



# NEWSLETTER

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## FEWER COMPLAINTS FOR THE BANKING OMBUDSMAN

After a year which started with an influx of complaints to be investigated, it is pleasing to report that the number of complaint investigations commenced in November 2003 was the lowest for more than two years.

Complaints about investment advice in the context of poorly performing managed funds featured largely in the early part of the year, and these have now almost disappeared as funds begin to recover in value. While this has contributed to the drop in new complaints, more important is the fact that almost all banks now have an internal complaint-handling process that is adequately resourced and has a strong emphasis on customer service. For the first time in some years, I have no major concerns about the operation of any bank's internal complaints process, and it is clear from the drop in cases coming to me that banks are operating effectively to resolve most complaints without the need to refer them to the Banking Ombudsman.

However, I still have some concerns about complaints that never find their way to banks' internal complaints processes or to the Banking Ombudsman. In April 2001, a "mystery shopper" exercise conducted by my office aimed to see how easy it was for customers to visit a bank branch and find information about making a complaint. We repeated the exercise in November 2003 and the provisional results are now available.

It is a requirement of the Code of Banking Practice that banks should have brochures about their complaints processes on display in branches, and in 2001 I was disappointed to find that in only 42% of branches was the brochure on display, easily found and immediately identifiable. While I have not yet done a full analysis of the results, it is clear that in 2003 fewer branches had information on display about the bank's own internal complaints process or about the Banking Ombudsman.

On a more positive note, bank staff scored more highly in 2003 both on their knowledge of the complaints process and on their willingness to help a customer with a complaint. Many customers, however, are reluctant to approach staff with their complaint in the first instance, and would prefer to pick up a brochure and find out about the process before making the complaint. I will be notifying banks of their individual performance shortly and would hope to see all banks taking steps to ensure they comply with their Code obligations.

Now that we have fewer complaints about investment advice, the make-up of our caseload has reverted to the familiar mix, with complaints about home loans, cards and the general conduct of transactional accounts making up about 70% of our work. Casenotes from each of these three areas can be found below.

Liz Brown  
Banking Ombudsman

## Home loans

Complaints to do with home loans take many different forms, and often offer an opportunity for the parties to work together to find a resolution to the problem that caused the complaint. Once a case has been referred to the Banking Ombudsman, our first step is to see if there is any prospect of working with the customer and the bank to resolve the complaint at an early stage. Case 1 below is a good example of this, with an early settlement of a complaint that arose out of particularly distressing events.

### *Case 1*

Mrs U owned her own home. In 1997 her daughter and son-in-law came to live with her. They took Mrs U to sign documents relating to the property. Mrs U believed she was signing a mortgage for \$40,000 in favour of the bank for renovations to the property.

In October 1998 Mrs U became unhappy about her daughter and son-in-law living with her as she wanted to sell her home. She then discovered that the actual amount of the mortgage was \$60,000, and that she had also signed an agreement for the transfer of the property title, with her daughter and son-in-law becoming owners with herself.

During January 2000, Mrs U discovered that two new loans had been made, secured against the property totalling \$131,200. There were five names on the loan agreements; Mrs U, her daughter and

son-in law, and her son and daughter-in-law. Mrs U's family admitted to her that they had forged her signature on the loan agreements. They had told the mortgage broker when she came to visit to get the agreement signed, that Mrs U was unwell in her bedroom. Her daughter took the agreement in for her to sign, but in fact forged the signature.

After my office took up Mrs U's complaint for investigation, the bank accepted a settlement proposal whereby Mrs U was to repay the original \$60,000 loan to the bank from the proceeds of sale of the property. She would then receive one third of the remaining proceeds of sale, with the remaining two-thirds being paid to the bank. The bank also said that it would enforce the loan contract with the remaining four parties and that it would pursue the son and daughter-in-law for their share of the loan.



## Credit cards

While customers usually know that EFTPOS and ATM transactions cannot be stopped or reversed, there is more confusion about credit card transactions.

Once a cardholder has authorised a credit card transaction, it cannot be stopped even if the customer asks the bank to stop the transaction before it has been processed. In limited circumstances, credit card transactions can be reversed through the chargeback process, as noted in the last edition of this newsletter. A transaction can only be

charged back once it has been processed, and there will be a waiting time before there is any certainty that the chargeback has been successful.

In the case noted below, the customer tried unsuccessfully to stop a transaction that he had already authorised. The case also serves as a reminder to consider the possible consequences before authorising a merchant to debit unspecified amounts to a credit card.

#### *Case 2*

Mr G rented a car in Australia. He signed a rental agreement which was imprinted with his credit card details. The agreement showed that Mr G had declined accident insurance. When Mr G returned the car six days later, it was damaged and he was told that he would be liable for the cost of the repairs. On that same day Mr G notified his bank, told it that he had lost his card and instructed it to stop withdrawals being made from his credit card account.

The rental company subsequently debited Mr G's credit card account for the cost of repairs and storage for the rental car he had damaged.

Mr G complained to the bank that it had allowed the charge on the credit

card account despite his express instructions not to allow withdrawals from this account, and that it should therefore reimburse him for this cost. The bank declined reimbursement.

Mr G then brought his complaint to this office. I found it clear that under the conditions of use for the credit card account, the cardholder is liable for any transaction already incurred at the date of cancellation of the card. As the rental agreement was signed prior to the cancellation of the card, the transaction made by the rental company was valid. I proposed to recommend that Mr G withdraw his complaint, and as I heard nothing further from him, I assume he accepted my views.



### **Closing an account**

One of the useful provisions of the 2002 Code of Banking Practice covers the circumstances in which a bank may close a customer's account without notice. Banks have an obligation to protect their staff from abusive and threatening customers, and it is entirely reasonable that a bank should be able to close a customer's account without notice if it is necessary to do so for the protection of its staff.

I regularly receive complaints that a bank has acted unreasonably in closing an account without notice. My general approach to such complaints is to determine whether there is sufficient evidence of abuse to support the bank's decision to close the account without notice. Provided there is some reasonable evidence to indicate foul language, threatening behaviour or similar types of abuse I will usually accept that the bank's decision was justified.

Closing an account without notice is, however, likely to have serious consequences for the customer, and banks should have processes in place to ensure that the decision is made with care and is neither made nor seen to be made in a spirit of retribution. It

is not desirable for the decision to be made by the staff member who has been subjected to the threats or abuse. Both staff and customers are likely to be under some stress at Christmas time, so the following case from last Christmas may make interesting reading.

<i>Case 3</i>
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Ms R regularly received money credited to her account from overseas. She understood that funds were transferred on 20 December, but had not received them. She visited her local branch on Christmas Eve and spoke to a staff member, Ms B, about it. The bank did not know where the funds were. Ms R thought that Ms B was very unhelpful.

The funds had still not been credited to Ms R's account on 27 December so she returned to her local branch. While Ms R was discussing her problem with another staff member, Ms B came over and told the clerk that nothing could be done and she had already tried to locate the funds herself without success. Ms R became very angry at this.

Ms B was upset by Ms R's behaviour and felt she was justified in closing Ms R's account. She started the process but then decided against the closure. However the early part of the process involved stopping Ms R's card, and Ms B had no authority to remove the stop. It had to remain in place over the weekend.

Ms R checked her account balance on 28 December and confirmed that the funds had been credited. She then went to use her card but the transaction was declined. She called the bank to question this and was told that her card had been cancelled, and she could not use it over the weekend. Ms R was very angry indeed. She went to the police station and laid a complaint

against Ms B and then called Ms B at home to voice her anger.

Ms R lodged a complaint with the bank about the cancellation of her card without notifying her, and claimed compensation for the embarrassment and stress this caused. The bank declined to compensate Ms R, and she brought her complaint to my office.

I was satisfied that Ms R was abusive to bank staff and that the bank would have been entitled to close her accounts. Ms B felt threatened by Ms R and she did not want to call her to say that her card had been cancelled because she could foresee the likely reaction.

I found, however, that the bank's process had not been good. It was not wise to allow Ms B to make the decision to close the account without at least consulting a more senior manager, and once the decision had been reversed, Ms R should have been told that her card could not be used over the weekend.

While I was of the view that most of Ms R's problems were of her own making, she was undoubtedly subjected to a good deal of stress, inconvenience and embarrassment over the weekend, and some of this could have been avoided if the bank's process had been better. I therefore found it to be appropriate that the bank compensate Ms R \$100 for inconvenience.