



Banking Ombudsman

Annual Report

08
09

This has been an unusually eventful year for the Banking Ombudsman scheme. It has been dominated by a very large and rapid increase in complaints. Complaints about investment advice and the cost of early repayment of a fixed rate loan account for a large proportion of the increase. There is a strong correlation between the state of the economy and the Banking Ombudsman's caseload ...

About the Banking Ombudsman

The Banking Ombudsman scheme was established on 1 July 1992 – the first such scheme in the private sector in New Zealand

- We investigate complaints about banking services supplied by participating banks
- We are independent and impartial
- Our service is free, efficient, and informal
- Banks must comply with awards of compensation made by the Banking Ombudsman

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This year has seen a record intake of complaints, and in particular a huge increase in complaints requiring at least some investigation.

The material about disputes in the graphs and tables needs to be treated with some caution as much of it relates to investigations completed in the year to 30 June 2009. As we received about 40% of this year's disputes during the last three months of the reporting year, and nearly 30% in the preceding three months, many of them are still under investigation. For this reason the information about types of disputes and their outcomes does not necessarily reflect the nature of the caseload at the end of the year.

Similarly, the time taken to resolve complaints and disputes appears to have varied very little from the 2007/8 year.

See pages 11-20 for details of complaint issues

Definitions

An enquiry is a complaint that is not about a member of the Banking Ombudsman scheme or that is otherwise clearly outside the terms of reference.

A complaint is a complaint that appears to fall within the terms of reference but has not been considered by the bank's internal complaints process.

A complaint facilitation occurs when the Banking Ombudsman assists in the resolution of a complaint that is still under consideration in a bank's internal complaints process.

A dispute is a complaint that appears to fall within the terms of reference and has been considered by the bank's internal complaints process without reaching a resolution that is satisfactory to the complainant. A dispute may also be an unresolved complaint that was made to the bank more than three months before the complaint was brought to the Banking Ombudsman. Some disputes are later found to fall outside the terms of reference.

A dispute facilitation is a dispute that is resolved at an early stage without the need for a formal investigation and assessment.

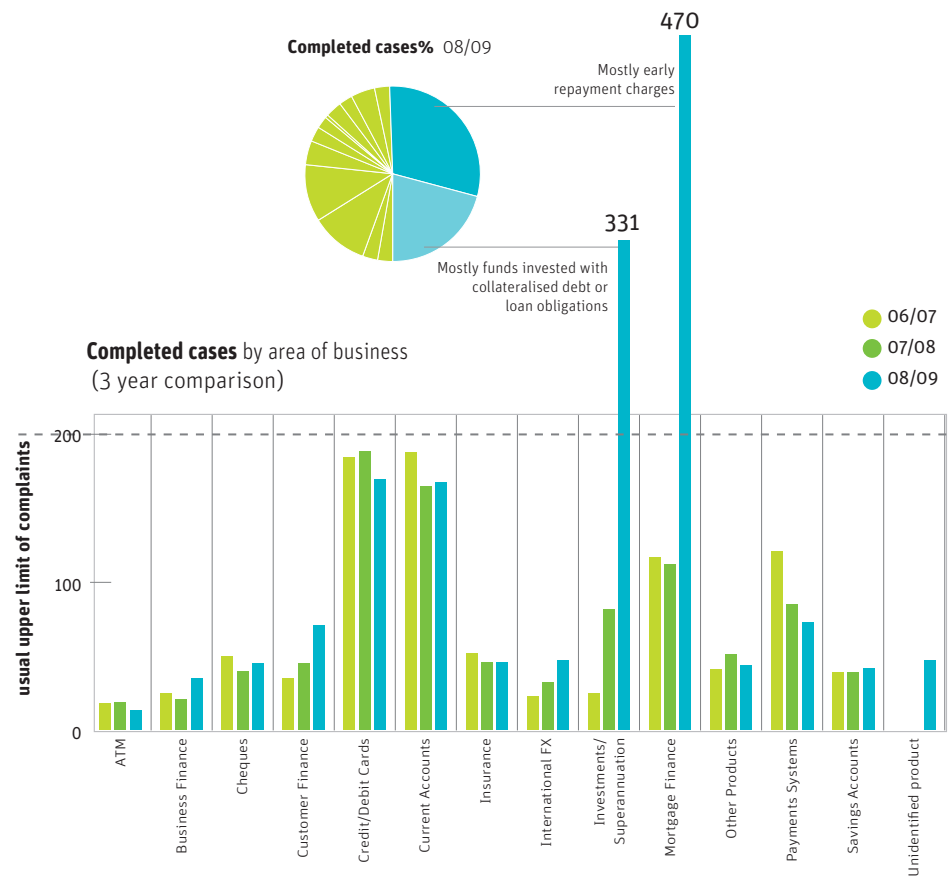
Cases received by bank

A	2007/08				2008/09			
	Enquiry	Complaint	Dispute	TOTAL	Enquiry	Complaint	Dispute	TOTAL
ANZ	17	130	89	236	40	301	299	640
ASB Bank	18	90	37	145	13	138	52	203
BNZ	9	83	51	143	14	120	54	188
Citi NZ	-	-	-	-	-	-	-	-
HSBC NZ	2	7	3	12	-	15	7	22
Kiwibank	8	72	8	88	24	89	23	136
NBNZ	13	74	29	116	14	161	69	244
Rabobank NZ	-	-	-	-	1	3	3	7
SBS Bank	-	-	-	-	-	-	-	-
TSB Bank	-	6	2	8	2	7	3	12
Westpac	13	122	50	185	46	245	97	388
*No Bank Enquiry	16	-	-	16	48	-	-	48
TOTAL	96	584	269	949	202	1079	607	1888

*Enquiries about financial institutions not members of the Banking Ombudsman scheme.

Annual complaints statistics by number of cases 1998-2009

	1998-9	1999-00	2000-01	2001-02	2002-3	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Received	1061	1113	1112	1102	1228	997	766	774	913	949	1888
Completed	1006	1093	1118	1103	1250	1080	799	780	906	913	1590
Carried over	220	240	234	233	211	128	95	89	96	132	430



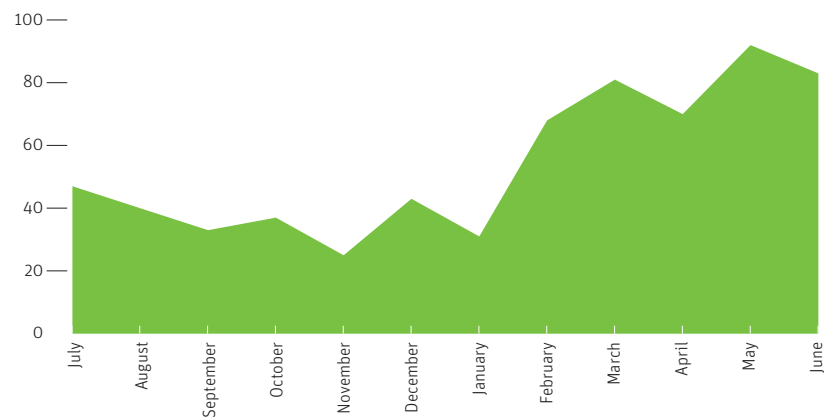
Disputes by bank

B	Jurisdiction Declined		Abandoned		Settled		Withdrawn		Not Upheld		Partially Upheld		Upheld		Award	
	07/8	08/9	07/8	08/9	07/8	08/9	07/8	08/9	07/8	08/9	07/8	08/9	07/8	08/9	07/8	08/9
ANZ	2	6	2	2	13	108	2	11	2	10	1	3	-	1	-	-
ASB Bank	5	9	5	4	18	11	4	2	4	3	1	3	-	-	-	-
BNZ	5	4	10	6	25	13	5	2	6	3	2	3	2	-	-	-
Citi NZ	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
HSBC NZ	-	-	1	2	3	1	-	-	-	1	-	-	-	-	-	-
Kiwibank	2	5	2	2	3	8	2	1	1	1	-	-	-	-	-	-
NBNZ	10	9	3	5	16	13	2	1	6	3	2	3	-	-	-	-
Rabobank NZ	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SBS Bank	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TSB Bank	-	1	1	-	2	-	-	-	1	-	-	-	-	-	-	-
Westpac	6	9	9	13	27	13	5	3	2	4	4	-	1	-	1	-
TOTAL	30	43	33	34	108	167	20	20	22	25	10	12	3	1	1	0

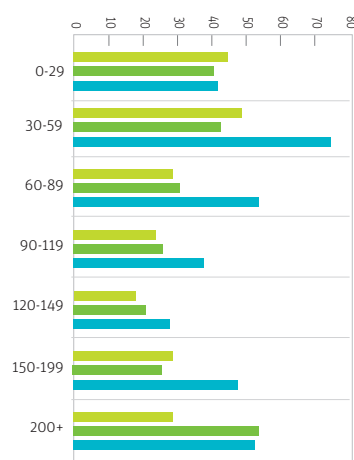
Telephone enquiries 1999-2009

1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
3091	3079	2920	2720	2173	1884	1918	1963	1773	3248

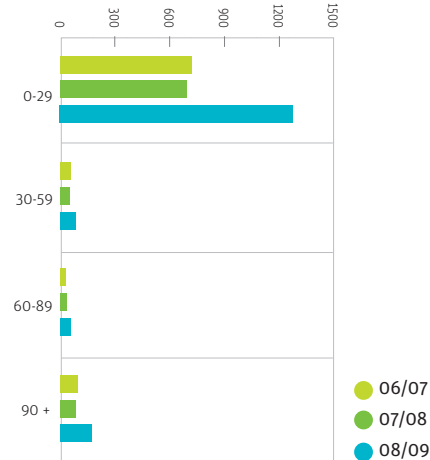
Dispute Investigations by month 08/09



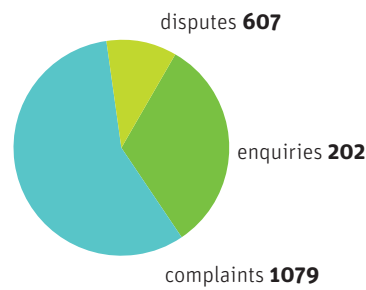
Disputes - time taken in days (3 year comparison)



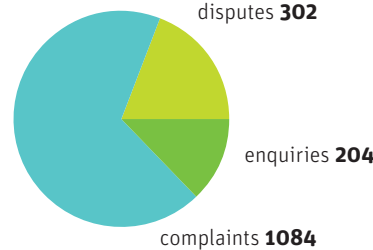
All cases - time taken in days (3 year comparison)



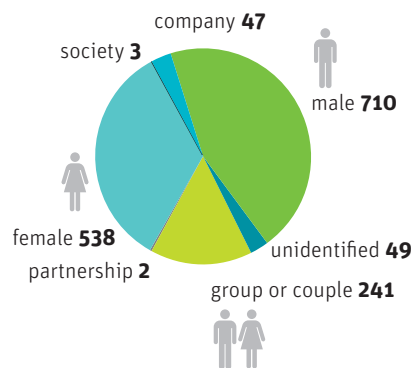
Cases received 08/09 1888



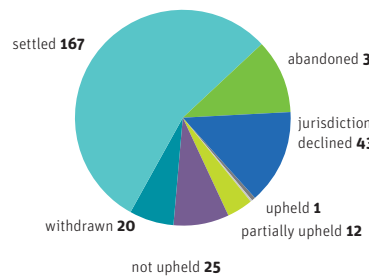
Cases completed 08/09 1590



Who complained? 08/09 1590



Outcomes of disputes 08/09



08|09
Largest number
of complaints
ever

\$7m
in compensation

83% increase
in telephone
enquiries

50% of all cases
involved **Investment advice**
or **Mortgage finance**

99%
increase in
cases received

74%
increase in
cases completed

125%
increase in
disputes received



Sir Ian Barker QC **Chairman**

Chairman’s preface

The year under review has been one of global financial unrest. Although New Zealand may not have suffered to the same extent as some nations, the effect of the unrest on the global economy, financial systems and financial service providers is reflected in the huge increase in complaints to the Banking Ombudsman.

Interest rate volatility and the failure of sophisticated investment instruments lie behind the complaints about loan repayment charges and investment advice. There is also an underlying increase in problems generated by general financial hardship, which, in turn, can ultimately be attributed to events in the global economy.

Consequently, it is more important than ever that good quality dispute resolution services be available to financial institutions and their customers in these troubled times.

The passing of the Financial Service Providers (Registration and Dispute Resolution) Act in September 2008 was a major event. Under this Act, all financial service providers, including banks, will be required to belong to an approved dispute resolution scheme. There will, for the first time, be New Zealand-specific criteria against which the Banking Ombudsman Scheme and other dispute resolution schemes can be measured.

My Board intends to apply for approval under the new Act as soon as possible.

The other event of significance has been Liz Brown’s retirement as the Banking Ombudsman after 14 years. The success and reputation of a scheme depend on the people who operate it. Liz has headed the operation of the Scheme most ably.

Liz has commanded universal respect from the banking community, government agencies, the general public, a wide range of national and international organisations, board members and her very loyal staff.

She has been a powerful champion of the role of an Ombudsman, which embraces independence, accessibility, fairness, accountability, efficiency and effectiveness. The focus is not only on the resolution of complaints, but on making powerful organisations accountable for the power they exercise over the lives and wellbeing of their customers.

“ ... all financial service providers, including banks, will be required to belong to an approved dispute resolution scheme. ”

“ [Liz Brown’s] most important contribution has been nurturing the Scheme ... it is regarded as the model upon which to base new dispute resolution services for financial advisers. ”

Liz has guided the Scheme wisely through many difficulties. Her determinations have been based on a sound knowledge of the law, commonsense and an understanding of human nature. Her most important contribution has been to nurture the Scheme to the point where it is so well accepted that it would be unthinkable to suggest that it be abolished. The Scheme is regarded as the model upon which to base new dispute resolution services for financial advisers.

On behalf of the Board, I wish Liz well in her retirement. I also extend a warm welcome to our new Banking Ombudsman, Deborah Battell.

I record my thanks to the Board members, Graham Hodges, Sam Knowles, Susan Chetwin and Helen Walch. The Board farewelled Graham Hodges in April following his appointment to the ANZ Chief Executive position in Australia. I thank Graham for his insightful contribution to the Scheme. We now welcome Andrew Thorburn, Chief Executive of BNZ, to replace him on the Board. This has been a very busy year for Board members. Extra duties included the search for and appointment of the new Banking Ombudsman.

I also record the appreciation of the Board to the devoted and loyal staff of the office for their hard work in making the Scheme effective. Complaints have increased dramatically in the last 12 months, which has meant a greater workload for all. Special thanks go to the Deputy Banking Ombudsman, Susan Taylor, for her huge contribution to the Scheme in many ways.

Banking Ombudsman Board



Ms Suzanne Chetwin



Mr Graham Hodges
July 2008 – 30 April 2009



Mr Sam Knowles



Mr Andrew Thorburn
Appointed 1 May 2009



Ms Helen Walch



Liz Brown Banking Ombudsman

Report of the Banking Ombudsman

This has been an unusually eventful year for the Banking Ombudsman scheme. It has been dominated by a very large and rapid increase in complaints.

We have also seen the passage of the Financial Service Providers (Registration and Dispute Resolution) Act, which will affect the future direction of the scheme, a final review of the scheme for the Retirement Commissioner, and the appointment of a new Banking Ombudsman, Deborah Battell, who will take office on 1 August 2009.

There is a reasonably strong correlation between the state of the economy and the Banking Ombudsman’s caseload, and if proof were needed for this proposition, the past year has provided it. The year under review has been an exceptionally busy one. We began the year with 132 complaints under investigation – itself a 37% increase over the previous year – and finished with 430, an increase of 230%. We received 1888 formal complaints, an increase of 99%, and 3,248 informal complaints and enquiries, an increase of 83%.

A surge of complaints on a single issue usually occurs when market events impact in an unexpected way on the products and services provided by banks, revealing potential problems in banks’ processes and practices. A more general rise in complaints is usually the result of a faltering economy leading to an increase in individuals with financial difficulties and disappointed expectations of their banks.

“There is a reasonably strong correlation between the state of the economy and the Banking Ombudsman’s caseload ...”

“While some increase in complaints had been expected, the size and speed of the increase was much greater than anticipated.”

This year we have seen both. Complaints about investment advice and complaints about the cost of early repayment of a fixed rate loan fall into the first category and account for a large proportion of the increase. The complaints that fall into the second category are more diverse, but are generally related to lending and debt recovery. They often reflect changes that banks have made to their practices and policies as they adapt to changing economic conditions.

While some increase in complaints had been expected, the size and speed of the increase was much greater than anticipated. For the first time ever, it has been necessary to make an additional levy on banks, to cover the cost of the increased workload. I am extremely grateful both to the Board of Banking Ombudsman Scheme Ltd for recognising the need and agreeing to the levy, and to member banks for prompt payment.



This is my final report as Banking Ombudsman, as I retire from the position on 31 July 2009. In the 14 years since my appointment in 1995 I have seen much change in the banking industry, and there is more to come. New banks have been set up and other banks have merged or have been taken over. Telephone and internet banking have arrived and become established. Technology has transformed the way we do business, and will continue to transform it. The regulatory environment has changed, and will change further in the near future.

One thing that does not change is the core of a bank’s business – its relationship with its customers. If customers are to have confidence in doing business with their banks, then they need to know that if a dispute arises, there are processes that are easy to access and use for resolving that dispute. They also need to know that if all else fails, there is an independent and neutral agency that will consider the dispute fairly, offer an effective resolution, and leave customers with their legal rights intact if they choose not to accept that resolution.

When I became Banking Ombudsman in 1995, the Banking Ombudsman scheme was three years old. The first Banking Ombudsman, Nadja Tollemache, had done excellent work in establishing the office and introducing the systems and processes that still underpin our work, but the scheme was still seen as rather experimental and neither banks nor their customers had complete faith its ability to remain independent and to act fairly to resolve disputes.

Thanks to the hard work of staff of the scheme over the years, and especially to the foresight and support of members of the Banking Ombudsman Commission and later the Board of Banking Ombudsman Scheme Ltd, the Banking Ombudsman scheme is now seen as a model for similar schemes in other parts of the financial services industry and indeed in other industries. I wish them every success in the future.

It only remains for me to welcome Deborah Battell as my successor. Deborah is well qualified for the position, not only by virtue of her recent work at the Commerce Commission, but also through her experience and qualifications in management.

When I decided in 2007 that I would not seek a further term as Banking Ombudsman, I did not expect, and would not have chosen, to hand over the workload that we now have. However, I have every confidence in Deborah’s capacity to manage it, as I have confidence in the enthusiasm and dedication of the staff of the office, and in the collective wisdom of the Board of Banking Ombudsman Scheme Ltd to support her as they have supported me through 14 years of dispute resolution.

“It only remains for me to welcome Deborah Battell as my successor.”



Deborah Battell New Banking Ombudsman



Managing a heavy caseload

Even with the additional funding, the very rapid increase in the workload, especially in the first months of 2009, placed a great burden on staff of the office. Complaints were coming in faster than new staff could be trained to deal with them, and individual caseloads more than doubled. All staff have carried their share



of the work with professionalism and good humour, and many went well beyond the requirements of their positions to make sure that delays were kept to a minimum. All complainants received a response to their complaints, and where immediate action was not possible, appropriate explanations and assistance were given.

In January 2009 we were obliged to introduce a waiting list for new dispute cases. Urgent complaints are identified and allocated for investigation as soon as they come in, but other complaints may have to wait up to eight weeks before allocation.

“Complaints were coming in faster than new staff could be trained to deal with them ...”

Once a complaint has been allocated, the investigation is conducted as speedily as possible, and in many cases the complaint is resolved without the need for a formal assessment. When a formal assessment is required, there may be a further wait between the completion of the investigation and the issue of the initial assessment.

Participating banks

We gained a new member in April 2009 when we were joined by SBS Bank. SBS already had an established internal complaints process, and we have assisted with training and advice to make sure our new member could comply with its obligations under the Code of Banking Practice. So far we have received no complaints about SBS.

Wholly owned subsidiary companies of banks participating in the Banking Ombudsman scheme automatically share their parent bank’s membership unless that bank has chosen to exempt them. There is also provision for the inclusion of part-owned companies where the bank has majority ownership. If such companies supply financial services to the public, they will be required to belong to an approved dispute resolution scheme once the Financial Service Providers (Registration and Dispute Resolution) Act comes into force in 2010.

Banks should now review their exempt subsidiaries and consider whether they should be included in their Banking Ombudsman scheme membership.

Retirement Commissioner’s review

Under the New Zealand Superannuation and Retirement Income Amendment Act 2005, the Retirement Commissioner has an obligation to monitor the effectiveness of the Banking Ombudsman scheme. This obligation will disappear if the Banking Ombudsman scheme becomes approved under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, which comes into force next year. As the Banking Ombudsman scheme intends to apply for approval at the first possible opportunity, the review conducted in 2008 for the Retirement Commissioner by former Ombudsman Mel Smith may well be the last of its kind.

Mr Smith reported the Banking Ombudsman scheme to be very well run within its terms of reference. He said:

“The scheme is managed by a competent and experienced person as Ombudsman, assisted by qualified and dedicated staff. To use the wording in the Satyanand report, the Banking Ombudsman scheme has (and I add is) operated well, with high standards of professionalism and integrity”.

The incorporation of the scheme and the appointment of its Board, with power to change the rules and constitution under which the scheme operates, was described as a significant step towards bolstering the independence of the Banking Ombudsman.

Two issues attracted thoughtful and useful comment:

- the absence of specific authority to undertake reviews of systemic issues
- the need for banks to ensure that their customers are well informed of their right to complain to the Banking Ombudsman.

In summary, Mr Smith confirmed that the Banking Ombudsman scheme is performing its functions effectively.

Promoting and publicising the Banking Ombudsman scheme

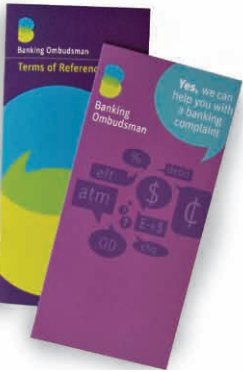
The increasing complaint workload has occupied much of our time, but we have been able to continue with our core programme of initiatives to ensure that the Banking Ombudsman scheme is as accessible as possible to all who may need its services. In particular, with the assistance of CWA New Media we completed the review and redesign of our website, and the design of our new logo with Blue Storm Design.

The new website has a fresh and attractive design with a number of features to enhance accessibility, including:

- a transparent and user-friendly website structure
- information in English, Maori, Chinese simplified, Chinese traditional, Korean, and Samoan. Other languages may be added later
- links to the NZ Relay scheme’s interpretation service for those with a listening, hearing, or speaking disability
- an effective large font option on each webpage to help all those who may have difficulty reading a regular font size.

There is also now a secure online complaints form, to guarantee the confidentiality of complaints.

The new website includes a searchable database of casenotes, at present comprising all casenotes issued since 2004-2005. As resources permit, we will add those casenotes from previous years that are still relevant. We may also be able to add new casenotes as investigations are completed rather than collecting them in an annual publication.



Most of the Banking Ombudsman publications have also been redesigned, and we have taken the opportunity to review the wording of information sheets and leaflets to ensure that they are in plain language.



Community outreach

In conjunction with the Insurance & Savings Ombudsman and the Electricity and Gas Complaints Commissioner, forums for community organisations were held in Gisborne, Hawkes Bay, Nelson and Blenheim.

There has been an unusual amount of media interest in the Banking Ombudsman's work this year, and I have given more than 30 interviews to radio, TV and print media.

Survey of bank branches and call centres

In September and October 2008 we carried out our annual survey of bank branches to determine how well banks are meeting their obligations under the Code of Banking Practice to display information about their own complaints processes and about the Banking Ombudsman, and whether their staff can give appropriate advice to customers seeking to make a complaint.

“The survey of call centres found that most call centre operators were helpful and efficient, but not always well informed.”

For the first time, in December 2008, we also surveyed banks' call centres. The results of the survey of bank branches were mixed. On the one hand there was a very welcome improvement in branch staff knowledge and understanding of the complaints process and their awareness of the Banking

Ombudsman. On the other hand there was again a decline in the number of branches complying with their obligation to display information about both the Banking Ombudsman and their own complaints process.

The Code of Banking Practice requires banks to have brochures relating to their complaints procedures and the Banking Ombudsman's services on display in all branches along with the Banking Ombudsman's own brochures. Similar information must also be available on banks' websites and on request.

The survey found that

33% of branches were **not** displaying information about the bank's own complaints process

37% of branches **did not** have the Banking Ombudsman leaflet on display

Many customers are hesitant about approaching bank staff with complaints and prefer the more impersonal approach of a telephone call or an email to a central complaints handling area, especially if the complaint may be seen as a criticism of branch staff. It is important that customers have easy access to contact details for complaints services.

“The median score for knowledge of the complaints process improved from 7 to 8 out of 10.”

Past surveys have usually found bank staff very willing to help a customer with a complaint, but with little knowledge of either the bank's own complaints process or the Banking Ombudsman. This year staff were found to be just as willing to help (most branches scored at least nine out of ten on this count) but much better equipped to give helpful advice. The median score for knowledge of the complaints process improved from 7 to 8 out of 10.

The survey of call centres found that most call centre operators were helpful and efficient, but not always well informed. In response to a request for contact details for the Banking Ombudsman, 68% could provide some of the necessary information without prompting. Only 26%, however, could explain the function of the Banking Ombudsman as a final resort for complaints about banks.

It was of considerable concern that around 30% of call centre operators advised to the effect that complaints were considered through their bank's complaints process and that there was therefore no recourse to the Banking Ombudsman.

While it is not expected that all call centre operators should have a full understanding of the complaints process and the place of the Banking Ombudsman in it, they should at least have easy access to the necessary contact details to pass on to enquirers, and should know that the Banking Ombudsman is there for customers whose complaints are not resolved by the bank's own process.

Copies of the reports on both surveys are available on request from my office or can be found on our website at www.bankomb.org.nz.

“call centre operators ... should know that the Banking Ombudsman is there for customers ...”

“It has been pleasing to see the enthusiasm with which banks have accepted less formal ways to resolve disputes.”

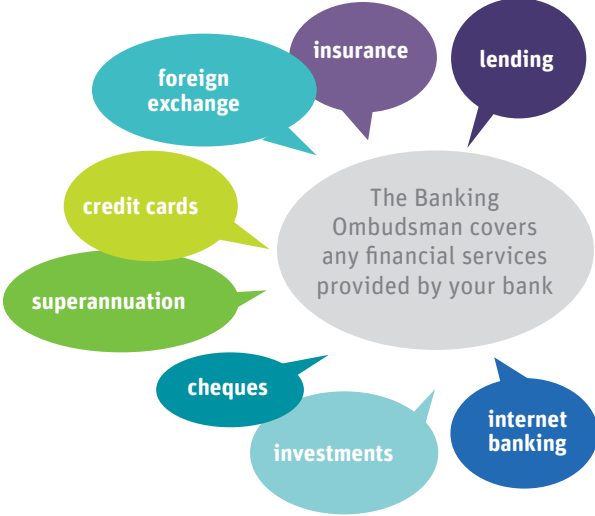
Good complaint handling in banks

The increase in complaints has been a challenge for banks as well as for the Banking Ombudsman, and it is pleasing to be able to report that relationships with banks’ complaints departments have generally remained good, despite the frustrations occasioned by delays in some banks.

When the Banking Ombudsman scheme was first set up, member banks agreed that reports and other information requested by the Banking Ombudsman would be supplied within 10 working days of the request. Extensions of time may be given for good reason, such as the absence of key staff or the need to retrieve documents from archival storage, but it is expected that banks will respond to an increase in complaints by increasing the resources available to deal with them without delay.

The size of a bank’s workload is not in itself a good reason for an extension of time. Most banks recognise that a speedy response to our requests for information increases the chances of an agreed resolution and makes it less likely that their staff will have to take time to respond to assessments and recommendations. We have, however, encountered some persistent delays in banks’ processes. If they continue, it is possible that assessments, and even recommendations, will have to be issued without a complete understanding of the bank’s response to the complaint because requests for information have gone unanswered.

It has been pleasing to see the enthusiasm with which banks have accepted less formal ways to resolve disputes. The introduction of a conciliation process (see page 20 for details) has given us an extra tool for dispute resolution, and its success depends on the willingness of banks to participate in meetings and discussions with complainants, often in an emotionally charged environment. It has been particularly effective in resolving some of the complaints about investment advice.



We continued our programme of forums for bank complaint-handling staff with a forum in Auckland in July 2008 and one in Wellington in March 2009.

Last year we experimented with a forum in Auckland for bank staff whose prime function is not complaint-handling but who encounter complainants in the course of their work and need to know more about the Banking Ombudsman. Further forums of this nature were held this year in Wellington and in Christchurch. They have been enthusiastically received by banks, and have also given us a better understanding of some of the problems encountered by bank staff in their day-to-day interaction with customers.

International networks

We continued to work with our colleagues in the Australian and New Zealand Ombudsman Association (ANZOA) on a variety of projects and initiatives. Of particular interest has been the development of special interest groups for specialist staff working in ombudsman offices in fields such as public relations and communications, training and education, information and technology.

In November 2008 I was re-elected secretary to ANZOA.

The International Network of Financial Ombudsmen is now well established. In September 2008 I attended its conference in New York and gave a presentation about handling a sudden influx of complaints in a small ombudsman scheme. There was a further conference in June 2009 in Dublin, where I presented in a workshop on complaints about investments for the elderly.

“It became clear that many complainants did not understand important features of their investments ...”

Complaint issues

Investment advice

We continued to receive large numbers of complaints about advice to invest in two investment funds provided by ING (New Zealand) Ltd, the Diversified Yield Fund (DYF) and the Regular Income Fund (RIF). These funds invested almost entirely in collateralised debt obligations and collateralised loan obligations, making them very different from the traditional managed funds offered by banks in New Zealand. Both funds performed poorly in late 2007 and early 2008, and in March 2008 withdrawals were suspended.

Complaints to this office have mostly been directed at the advice given by advisers from ANZ’s branch network, both advice about investing in the funds and advice not to withdraw once the value of the investment began to decrease.

While advice about these investments has generated by far the largest number of complaints with a common theme that the Banking Ombudsman has ever received, the issues they raise are not new. Almost all of the complaints can be analysed in terms of either the Fair Trading Act 1986 or the Consumer Guarantees Act 1993, using much the same approach developed for a similar but smaller wave of complaints in 2002-4.

“These funds invested almost entirely in collateralised debt obligations and collateralised loan obligations, making them very different from the traditional managed funds offered by banks in New Zealand.”

Fair Trading Act

The Fair Trading Act prohibits misleading conduct in trade. Misleading conduct can include a failure to supply information when it would be appropriate to do so, as well as positively misleading statements.

It became clear that many complainants did not understand important features of their investments, and in some cases they had been given either insufficient information or misleading information about them.

Common misapprehensions about the funds were:

- that the investor could not lose the original capital invested
- that they were some sort of bank deposit with a variable interest rate
- that the funds were invested in major international companies, but were not shares
- that the investment was in ING itself (or sometimes in the bank).

It is usually fairly easy to determine whether the customer understands the important features of the investment, but it is much more difficult to determine whether the misunderstanding is the result of misleading information given by the adviser (or the adviser’s failure to correct an obvious misunderstanding), or the result of mistaken assumptions made by the customer and not apparent to the adviser.

In some cases there is evidence of misleading behaviour either in notes kept by the adviser or the customer or in the circumstances of the investment. In others there were process deficiencies that made it very likely the customer had been misled, and in yet others it is clear that the customers were given appropriate explanations and information and the complaint cannot be upheld.

“Many of the complaints settled in favour of the complainant have been cases where the adviser assessed the customer’s risk tolerance and found it to be low ...”



Although our approach is consistent, almost all complaints about misleading advice have to be considered on a case by case basis, by reference to the circumstances of the particular complainant. Occasionally we find a number of complaints with similar features about the advice given by an individual bank adviser, making it likely that a pattern of behaviour had become established.

Consumer Guarantees Act

The Consumer Guarantees Act implies certain guarantees in contracts for the supply of goods and services. Services must be supplied with due skill and care, and when the customer has relied on the supplier to provide a service or product for a particular purpose, it must be fit for that purpose.

In many of the complaints, the complainant considered the recommendation to invest in the DYF and/or RIF had not been appropriate and had resulted in an investment that did not achieve its intended objective.

The fact that the funds performed poorly and were eventually suspended is not in itself evidence either that the funds were of a higher risk than was represented or that they were not suitable for a particular class of investor. They were, however, at least a low to moderate risk investment and while there could be a place for them in a diversified portfolio for a conservative or defensive investor, they were not suitable as a sole investment for a customer with a low tolerance of risk.

Many of the complaints settled in favour of the complainant have been cases where the adviser assessed the customer’s risk tolerance and found it to be low, and then recommended that either the whole of the customer’s savings or an inappropriately high proportion of them be invested in one or both funds.

Advice not to withdraw

A common cause of complaint was the advice given in the second half of 2007 and early 2008 when the funds were losing value. Concerned investors who consulted their adviser were generally advised not to withdraw and crystallise a loss, but to wait for the funds to recover.

In hindsight, the advice was clearly wrong. However, it has to be judged on the information available at the time, and while some commentators saw little future for the funds, others considered it likely they would regain value in time. ANZ did not rely on its own opinion of the funds but sought independent advice, which suggested customers should hold on to their investment in the funds.

“Concerned investors who consulted their adviser were generally advised not to withdraw ...”

In general, therefore, I have not upheld complaints about advice not to withdraw. In some cases, however, the circumstances of the customer were such that the request for advice should have prompted the adviser at least to suggest a review of the investment, and if a review had been carried out, the appropriate advice would have been to withdraw from the funds or to reduce exposure to them. Such complaints are likely to be upheld.

“The powers of the Banking Ombudsman are compensatory, not punitive.”

Remedies

The powers of the Banking Ombudsman are compensatory, not punitive. When I have found that a bank’s wrongful action has caused loss to a complainant, the remedy is to restore the customer as closely as possible to the position that he or she would have been in if the bank had acted properly.

In the case of poor investment advice, the remedy is usually to consider the return that would have been achieved from a more appropriate investment and to suggest compensation accordingly. In many cases where the customer invested in the DYF or RIF, the appropriate advice would have been to invest (or remain invested) in a term deposit or other capital guaranteed investment. Compensation therefore consists of return of the sum invested, together with the interest or other return that would have been earned.

Compensation for inconvenience is proposed only where the customer has clearly suffered inconvenience, usually in the form of anxiety and/or financial hardship, solely as the result of the bank’s wrong advice or behaviour. It is generally limited to those cases where the customer would not have invested any funds at all in the DYF or RIF if properly advised.

ING settlement offer

In June 2009, ING NZ wrote to investors in the DYF and RIF to advise that it proposed to offer them 60c per unit for their units in the DYF and 62c per unit for the RIF. In addition, investors who accepted the offer could deposit the proceeds in a special purpose call account with ANZ at 8.3% interest for up to five years.

Investors who wished to accept the offer were required to sign a release by which they surrendered and released all claims they might have against ING, ANZ, and other advisers. This would have meant that customers who considered they had been poorly advised and wished to claim the return of their original investment, with or without other compensation, could not accept the offer without prejudice to their right to a Banking Ombudsman investigation.

“Investors who wished to accept the offer were required to sign a release by which they surrendered and released all claims ...”

It is not unusual for the Banking Ombudsman to receive a complaint from a complainant who has entered into a settlement agreement in return for releasing all claims against their bank (a “full and final settlement”), and a standard approach has been developed to such complaints. There are, however, difficulties in applying this approach where the settlement agreement is between the customer and a third (non-bank) party, such as ING.



“The [Credit Contracts and Consumer Finance] Act requires that any early repayment charge must be reasonable.”

While there is nothing in my terms of reference that would prevent me from investigating a complaint from an ANZ customer who had accepted the settlement offer, the first step in the investigation would have to be a consideration of whether the complainant should be bound by the release that was part of the settlement agreement. In the absence of any power to enquire into the behaviour of ING or to require information from ING, it would be difficult, if not impossible, to determine whether the release should be considered binding. It seemed quite likely that I would find myself unable to investigate complaints that were very similar to those investigated and resolved before the settlement offer was made.

By the time of ING’s settlement offer, it had become clear that there had been some deficiencies on the part of ANZ, and a number of complaints had been resolved in favour of the complainant through ANZ’s internal complaints process, by facilitation or conciliation through my office, or after I had issued an initial assessment of the complaint. Both ANZ and I were concerned about the position of ANZ customers whose complaints had not yet been resolved. It seemed inequitable that those who had a valid complaint but had delayed lodging it in the hope that the investment would recover should be disadvantaged as against those who had complained earlier.

Accordingly ANZ offered an exception to the release for investors who had made their investment through ANZ and who wished to complain about ANZ. Customers wishing to take advantage of the exception were required to lodge their complaint with ANZ by 31 July 2009.

Early repayment charges (break costs)

As loan interest rates began to fall towards the end of 2008, so the cost of early repayment of fixed interest rate loans started to increase. A bank may incur a cost when a fixed rate loan is repaid before the end of the fixed rate term, and it is entitled to include in the loan contract, subject to the provisions of the Credit Contracts and Consumer Finance Act 2003, a requirement for the borrower to pay that cost.

The Act requires that any early repayment charge must be reasonable. “Reasonable” means that it must reflect the actual cost to the lender of breaking the loan early. The Act also provides a “safe harbour” formula, and a charge is deemed reasonable if it is calculated in accordance with the formula. However, there is no requirement to use the safe harbour formula, and only two banks use it.

Most customers understand that if interest rates are below the rate they were paying on the loan, banks cannot lend out the repaid funds at the same rate and incur a loss. All banks publish their retail interest rates, and if these are the rates used to calculate the early repayment charge, it is not difficult for a customer to establish whether an early repayment charge is likely to be required. Some banks, however, use a calculation which takes into account the cost of borrowing on the wholesale market. This method of calculation is much less transparent as wholesale rates are not necessarily publicly available. As a result of the “credit crunch” and general global instability, it also resulted in much higher early repayment charges.



Lending and debt recovery

There has been a general rise in complaints about lending and debt recovery, many of which relate to a bank’s exercise of its commercial judgement and therefore fall outside the Banking Ombudsman’s terms of reference.

Apart from some limited obligations under the Credit Contracts and Consumer Finance Act, banks are not legally required to assist customers in financial hardship. Most banks, however, have set up specialist teams to give advice and assistance to customers who are having difficulty meeting their obligations. Often all that is required of my office is a referral to the appropriate department within the bank.

Two issues that give rise to some concern have to do with repayment of credit card debt and with reduction of a customer’s total debt on the sale of a property securing a bank loan.

“... banks are not legally required to assist customers in financial hardship.”

A further factor leading to the complaints is that it is at least 10 years since interest rates last dropped substantially over a short period of time, resulting in significant early repayment charges. Several complaints came from customers who said that when they were considering taking a fixed rate loan they had enquired about the early repayment charge and had been told that any charge would be at most a few hundred dollars. As many bank staff would never have seen a significant early repayment charge, it is quite likely that such advice was given in some cases.

Because the complaints raised a major compliance issue which affects the whole banking industry as well as other lenders, I concluded that if the only issue in the complaint was compliance with the Credit Contracts and Consumer Finance Act, that is, whether the charge was a reasonable reflection of the cost to the lender, I should decline to investigate and should refer the complainant to the Commerce Commission.

If the bank was using the “safe harbour” formula, I declined to investigate the reasonableness of the charge because the complaint was about a practice of the bank that did not breach any obligation owed to the customer (paragraph 20 of the Banking Ombudsman’s terms of reference).

Some complaints raised other issues such as:

- *misleading information about the likely amount or application of any charge*
- *failure to warn that a fixed rate loan was unsuitable for the complainant’s purposes*
- *an amount charged on repayment greater than indicative amount quoted prior to settlement*
- *a refusal to supply information about wholesale borrowing costs so that the customer could check the calculation of the charge.*

Complaints of this kind were accepted for investigation.



Credit card debt

When a customer is unable to repay credit card debt, the bank will usually offer a repayment programme if the account is closed and the card stopped. However, once the account is closed, no further statements are issued on it. If, as often happens, the debt is repaid in small instalments over an extended period of time, the debtor can easily lose track of the amount still owing.

We have had complaints from customers in such circumstances who have had difficulty finding out the balance owing. Sometimes they have assumed that the debt must have been repaid and have stopped making payments, only to find themselves subject to recovery action.

I suggest that when a bank arranges a debt repayment programme that is likely to extend beyond 12 months, it should also arrange to send the customer at least an annual statement showing payments made and the amount outstanding.

“Complaints have come from customers ... expecting to repay the balance of the loan taken out to fund the purchase of the property ... only to find that the bank intends to retain some or all of the expected surplus ...”

Reduction of total debt

Complaints have come from customers who have arranged to sell an investment property, expecting to repay the balance of the loan taken out to fund the purchase of the property and have surplus funds to meet other commitments, only to find that the bank intends to retain some or all of the expected surplus to reduce the customer's total borrowing.

While a bank is normally entitled to require a reduction in total debt on the sale of a security property, it should tell the customer about its intentions at the earliest possible opportunity. In some cases it has not been until very shortly before settlement that the customer realises the expected surplus will not be available, and this may mean an inability to meet commitments made in reliance on it



Systemic issues

While there are undoubtedly some systemic issues emerging from complaints currently under investigation, they have yet to be fully identified and addressed. Most investigations completed this year did not find any systemic issues, and sometimes when there did seem to be a systemic issue, further investigation found this was not the case. There follow notes on a resolved systemic issue and on a case where no systemic issue was found.

Case 1

This issue arose out of a complaint by a customer who had made a payment to his bank on a Friday for a credit card account with a due date of Sunday. The funds were not credited to the account until Monday, and he incurred interest and a late payment fee.

The bank resolved the complaint by refunding the interest and fee, but I was concerned about other customers who could find themselves in a similar situation.

The bank agreed to investigate the possibility of changing its system, and has now made a change whereby the system takes into account funds in transit at the due date.

Case 2

In this case, a customer who had a credit card jointly with his former wife was not told that arrears had built up, the account had been sent to a collection agency, and a default listing had been registered against him.

I was concerned that the bank's dealings had been entirely with the former wife and he had never been given an opportunity to remedy the default and avoid the listing.

The complaint was resolved when the bank agreed to remove the listing, recall the debt from the collection agency and enter negotiations over a repayment programme, but I was concerned that there could be a systemic issue concerning notification of defaults to joint accountholders who have not been actively involved in the banking relationship.

Further investigation revealed some highly unusual circumstances in the case that had come to me. The bank's usual policy was to notify all accountholders of defaults, and to notify them again before the debt was sent for collection or a default listing made. I was satisfied that there was no systemic issue.

“ In the past two years it has been very rare for a complaint to take more than a year to resolve. ”

Complaint statistics

As noted above, this year has seen a record intake of complaints, and in particular a huge increase in complaints requiring at least some investigation.

Definitions

An enquiry is a complaint that is not about a member of the Banking Ombudsman scheme or that is otherwise clearly outside the terms of reference.

A complaint is a complaint that appears to fall within the terms of reference but has not been considered by the bank’s internal complaints process.

A complaint facilitation occurs when the Banking Ombudsman assists in the resolution of a complaint that is still under consideration in a bank’s internal complaints process.

A dispute is a complaint that appears to fall within the terms of reference and has been considered by the bank’s internal complaints process without reaching a resolution that is satisfactory to the complainant. A dispute may also be an unresolved complaint that was made to the bank more than three months before the complaint was brought to the Banking Ombudsman. Some disputes are later found to fall outside the terms of reference.

A dispute facilitation is a dispute that is resolved at an early stage without the need for a formal investigation and assessment.

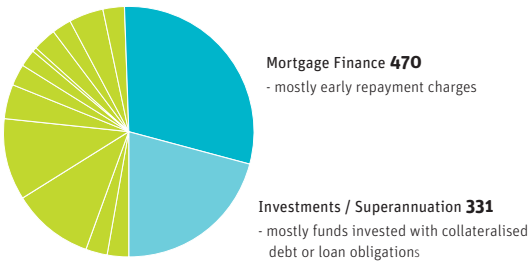
The material about disputes in the graphs and tables needs to be treated with some caution as much of it relates to investigations completed in the year to 30 June 2009. As we received about 40% of this year’s disputes during the last three months of the reporting year, and nearly 30% in the preceding three months, many of them are still under investigation. For this reason the information about types of disputes and their outcomes does not necessarily reflect the nature of the caseload at the end of the year.

Similarly, the time taken to resolve complaints and disputes appears to have varied very little from the 2007/8 year. The time taken over disputes and facilitations has actually improved, with only 18% of them taking more than 200 days to resolve (22% in the previous year) and 50% resolved within 89 days (48% in the previous year). While it is pleasing that we have been able to keep up our standards of timeliness while the workload increased, it would be unrealistic to expect that complaints currently under investigation will be resolved quite as quickly.

In the past two years it has been very rare for a complaint to take more than a year to resolve. Perhaps as an indicator of the future, as at 30 June 2009 nine dispute cases had been open for more than a year.

“ Almost all 331 complaints in the investments/superannuation category were about investment advice ... ”

Completed cases % 08/09



Types of complaint

The impact of the complaints about investment advice and about early repayment charges can be seen in the analysis of complaints by area of business. Almost all 331 complaints in the investments/superannuation category were about investment advice, and a high proportion of the 470 complaints in the mortgage finance category were about early repayment charges. Together these two categories made up 50% of complaints.

Some of the increase in the mortgage finance category can be attributed to general lending complaints with a background of financial hardship, but hardship also contributes to complaints about early repayment charges. Such complaints are often made by customers who either want to break the loan to take advantage of lower interest rates and thus reduce their outgoings, or to sell the property, repay the loan and use the surplus to buy a cheaper home or repay other debts.

There has been an increase in complaints about consumer finance, usually to do with personal loans, and also an increase in complaints about business finance. Other categories have remained much as in previous years, apart from complaints about foreign exchange and cross-border transactions, which have also increased, probably because of increased volatility in exchange rates.



Complaint outcomes

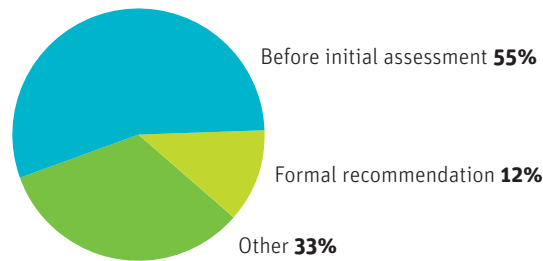
Over the past five years there has been a steady reduction in the number of cases where it is necessary to issue a formal recommendation to conclude the investigation. From 27% in 2004-5, it has dropped to 12% in 2008-9, while the proportion of complaints settled at or before initial assessment stage has risen from 38% to 55%. This is an indication of the success of the less formal processes of dispute resolution we have introduced in recent years.

Facilitation

Facilitation involves the early identification of complaints where some common ground between the bank and the complainant means that an informal resolution may be possible. They are often cases where there is no dispute about the facts, but disagreement about an appropriate remedy. The investigator discusses the case with the bank and the complainant, usually referring to the principles on which the Banking Ombudsman awards compensation and to the outcome of similar complaints previously investigated.

Most facilitations occur once the complaint has been through a bank’s internal complaints process without reaching a satisfactory resolution. However, we have also encouraged banks to identify cases that are still within their process where the complaint is unlikely to be resolved without the assistance of an independent third party. An early facilitation of this kind (a “complaint facilitation”) can often result in the satisfactory resolution of a complaint before an entrenched sense of grievance develops and makes resolution difficult.

How cases were resolved 08/09



“... while the proportion of complaints settled at or before initial assessment stage has risen from 38% to 55%. ”

Conciliation

Conciliation is a more formal process than facilitation. It involves the parties to the complaint, with the assistance of a neutral conciliator, together attempting to find a resolution to the complaint.

Conciliation helps resolve disputes by sharing information, identifying issues in dispute, discussing them and trying to reach an agreement. It is an informal process which enables both parties to a dispute to openly discuss and identify the relevant issues and move the dispute towards resolution.

The conciliator facilitates and assists both parties equally to communicate their concerns, and to help generate options for resolution.

The proceedings are confidential. Nothing said or done during a conciliation can be disclosed unless agreed by both parties. Only a record of the outcome (that is, whether the complaint was or was not resolved, and the details of any settlement) is recorded on the complaint file.

136 complaints were resolved by conciliation or facilitation this year. In a small number of these cases the complainant eventually failed to respond to attempts to contact him or her and the complaint was treated as abandoned, but in nearly all cases there was a settlement that both the bank and the complainant found satisfactory.

Compensation

Over \$7m was paid this year in compensation to customers who had complained to the Banking Ombudsman. This is very much higher than usual, and reflects the substantial nature of some settlements of complaints about investment advice.



Staff

We were sorry to say goodbye to Katrina McLaughlin in April 2009. Katrina joined us as a junior administrator in 2000 and later became senior administrator and my PA. Her cheerful presence at the front desk is much missed.

Angela Trotter has been appointed as acting senior administrator pending a permanent arrangement.

In July 2008 Trevor Slater came to us as an investigator, from the Financial Ombudsman Service in Australia. Trevor brought with him a wealth of experience, especially in conciliation techniques, and is now in charge of developing our conciliation programme.

The increase in complaints meant more administration work, and Malissa Tiraha became our part time administrator in February 2009. She is now working in the position full time.

Jonathan Hanton joined us as an additional investigator in March 2009.

The rapidly increasing workload has meant an unusual number of temporary and/or part-time employment arrangements, secondments and contracted assistance.

Joshua Hitchcock was seconded to us as an assistant investigator from Chen Palmer, and Bonnie Gadd came on secondment from the Electricity and Gas Complaints Commissioner to assist in the enquiries area. Penny Jones was seconded from CGM Architects as an additional part time administrator.

Lizzie Jones is giving us some much-needed extra assistance in enquiries administration. Josie Campbell, Julie Browne and Toni Izzard all came for short periods to relieve investigators of some of their caseload, while Kirsty-Anne Singleton was contracted to write case notes for us.

Banking ombudsman case notes

The Banking Ombudsman case notes for 2008-2009 and future years will be made available primarily through the searchable case notes section of the new Banking Ombudsman website, at www.bankomb.org.nz. We will also provide an electronic version to our usual subscribers and on request, but there will be no hard copy publication.

The case notes for 2008-9 have already been added to the publicly accessible database, and we anticipate that in the future, case notes will be added at regular intervals throughout the year. This means that the case notes, which previously could relate to investigations concluded more than a year before publication, will be much more timely and topical.

The case notes on the next five pages will also be found in the case notes publication and on the database. They have been chosen to show the Banking Ombudsman at work in different ways on the sort of complaint that has been typical of the past year's cases.

Two of the cases required full investigation, culminating in a formal recommendation, but we are increasingly using less formal means to resolve complaints. The first case note illustrates the use of the conciliation process we have introduced this year, while the third note relates to a complaint resolved by informal discussion once the relevant facts had been ascertained through investigation.

All four cases involve complaints about issues that have been prominent this year:

- 1. faulty investment advice
- 2. financial abuse of the elderly
- 3. exchange rate loss caused by delays in cross-border transactions
- 4. early repayment charges on fixed rate loans.





Mr J and Mr V had a number of meetings with the adviser. Although the funds were declining in value he failed to inform them about the true picture of their investment.

Investment advice – failure to inform about performance of investment – complex complaints – conciliation process – factors making case suitable for conciliation

Mr J and Mr V were longstanding customers of the bank and sought advice about their investments, both on a personal basis and as trustees of a trust for the benefit of relatives. They were referred to one of the bank’s financial advisers.

Mr J and Mr V initially wanted a medium term investment but when a regular review was undertaken, their needs had changed and they required a short term investment. They intended to purchase property in the near future. They also wanted their funds to be closely monitored to ensure they did not lose the capital they had invested.

The adviser recommended a number of investments including the ING Diversified Yield Fund (DYF). The adviser also suggested that the investment be made through an investment monitoring service.

Mr J and Mr V agreed with the adviser’s recommendations, on the understanding that the adviser would monitor the investment and that the investment monitoring service would assist with this.

During 2007 Mr J and Mr V had a number of meetings with the adviser. Although the funds were declining in value, he failed to inform them accurately about the status of their investment. They only became aware of the drop in the value of the DYF after it had been frozen.

Mr J and Mr V complained to the bank both personally and on behalf of the trust.

The bank’s response was to accept that the adviser had not acted properly and to make an offer of settlement. Mr J and Mr V rejected the offer as they believed it was too low. They requested a higher amount.

There was a substantial exchange of correspondence in the months following these initial negotiations, but when no agreement was reached the complaint was referred to my office.

The exchange of correspondence continued, with arguments and counter arguments being put forward by each party. A large file built up, but still no agreement could be reached.

At the point when it seemed likely that we would have to conduct an extensive analysis of the correspondence before issuing an initial assessment, my office was introducing a conciliation process as an alternative form of dispute resolution. Our recently employed conciliation expert reviewed the file and suggested that face-to-face conciliation might offer a way forward.

“ There was a strong indication both parties wanted to reach a resolution ”

Conciliation was thought to be preferable to a formal assessment and, if necessary, a formal recommendation, for the following reasons:

- *Mr J and Mr V had been long term customers of the bank, and their complaint was more about the advice from the adviser than about the overall operations of the bank*
- *it was apparent that they would prefer to stay on as customers of the bank*
- *agreement had very nearly been reached early in the history of the complaint*

1 continued



“ When a complex case is dealt with by conciliation it helps if the individual issues can be separated and discussed. ”

- *it was clear that Mr J and Mr V felt they were not getting their message through to the bank via their correspondence*
- *the written file was very complex, and it would have been extremely difficult to summarise all issues and arguments raised by each party in a formal recommendation*
- *there was a strong indication that both parties wanted to reach a resolution.*

In preparation for the conciliation my staff member visited the home of Mr J and Mr V, and obtained a fuller picture of the complaint. He also explained how the conciliation process would be conducted, and in particular the role that he would play as conciliator. Mr J and Mr V were happy with the proposed conciliation process, and confirmed that they would participate.

A similar meeting was undertaken with the bank.

A major role of a conciliator is to gain the trust and respect of both parties, preferably before the conciliation is undertaken. This gives comfort to both parties and encourages them to speak openly at the conciliation.

All conciliations are conducted in a confidential setting which also encourages open discussion with the knowledge that neither party will compromise its position if the matter cannot be resolved through conciliation.

When a complex case is dealt with by conciliation it helps if the individual issues can be separated and discussed. This helps to generate potential options for resolution: a process that would be difficult if all issues were discussed at once. With this in mind it was decided to focus the conciliation on Mr J and Mr V’s personal complaint only, as the issues that it raised were less emotive.

In addition, it is often the case that, if there are multiple complaints or multiple issues within a complex complaint, once resolution is reached on one of the complaints or one of the major issues, the remaining issues are resolved as well. Furthermore, this can occur by the parties negotiating directly with each other, without the assistance of a conciliator.

The conciliation was conducted with Mr J, Mr V and a senior representative from the bank who was empowered to commit the bank to any agreement that could be reached.

At the conciliation both parties agreed to an acceptable settlement of the complaint.

In the ensuing months the parties also reached an agreement between themselves to resolve the trust complaint.

The result of this conciliation was not only to resolve the complaint, but to do it in a way that satisfied both parties’ primary needs as identified before and during the conciliation. It also meant that we did not have to write two very complex and time consuming assessments that may have resulted in a formal resolution of the complaints but would most probably have left both parties dissatisfied.



When Mr G’s health deteriorated ... his son took over his banking affairs and was dismayed to discover that Mr G’s savings account of approximately \$27,000 had been “cleaned out”...

Cards – unauthorised use – financial abuse of elderly – breach of conditions of use by customer – card linked to more than one account – no evidence of customer’s authority to link savings account to card – bank to bear part of loss

Mr G, aged 81, was befriended by a young woman, J, who offered to help him with his shopping. At first Mr G gave J cash to pay for his shopping. As time went on and Mr G grew to trust J, he gave her his Eftpos card and PIN.

Mr G’s health deteriorated and he was admitted to a rest home. His son took over his banking affairs and was dismayed to discover that Mr G’s savings account of approximately \$27,000 had been “cleaned out” over a period of several months.

It turned out that, when J was doing Mr G’s shopping, she used his Eftpos card to withdraw money from his savings account, via an ATM.

Mr G said he had no idea that his Eftpos card could access his savings account. He thought that J would only be able to access his current account which had a balance of about \$4,000.

J was prosecuted for the theft and sentenced to a term of imprisonment, but could not repay the funds stolen.

Mr G’s son complained. He said the bank should not have allowed the Eftpos card to access the savings account, and that it had failed to exercise a reasonable duty of care in monitoring Mr G’s accounts.

My investigation found that:

- *there was no positive evidence that Mr G had instructed the bank to link his Eftpos card to his savings account*
- *it was reasonably clear that Mr G did not know that the card had been linked to his savings account because he had never used the card to access the savings account himself. There was no reason for him to have wanted his savings account to be linked to the card*
- *the series of cash withdrawals from the savings account in a short space of time was completely out of character for Mr G*
- *there is no legal duty on banks, nor is it common practice, for banks to monitor customers’ accounts for this type of fraudulent activity*
- *there was no reason for the bank to have checked the status of Mr G’s accounts until advised by his son that he was taking over management of the accounts*
- *although Mr G had breached the conditions of use for his card by disclosing his PIN to J, he thought any potential loss was limited to the balance of \$4,000 in his current account. He did not know that he was enabling access to his savings account.*

In the circumstances, I considered that a fair outcome was for Mr G to bear the loss of \$4,000, which he had known he was risking when giving his card and PIN to J. The balance of the loss of approximately \$23,500 was to be shared equally between the bank and Mr G. Any reparation recovered from J would also have to be shared proportionately between the bank and Mr G. I made a recommendation to give effect to this and both parties accepted the recommendation.



Ms F arranged a foreign currency account with her bank. She was expecting a large payment into the account by international money transfer within a few days and entered into a contract for conversion of the currency ...

International money transfer – unable to identify recipient – loss sustained when funds not received in time – compensation for inconvenience

Ms F arranged a foreign currency account with her bank. She was expecting a large payment into the account by international money transfer within a few days. In anticipation of its arrival she entered into a contract with a third party for conversion of the currency into New Zealand dollars at a particular rate.

The funds did not arrive as expected. Despite repeated enquiries to her local branch, Ms F could not discover what had happened to the funds for more than two weeks. She eventually found that the funds had been received by the bank, but had been returned to the overseas bank because no account details had been supplied, only a name and address. Ms F lost the non-refundable deposit she had paid for conversion of the funds at a fixed rate of exchange.

Ms F complained that the bank should have been able to trace her because her name and address had been supplied by the overseas bank. She believed the bank should be held responsible for the loss she had incurred.

The bank explained that although in this particular case it did run a name check, it was not able to positively identify Ms F because it had a number of customers with the same or a similar name. Rather than make further enquiries, it returned the funds to the overseas bank in line with its standard policy of returning funds when a money transfer is received with insufficient details.

I concluded that the bank’s policy of returning funds when it is unable to identify the correct recipient of the funds, rather than trying to trace the recipient, did not breach any obligation or duty it owed its customer. Paragraph 20 of my terms of reference prohibits the investigation of a complaint when it relates to a practice or policy of a bank that does not itself give rise to a breach of any obligation or duty owed to the complainant.

The bank agreed that Ms F had experienced some difficulty in getting information from her local branch about the funds she was expecting. The bank offered her \$250 to acknowledge the inconvenience she had suffered. Ms F accepted the bank’s offer and the complaint was resolved on that basis.



Mr and Mrs Y repaid the loan early. On settlement, they discovered the bank had added \$5,000 to the amount required to repay the loan to cover the early repayment charge.

Fixed rate loan agreement – loan broken early – early repayment charge on settlement – provision in loan agreement for early repayment charge – bank unaware that complainants intended to break fixed term early – no evidence to suggest complainants would have acted differently

Mr and Mrs Y had entered into a two year fixed rate loan agreement with the bank. Eighteen months later, they repaid the loan early. The bank charged them an administration fee but no early repayment charge.

A year later, after meeting with one of the bank’s officers, Mr and Mrs Y entered into another fixed rate loan agreement with the bank.

Fourteen months later, Mr and Mrs Y repaid the loan early. On settlement, they discovered the bank had added \$5,000 to the amount required to repay the loan, to cover the early repayment charge.

Mr and Mrs Y complained to the bank, and when they were dissatisfied with its response, to my office. They complained that the bank did not tell them that an early repayment fee might be charged if the fixed interest rate loan agreement was terminated and the loan was repaid early.

After investigation, I concluded that:

- *the loan agreement provided for an early repayment charge if the loan was repaid early*
- *although Mr and Mrs Y had told me that they move house every year and had expected to repay the loan early, the bank was unaware that they intended to break the fixed term early*
- *even if Mr and Mrs Y had known about the early repayment charge, they could still have decided to fix the interest rate. There was no way of knowing that interest rates were going to drop as far as they did and that the early repayment charge was going to be so significant.*

My formal recommendation was that the complaint be withdrawn. The case was closed on this basis.

“They complained that the bank did not tell them that an early repayment fee may be charged if the fixed interest rate loan agreement was terminated and the loan was repaid early.”

Financial Statements

For the year ended 30 June 2009

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Chartered Accountants



Statutory Information

For the year ended 30 June 2009

The Board of Directors present their Annual Report including the financial statements of the Company for the year ended 30 June 2009 and the auditor’s report thereon.

The shareholder of the Company has exercised his right under section 211 (3) of the Companies Act 1993 and agreed that this Annual Report need not comply with paragraph (a) and (e) to (j) of section 211 (1) of the Act.

For and on behalf of the Board:

A handwritten signature in blue ink, appearing to read "Ian Barker".

Sir Ian Barker **Chairman**
8 October 2009

Auditor’s Report

To the Shareholder of Banking Ombudsman Scheme Limited (“the Company”)

We have audited the financial statements on pages 30 to 36. The financial statements provide information about the past financial performance of the company and its financial position as at 30 June 2009. This information is stated in accordance with the accounting policies set out on pages 33 to 35.

This report is made solely to the company’s shareholder in accordance with Section 205(1) of the Companies Act 1993. Our audit has been undertaken so that we might state to the company’s shareholder those matters we are required to state to them in an auditor’s report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company’s shareholder, for our audit work, for this report, or for the opinions we have formed.

Directors’ Responsibilities

The directors are responsible for the preparation of financial statements which comply with generally accepted accounting practice in New Zealand and give a true and fair view of the financial position of the company as at 30 June 2009 and of its financial performance for the year ended on that date.

Auditor’s Responsibilities

It is our responsibility to express an independent opinion on the financial statements presented by the directors and report our opinion to you.

Basis of Opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the directors in the preparation of the financial statements; and
- whether the accounting policies are appropriate to the company’s circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards in New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor and tax advisor we have no relationship with, or interest in, the company.

Unqualified Opinion

We have obtained all the information and explanations we have required.

In our opinion:

- proper accounting records have been kept by the company as far as appears from our examination of those records; and
- the financial statements on pages 30 to 36:
 - comply with generally accepted accounting practice in New Zealand; and
 - give a true and fair view of the financial position of the company as at 30 June 2009 and its financial performance for the year ended on that date.

Our audit was completed on 8 October 2009 and our unqualified opinion is expressed as at that date.

A handwritten signature in black ink, appearing to read "Ernst & Young".

Wellington

The Banking Ombudsman Scheme

The Banking Ombudsman Scheme

Balance Sheet	note	08 09	07 08
As at 30 June 2009			
Current Assets			
Bank - Cheque Account		115,465	643
Bank - On Call account		157,503	664,439
Accounts Receivable	9	445,992	22,164
Prepayments	10	10,323	24,744
Tax Refundable		21,601	-
		750,884	711,990
Property, Plant and Equipment	5	64,563	59,311
Intangibles	6	43,881	23,700
Total Assets		\$859,328	\$795,001
Current Liabilities			
Sundry Payables and Accruals	8	199,724	118,032
Levies in Advance		500,000	445,000
Goods and Services Tax Payable		24,615	45,007
Banking Ombudsman Commission		196,815	196,815
Provision for Taxation		-	8,114
Total Liabilities		\$921,154	\$812,968
Net Liabilities		\$(61,826)	\$(17,967)
Equity			
Contributed equity			1
Current loss & reserves		(61,826)	(17,968)
Shareholder's Deficit		\$(61,826)	\$(17,967)

For and on behalf of the Banking Ombudsman Scheme Limited which approved the issue of these financial statements on 8 October 2009.

Chairman: Sir Ian Barker
Date: 8 October 2009

Director: Sam Knowles
Date: 8 October 2009

The accompanying notes form part of and should be read in conjunction with these financial statements.

	note	08 09	07 08	Income Statement
				For the year ended 30 June 2009
Income				
Levies		1,960,000	1,562,855	
Interest		22,373	27,483	
Other income		10,044	3,750	
Total Operating Income		\$ 1,992,417	\$1,594,088	
Expenses				
Accident Compensation		3,940	3,400	
Accounting Fees		-	410	
Audit Fees		13,230	13,075	
Bank Fees		303	357	
Board Expenses	16	64,501	9,552	
Cleaning		13,300	12,619	
Chairman's Expenses		1,300	1,300	
Commission Reviews		-	17,425	
Conference Expenses		27,770	23,973	
Consulting		22,223	8,770	
Depreciation	5	28,976	21,653	
Amortisation of Intangibles	6	15,639	21,643	
Directors' Remuneration	12	92,240	92,240	
Electricity		5,054	4,848	
Entertainment		4,248	4,322	
Fringe Benefit Tax		5,817	5,012	
General Expenses		7,451	5,337	
Healthcare		9,656	7,607	
Insurance		921	917	
Office Supplies		14,421	11,106	
Photocopying		2,668	2,480	
Postage		7,228	5,924	
Printing		49,569	44,468	
Professional Expenses and Subscriptions		8,879	6,556	
Promotions & Publicity		29,542	28,334	
Publications & Periodicals		22,159	24,874	
Recruitment Costs		1,638	7,125	
Rent		147,427	133,063	
Repairs & Maintenance		3,569	1,408	
Salaries		1,176,581	937,997	
Special project		-	5,800	
Superannuation		42,441	39,864	
Technology		31,567	20,151	
Telephone & Tolls		21,053	15,875	
Temporary Office Staff		57,836	3,157	
Training		22,548	19,019	
Translation		494	-	
Travel		43,068	30,635	
Impairment of Goodwill	13	-	1,000	
Website Review		19,718	-	
Total Expenses		\$2,018,975	\$1,593,296	
Operating Surplus before Taxation		(26,558)	792	
Taxation	11	(17,301)	(18,760)	
Net Loss after Taxation		\$ (43,859)	\$(17,968)	

The accompanying notes form part of and should be read in conjunction with these financial statements.

The Banking Ombudsman Scheme

Statement of Movements in Equity		note	08 09	07 08
For the year ended 30 June 2009	Equity at beginning of year		(17,967)	-
	Loss for the year		(43,859)	(17,968)
	Total recognised income and expense for the year		(43,859)	(17,968)
	Issue of Share Capital		-	1
	Equity at end of the year		\$ (61,826)	\$(17,967)

Notes to the Financial Statements

For the year ended 30 June 2009

1. Corporate information

The financial statements of the Company for the year ended 30 June 2009 were authorised for issue in accordance with a resolution of the directors on 8th October 2009.

The Company was incorporated on 19 June 2007 and is incorporated and domiciled in New Zealand.

The Company provides a free, independent and impartial dispute mechanism for those receiving “banking services” from the participating banks in New Zealand.

2. Summary of significant accounting policies

(a) Basis of preparation

The financial statements have been prepared in accordance with generally accepted accounting practice in New Zealand and the requirements of the Companies Act 1993 and the Financial Reporting Act 1993.

The financial statements are presented in New Zealand dollars (\$).

Differential reporting

The Company qualifies for Differential Reporting exemptions as it has no public accountability, and its shareholder is a director of the Company. All available reporting exemptions allowed under the framework for Differential Reporting have been adopted.

(b) Statement of compliance

The financial statements have been prepared in accordance with generally accepted accounting practice in New Zealand (NZ GAAP). They comply with the New Zealand equivalents to International Financial Reporting Standards, and other applicable Financial Reporting Standards, as appropriate for profit oriented entities that qualify for and apply differential reporting concessions.

(c) Basis of measurement

The accounting principles recognised as appropriate for the measurement and reporting of earnings and financial position on a historical cost basis are followed by the Company.

3. Accounting policies

The following specific accounting policies which materially affect the measurement of financial performance and financial position have been applied;

(a) Cash and cash equivalents in the balance sheet comprise cash at the bank and in hand.

(b) Loans and receivables are non derivative financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are carried at amortised cost. Gains or losses are recognised in profit or loss when the receivables are derecognised or impaired. They are included in current assets, except for those with maturities greater than 12 months after balance date, which are classified as non-current.

(c) Property, plant and equipment are stated at cost less accumulated depreciation. Such cost includes the cost of replacing parts that are eligible for capitalisation when the cost of replacing the parts is incurred. Similarly, when each major inspection is performed, its cost is recognised in the carrying amount of the plant and equipment as a replacement only if it is eligible for capitalisation. All other repairs and maintenance are recognised in profit or loss as incurred.

Depreciation has been calculated on plant, property and equipment on a diminishing value basis using the rates permitted for income tax purposes. Depreciation rates are as follows:

Furniture, Fixtures and Fittings	7.5%-28.0%
Office Equipment	18.0%-60.0%
Hardware	33.0%-48.0%
Other Property, Plant & Equipment	9.5%-48.0%

Gains and losses on disposals are determined by comparing proceeds with the carrying amount. Theses are included in the income statement.

(d) Intangibles –

i Computer Software

Computer software licences are capitalised on the basis of the costs incurred to acquire and bring into use the specific software. Amortisation rates for software are 40% to 48%.

ii Website

Following initial recognition website developments costs are carried at cost less accumulated amortisation. Amortisation rates for the website are 40%.

(e) Sundry payables and accruals are carried at amortised cost and due to their short term nature they are not discounted. They represent liabilities for goods and services provided to the company prior to the end of the financial year that are unpaid and arise when the Company becomes obliged to make future payments in respect of the purchase of these goods and services. The amounts are unsecured and are usually paid within 30 days of recognition.

(f) Leases

The Company leases its office premises. Operating lease payments are recognised as an expense in the income statement on a straight line basis over the lease term.

(g) The financial statements have been prepared on a GST exclusive basis except for receivables and payables which are shown gross when billed.

(h) Provisions and employee benefits

Provisions are recognised when the Company has a present obligation (legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

(1) Wages, salaries, annual leave and sick leave.

Liabilities for wages and salaries, including non monetary benefits, annual leave and accumulated sick leave expected to be settled within 12 months of the reporting date are recognised in respect of the employees' service up to the reporting date. They are measured at the amounts expected to be paid when the liabilities are settled. Expenses for non accumulating sick leave are recognised when the leave is taken and are measured at the rates paid or payable.

(2) Defined contribution pension plans.

Obligations for contributions to defined contribution pension plans are recognised as an expense in the Income Statement when they are due.

(i) Revenue recognition

(1) Levy revenue

Revenue from members of the Scheme is recognised on an accrual basis. Levies are paid on a quarterly basis.

(2) Interest revenue

Revenue is recognised as interest accrues during the life of the investment.

(j) Income tax and other taxes

Income tax is accounted for using the taxes payable method. The income tax expense recorded in the income statement for the period represents the income tax payable for the period.

The current income tax asset or liability recognised in the balance sheet represents the current income tax balance due from or obligation to the Inland Revenue Department at balance date.

Other taxes

Revenues, expenses and assets are recognised net of the amount GST except:

- when the GST incurred on the purchases of goods and services is not recoverable from the taxation authority, in which case the GST is recognised as part of the acquisition of the asset or part of the expense item as applicable; and
- receivables and Payables, which are stated with the amount of GST inclusive.

The net amount of GST recoverable from, or payable to, the taxation authority is included as part of the receivables or payables in the balance sheet.

Commitments and contingencies are disclosed net of the amount of GST recoverable from, or payable to, the taxation authority.

4. Changes in accounting policies

There have been no changes in accounting policies during the year.

5. Property, Plant and Equipment

	Cost	2009 Accumulated Depreciation	Book Value
Fittings	19,335	5,141	14,194
Furniture	20,456	5,639	14,826
Office Equipment	27,861	16,026	11,835
Hardware	38,613	20,584	18,029
Other Property, Plant and Equipment	8,918	3,239	5,679
	\$115,192	\$50,629	\$64,563

	2009 Depreciation
Fittings	2,278
Furniture	2,729
Office Equipment	10,624
Hardware	12,231
Other Property, Plant and Equipment	1,114
	\$28,976

	Cost	2008 Accumulated Depreciation	Book Value
Fittings	19,335	2,863	16,472
Furniture	17,721	2,910	14,811
Office Equipment	13,463	5,402	8,061
Hardware	21,527	8,352	13,175
Other Property, Plant and Equipment	8,918	2,126	6,792
	\$80,964	\$21,653	\$59,311

	2008 Depreciation
Fittings	2,863
Furniture	2,910
Office Equipment	5,402
Hardware	8,352
Other Property, Plant and Equipment	2,126
	\$21,653

6. Intangibles

	Cost	2009 Accumulated Amortisation	Book Value
Computer software	45,343	34,151	11,192
Website	35,820	3,131	32,689
	\$81,163	\$37,282	\$43,881

	2009 Amortisation
Computer software	12,508
Website	3,131
	\$15,639

	Cost	2008 Accumulated Amortisation	Book Value
Computer software	\$45,343	\$21,643	\$23,700

	2008 Amortisation
Computer software	\$21,643

7. Lease Commitments

Lease commitments under non-cancellable operating leases:

	2009	2008
Current	61,427	147,427
Non current		61,427
	\$61,427	\$208,854

8. Sundry Payables and Accruals

	2009	2008
Sundry Payables	29,018	30,302
Accruals	90,371	43,026
Provision for holiday pay	80,335	44,704
	\$199,724	\$118,032

9. Accounts Receivable

	2009	2008
Levy funding receivable	\$445,942	\$22,164

10. Prepayments

	2009	2008
Travel expenses	764	11,760
Healthcare	2,862	2,518
Staff salaries	5,797	8,160
Other	900	2,306
Balance 30 June 2009	\$10,323	\$24,744

11. Income Tax Expense

	2009	2008
Operating surplus (deficit) before tax	(26,558)	792
Tax at statutory income tax rate of 30% (2008: 33%)	(7,967)	261
Adjustment in respect of current income tax of previous years	7,070	-
Add tax effect of non deductible expenditure	18,198	18,499
Current year taxation as per income statement	\$17,301	\$18,760

12. Directors' Remuneration

The directors had remuneration due or paid during the year of \$92,240 (2008: \$92,240).

13. Contingent Assets and Liabilities

There are no contingent assets or liabilities at year end.

14. Transactions with related parties

There have been no transactions other than those disclosed in the financial statements with related parties during the year.

15. Financial Instruments

The carrying amounts of categories of financial assets and liabilities are as follows:-

	2009	2008
Loans and Receivables	445,992	22,164
Accounts Receivables	272,968	665,082
Bank	\$718,960	\$687,246

Financial Liabilities Measured at Amortised Cost

	2009	2008
Sundry Payables	29,018	30,302
Banking Ombudsman Commission Payable	196,815	196,815
	\$225,833	\$227,117

16. Board expenses

Board expenses include the recruitment costs of \$57,112 for the newly appointed Banking Ombudsman (2008: nil).

Directory

Directors

Hon Sir Ian Barker
Ms Suzanne Chetwin
Mr Graham Hodges (Resigned 30 April 2009)
Mr Andrew Thorburn (Appointed 1 May 2009)
Mr Sam Knowles
Ms Helen Walch

Banking Ombudsman

Liz Brown (Retired 31 July 2009)
Deborah Battell (Appointed 1 August 2009)

Registered Office

Level 11
109 Featherston St
Wellington 6143
Telephone 04 471 0006
Facsimile 04 471 0548

Banker

The National Bank of New Zealand Limited
Wellington

Auditor

Ernst & Young

Business Location

Wellington

Banks in the Scheme

ANZ
ASB Bank
BNZ
Citi New Zealand
HSBC New Zealand
Kiwibank
The National Bank of New Zealand
Rabobank New Zealand
SBS Bank
TSB Bank
Westpac



Banking Ombudsman

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