Commission’s policy on the collection, use and provision of information is in accordance with the “Information Gathering and Public Trust” Model Standards issued by the Public Service Commission on 18 December 2018 (as may be updated from time to time). The Banking Ombudsman’s policy on the collection, use and sharing of information is set out in its TOR and its privacy statement.

### Purpose

6. The purpose of this Memorandum of Understanding (**MOU**) is to provide a framework for a formal relationship of cooperation and the provision of information between the Parties to enable effective and efficient performance of each Party’s functions.

### **Cooperation principles**

7. Where, and to the extent appropriate, practicable and permitted by law, the Parties will:
  - 7.1 Communicate in an open, honest and timely manner.
  - 7.2 Raise relevant issues promptly with each other.
  - 7.3 Ensure that the other Party is informed of any seminars, workshops, or conferences that a Party is hosting that it considers the other Party may be interested in and extend invitations to attend or participate.
8. Where, and to the extent appropriate, practicable and permitted by law, the Parties may provide assistance or information to the other Party about matters of mutual interest.
9. Each Party will raise any operational or policy concerns through the other Party's Relationship Manager (see clause 21 below), rather than through the media.

### **Provision of information**

10. The Parties will comply with their obligations under the Privacy Act 2020, and other relevant legislation and published guidelines, including the TOR, when requesting, receiving and using information. The Commission will also comply with its obligations under the Official Information Act 1982.
11. Obligations regarding the use, storage and retention of any information provided to the Commission are set out in Schedule 1 to this MOU.

#### *Provision of information to the Commission*

12. The Banking Ombudsman must disclose information to the Commission about a complaint it has received if it is required by law to do so (refer to paragraph 39.2 of the TOR).
13. The Banking Ombudsman may also disclose information to the Commission if it needs to consult with the Commission to decide whether the Banking Ombudsman or the Commission should consider a complaint the Banking Ombudsman has received, provided it has the complainant's consent to disclose any information that may identify the complainant (refer to paragraphs 2.6 and 39.4 of the TOR).
14. The Banking Ombudsman is required under sections 67 and 67A of the FSP Act and paragraph 47.2 of the TOR to advise the Commission when it has reasonable grounds to believe that a member that is a creditor under a consumer credit contract or a mobile trader has contravened or is likely to contravene the CCCFA in a material respect.
15. In any of the instances set out in clause 14 above, the Banking Ombudsman will provide to the Commission the information, required by sections 67 or 67A of the FSP Act, in a timely manner and in a manner to be agreed in writing by the Parties separately from this MOU.

#### *Requests for information made to the Commission*

16. Any requests for information from the Banking Ombudsman to the Commission should be made in writing to the Commission's Relationship Manager. Oral requests must be followed up by a written request as soon as practicable, or as agreed at the time of the request.

17. Requests for information to the Commission will be treated as requests for information under the Official Information Act and/or the Privacy Act.
18. The Commission will respond to requests for information as soon as is practicable or within the timeframe requested and in accordance with the Official Information Act and/or the Privacy Act.
19. Where the Commission holds the information requested but declines to provide it to the Banking Ombudsman, it will (to the extent it is able to do so) inform the other Party of the reason for declining the request and comply with the relevant provisions in the Official Information Act and/or the Privacy Act.
20. Before requesting information, the Banking Ombudsman should consider whether the information is already in the public domain and can be obtained without the need for a formal request.

### Representatives and reviews

21. Each Party will appoint a “**Senior Representative**” and a “**Relationship Manager**” to assist with the implementation of this MOU and continued relationship between the Parties. The initial Senior Representative and Relationship Manager for each Party are:

<b>Commerce Commission</b>	<b>Banking Ombudsman Scheme</b>
<p><b>Senior Representative</b></p> <p>Louise Unger General Manager, Credit Branch Level 13, 55 Shortland Street Auckland 1010</p> <p><b>Relationship Manager</b></p> <p>Karla Reynolds Engagement and Operations Manager, Credit Branch Level 13, 55 Shortland Street Auckland 1010</p> <p>Email: <a href="mailto:karla.reynolds@comcom.govt.nz">karla.reynolds@comcom.govt.nz</a></p>	<p><b>Senior Representative</b></p> <p>Nicola Sladden Banking Ombudsman Level 5, Huddart Parker Building, 1 Post Office Square, Wellington 6011</p> <p><b>Relationship Manager</b></p> <p>Erica Penney Policy and Systemic Issues Manager Level 5, Huddart Parker Building, 1 Post Office Square, Wellington 6011</p> <p>Email: <a href="mailto:erica.penney@bankomb.org.nz">erica.penney@bankomb.org.nz</a></p>

22. Relationship Managers will:
  - 22.1 be the first point of contact between the Parties with respect to the day to day implementation of this MOU;
  - 22.2 meet every three months, virtually or in person, unless otherwise agreed, to discuss the activities undertaken pursuant to this MOU, activity that could constitute current or future matters of mutual interest, and any other matters relevant to the relationship between the Parties;

- 22.3 develop or amend protocols relating to specific procedures and activities, as required; and
- 22.4 notify each other of any changes to their representatives under this MOU.
- 23. The Parties' Senior Representatives will meet every three years, virtually or in person, or as otherwise agreed by the Parties, to review this MOU and the Schedule.
- 24. Either Party may terminate the MOU by giving three months' notice in writing to the other Party.
- 25. Any modification of this MOU, including modification or termination of any Schedule, shall first be discussed by the Senior Representatives, and then agreed in writing between the Parties.

**Issue or dispute resolution**

- 26. All issues, disputes and differences between the Parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity between the Relationship Managers themselves, wherever possible.
- 27. Only when matters remain unresolved or require further adjudication should they be referred to the Parties' Senior Representatives.

**Costs**

- 28. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the Party incurring the cost.

**Legal**

- 29. Nothing in this MOU shall make either Party liable for the actions of the other or constitute any legal relationship between the Parties.
- 30. The provisions in this MOU are to be read subject to any Chief Executive, Public Service Commission or Cabinet directives, and any enactment, regulations, rules or applicable case-law. For the avoidance of doubt, nothing in this MOU should be interpreted or applied inconsistently with either Party's statutory functions, powers or obligations.
- 31. Where there are changes to Government policy or legislation, the TOR, or any other changes which affect the purpose and functions of this MOU, the Parties agree to meet to re-negotiate, if necessary, any aspects of the MOU.

**Signed by the Commerce Commission**



Adrienne Meikle  
Chief Executive  
Commerce Commission

Date: 8/2/22

**Signed by the Banking Ombudsman Scheme Limited**



Nicola Sladden  
Banking Ombudsman

Date: 18/2/22

### **Schedule 1: Use, storage and retention of information**

1. This Schedule does not supersede and should be read together with the more general obligations regarding the provision of information that are set out in the main body of the MOU.
2. Any information provided to the Commission in accordance with this MOU will:
  - 2.1 be used and kept for legitimate purposes only and in line with the Privacy Act, all other relevant legislation, and the Commission's policies, processes and systems;  
and
  - 2.2 be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.

