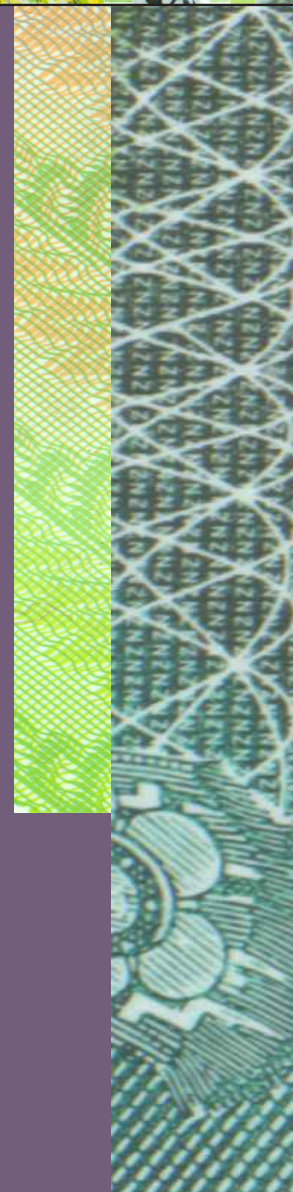


The Banking Ombudsman

ANNUAL REPORT 05
06



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About the Banking Ombudsman scheme

- 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
- We are independent and impartial
- Our service is free, efficient, and informal
- We can only investigate complaints which have already been taken up with the bank in question
- If banks do not agree to settle voluntarily, they can be bound by recommendations of the Banking Ombudsman



At a glance

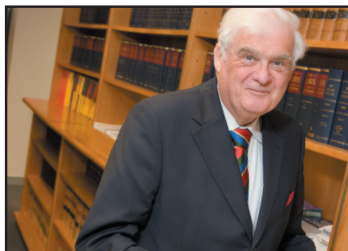
2005/2006 has been a major year for the Banking Ombudsman. The first independent review of the scheme was conducted, examining all of its aspects.

The reviewer commented that the scheme is in excellent health, and recommended adjustments in areas of governance and administration. All recommendations for administrative change have already been implemented, while governance issues are being assigned priority in consultations with banks.

The review found that much more needs to be done to improve the visibility and accessibility of the Banking Ombudsman scheme as far as bank customers are concerned. The Banking Ombudsman is working with banks to identify concrete ways and means of implementing this important recommendation.

Complaints that come the way of the Banking Ombudsman are getting more and more complex, challenging, and time-consuming – especially if, as in the case of internet banking, they occur in an area largely lacking agreed norms and rules.

The level of complaints has remained steady, with progress being made in reducing the time taken to resolve complaints.



Hon. Sir Ian Barker QC
Chairman,
Banking Ombudsman Commission

From the Chairman

The independent review of the Banking Ombudsman scheme recently conducted by the Hon Anand Satyanand PCNZM, a former Ombudsman who will be Governor-General by the time this annual report is published, has been the most important feature of the past year. The distinguished reviewer made the most of this first opportunity, in the fourteen years since the scheme was established, to consider all its substantive aspects, and to identify changes and improvements that will enhance it. The reviewer's report is on the Banking Ombudsman website.

The Banking Ombudsman Commission has carefully considered the reviewer's findings and recommendations. The Commission was pleased to note the reviewer's key finding that the scheme has operated well, with high standards of professionalism and integrity. However, given that the rationale for the review was a concern to identify any changes which might be necessary, most interest has focused on the reviewer's findings and recommendations. Within the confines of this brief foreword, I mention three of them.

The Commission appreciates the real importance, emphasised by the reviewer, of doing more to ensure that the community at large knows about the availability of the scheme. If bank customers do not know about the Banking Ombudsman scheme, they cannot take advantage of the important service that it provides. The Commission supports the reviewer's finding that banks need to do much more in this regard, and is looking forward to discussing with banks practical ways of achieving this goal.

The reviewer noted that the power to set the rules defining the legal parameters of the scheme – known as its Terms of Reference – has hitherto rested exclusively with the Council of the New Zealand Bankers' Association. He found that this is contrary to the notion of independence which "should be at the heart" of the scheme, and recommended



that a decision-making process be devised which will allow both the Council of the New Zealand Bankers' Association and the Banking Ombudsman Commission to share in determining these rules. I concur with this view, and am confident that a formula will soon be devised which strengthens the independence of the Banking Ombudsman scheme.

The reviewer also recommends the enhanced independence that would result if the Commission acquired a separate legal identity through incorporation. Given the critical importance of this review for the Banking Ombudsman scheme, the Commission would appreciate it if banks could conclude their consideration of all of its recommendations with as much speed as is reconcilable with their need to reflect and to consult amongst themselves.

As this foreword opens a new slimline annual report, even the Chairman of the Commission must shorten his contribution. However, I must note with regret the recent retirement from the Commission of Sir John Anderson, the former Chief Executive of ANZ National Bank, who has tirelessly supported the Banking Ombudsman scheme since its inception. We thank him for his enduring contribution. On behalf of the Commission, I wish to express sincere appreciation for the dedication with which Liz Brown, the Banking Ombudsman, and her staff have devoted themselves to upholding the highest standards of efficiency, integrity, and impartiality in their work. I also thank my fellow Commission members, Peter Thodey, Sam Knowles, David Russell, and Helen Walch, for their support and wise counsel during the year.

Banking Ombudsman Commission

Mr Sam Knowles

Sir Ian Barker

Mrs Liz Brown (secretary)

Mr Hugh Burrett (alternate)

Ms Helen Walch

Mr David Russell

absent: Mr Peter Thodey



Liz Brown
Banking Ombudsman

Report of the Banking Ombudsman

Although for the past seven years we have had regular reviews of the investigation process, there had never been a wide and general review of the structure, governance, and functioning of the Banking Ombudsman scheme.

It is likely that, when we look back on the year just past, we will find that it was a significant one in the history of the Banking Ombudsman scheme.

Our core business of dispute resolution went on as usual, and apart from some new and difficult issues to do with internet banking, there was no great change in the numbers or types of complaint coming to my office. This made it a good time for wider reflection, and there was plenty of food for thought in the review carried out by the Hon Anand Satyanand PCNZM, as reflected in his subsequent report.

Although for the past seven years we have had regular reviews of the investigation process, there had never been a wide and general review of the structure, governance, and functioning of the Banking Ombudsman scheme. We believed it to be sound and effective, but we also realised that in the thirteen years since its inception, the banking industry had changed, with the same being true of the regulatory environment and of customers' expectations of the industry. We needed to be sure that the scheme had not only adapted to change as it occurred, but was in a good position to face future change and to continue to supply a first class dispute resolution service to its members and their customers.

In outline, the questions the reviewer was asked to address were

- whether the scheme was meeting internationally recognised standards of best practice; and
- whether it was meeting the needs of New Zealanders and their banks for a demonstrably independent and effective resolution process for banking disputes.

In response, the reviewer said that the Banking Ombudsman scheme has operated well, with high standards of professionalism and integrity. He found that, with some relatively minor adjustments to its structure and approach, the scheme has a durable future in providing help for the banking industry and its consumers.

All the recommended minor adjustments which could be made through consultations between the Banking Ombudsman Commission and the Banking Ombudsman have already been implemented.

- ① **We have developed a communications plan**, and the coming year should see a greater emphasis on ensuring that the Banking Ombudsman scheme is accessible to all those who may need its assistance. In particular, we will be working with banks and community advisory organisations to ensure that their staff have sufficient basic knowledge about the Banking Ombudsman to advise their customers or clients and to make appropriate referrals.
- ② **The triennial process review has been reconsidered**, with a decision in principle made on its future. We expect to have a full review less frequently than in the past, probably at five yearly intervals, with a series of small-scale interim reviews at one to two yearly intervals.
- ③ **Timeliness standards have been reviewed** and new time targets have been set for the completion of investigations. In particular, it is expected that 40% of cases should be resolved within 60 working days.
- ④ **We have discontinued the practice of referring cases to the Chairman for review** when a complainant claims that there were procedural deficiencies in the investigation. A new internal review process has been set up.

I am pleased that the reviewer found it fundamentally sound, with only comparatively minor changes required to bring it up to the highest standards of best practice.

The remaining recommendations require action by the banking industry through the Council of the New Zealand Bankers' Association, as well as by the Banking Ombudsman Commission and the Banking Ombudsman. This necessarily takes some time, and no decisions had been made at the time of writing this report.

The review has been invaluable in providing a broad overview of the Banking Ombudsman scheme. I am pleased that the reviewer found it fundamentally sound, with only comparatively minor changes required to bring it up to the highest standards of best practice. From a personal point of view I am particularly pleased to see some recognition of the changes in the role of the Banking Ombudsman since the scheme was first set up. I believe that one of the best things we have done is to encourage and assist banks in developing effective complaint handling practices of their own to facilitate the speedy resolution of the great majority of disputes by the bank itself, and to the customer's satisfaction. The reviewer recognised this function together with the broader educative role of the Banking Ombudsman, and recommended that these aspects of our work be properly reflected in the Terms of Reference.



At almost the same time as the Hon Anand Satyanand's review, Chen Palmer carried out the triennial investigation process review, presenting their report in February 2006.

The aim of the latter review is to provide an independent assessment of the process by which complaints are investigated and resolved. The values of fairness and impartiality as established in common law provide a baseline standard for it.

Chen Palmer noted some issues of timeliness, and made some useful recommendations – all of which have been implemented – to improve file, case and time management.

Having surveyed a random sample of investigations drawn from the review period, the reviewers found that the Banking Ombudsman's investigation process is both fair and impartial. Processes in relation to settlements, recommendations and jurisdictional decisions were all in compliance with the Banking Ombudsman's Terms of Reference.

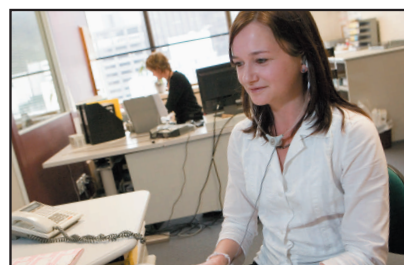
Chen Palmer noted some issues of timeliness, and made some useful recommendations – all of which have been implemented – to improve file, case and time management.

In the wider finance sector, the Taskforce on Financial Intermediaries completed its work and affirmed the need for dispute resolution processes to be available to all customers of financial intermediaries. The taskforce's recommendations have already been adopted by Government, and work is under way on implementing them. There have been discussions with officials on how best to build on the experience of existing ombudsmen in the finance sector in working towards the extension of dispute resolution services to parts of the finance sector where they do not currently exist.

Complaint Issues

Internet banking

Internet "mule" cases



We received several complaints from bank customers who had been caught up in internet scams in which their accounts were used to transfer the proceeds of fraud overseas. We have begun to develop a standard approach to this type of complaint.

While the cases differ in detail, they generally have the following features in common.

- The bank customer responds to a plausible email or internet offer of employment, and is told that an overseas enterprise needs agents in New Zealand to receive payment for sales made there and to transmit the payments overseas (after deducting a generous commission).
- The agent, or mule, is told that funds will arrive by direct transfer from the purchaser's account, and should be immediately forwarded to an overseas address.
- In the meantime the fraudsters gain access to New Zealand bank accounts by using either keystroke logging devices or "phishing" and transfer the misappropriated funds to the mule's account.
- The mule then immediately sends the funds overseas as instructed.

The scam usually comes to light quickly, when a customer notices that funds are missing from his/her account, but by then the funds have been sent overseas, and are generally irrecoverable. The practice has been for banks to reverse such transactions out of the mule's account, back into the account of the "purchaser", usually leaving the mule with a substantial debt or overdraft. Banks do not generally accept responsibility for the mules' losses, which can be quite substantial.

Neither current legislation nor the present version of the Code of Banking Practice is of much help in these cases, as they were not drawn up with electronic transactions in mind. Electronic banking in general, and mule cases in particular, constitute a large grey area in the application of the law to banking. I hope that the current review of the Code of Banking Practice will result in useful guidance on standards of good practice in such cases.

Other electronic and internet banking issues

The increased use of electronic and especially internet banking has resulted in further confusion on the part of bank customers about the availability of funds transferred into their accounts. When transfers between the customer's own accounts take place almost instantaneously, it can be difficult to understand that transfers to other accounts at the same bank may take longer, or that transfers to the customer's own credit card account with the same bank will be processed overnight. Better and more accessible information about the clearance times for different types of transfer would be helpful to customers.

Moreover, if banks are making uncleared funds available to their customers, they should give a clearer explanation of the risk that such transactions may be reversed. Bank customers frequently fail to grasp why, after funds have been deposited in their account and they have drawn on them, they can subsequently be advised that the funds were not cleared and that the deposit transaction was invalid.

Electronic banking in general, and mule cases in particular, constitute a large grey area in the application of the law to banking. I hope that the current review of the Code of Banking Practice will result in useful guidance on standards of good practice in such cases.

Cheques

One surprising feature of the year was an increase in the number of complaints about cheques. The use of cheques is declining, and until now, complaints about cheques had declined as well. **An analysis of the complaints confirmed earlier suspicions that we now have a generation of New Zealanders who are not familiar with the use of cheques.** In particular, they are not familiar with the crossings that can be used to safeguard against fraud. Several of our complainants did not understand the potential consequences of a failure to cross a cheque properly, while others were dismayed to find that crossing a cheque "not negotiable" does not prevent a bank from accepting it into the account of someone other than the originally named payee – even if the cheque is eventually discovered to have been illegally intercepted. During the year under review complainants have irrevocably lost amounts as large as \$33,000, without having any entitlement to reimbursement by the bank in question.





“I didn’t know that
I had to write
not transferable
on my crossed cheque
so that someone else
could not cash it”.

Now that cheques are hardly ever used by customers to draw cash for their everyday needs, the time may have come for banks to consider routinely offering chequebooks with cheques crossed “not transferable” or “A/C payee only”, thus ensuring that, even if the name of the payee is changed, the bank customer who signs the cheque will enjoy complete protection. Those customers who want greater flexibility could continue to use conventional chequebooks, but should be made aware of the risks which accompany this.

Facilitations

During the 2004-5 year the New Zealand Bankers’ Association reviewed the formula used to decide how the cost of funding the Banking Ombudsman scheme is shared between participating banks. One result of this review was the initiation of a new category of cases, to be known as facilitations, which are charged to the banks at a lower rate than a dispute.

Facilitations - settlement times

	number	outcome	time taken (days)		
			1-20	20 - 40	40+
Facilitated Complaints	16	14 Settled	5	9	
		1 abandoned			1
		1 withdrawn			1
Facilitated Disputes	25	22 settled	7	9	6
		3 abandoned		1	2

Facilitations are cases where my office has assisted in the resolution of a complaint or dispute (other than by simply referring the complaint to the bank’s internal complaints process), but where a full investigation was not necessary.

After the first year’s experience, I am happy to report that the facilitation process has been a success. Having a formal category for this type of complaint has helped bank complaints handlers and my staff to concentrate on the early resolution of complaints. When a complaint became deadlocked, our previous system essentially saw banks handing over responsibility for the complaint to this office. Now there is a period around the point of deadlock when we are both working to resolve the complaint – frequently with a very positive outcome.

It is also open to a bank to consult my office before a complaint reaches deadlock, when it seems that the intervention of an independent third party may help resolve the complaint.

One of the highlights of our year was the use of the facilitation process to resolve a complaint on the day it arrived in this office. A total of 41 complaints were resolved as facilitations during 2005-6. Although a small number involved quite lengthy negotiations, taking up to two or three months to resolve, most were resolved much more quickly.

Survey of bank branches

In December 2005 we carried out our annual survey of bank branches to assess the accessibility of information about complaints processes generally and about the Banking Ombudsman. The results were rather disappointing. At best there had been a very minor improvement in the availability of information about banks' complaints processes and the Banking Ombudsman. In 28% of branches surveyed, no leaflet or other written information about the complaints process could be found, while in another 9% of branches it could only be found after some searching.

Forty-five percent of branches had a Banking Ombudsman brochure on display, a poorer result than in 2004 when 49% of branches displayed the leaflet.

The survey included an assessment of the willingness of bank staff to help with information about the complaints process and the results on this part of the survey were very similar to those of previous years. The mean score across all banks was 7.4 on a scale of 1-10, with the smaller banks generally achieving better results. One area where the survey showed a distinct improvement was in staff knowledge of the complaints process.

We noted in particular some telling comments from the students who had been engaged to conduct the survey, ranging from a description of bank staff as “really helpful, understanding, keen to help me out personally” to “was nice to begin with until heard the word complaint”.

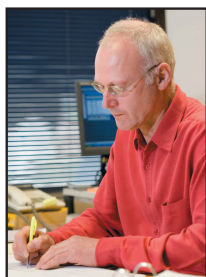
Also this year we conducted an informal survey of bank call centres. Call centre staff were generally found to be helpful, but it was noted that callers who specifically asked how to contact the Banking Ombudsman were usually given the relevant information, while general enquiries about complaints which had not been resolved through a bank's own process were unlikely to receive a satisfactory answer. In other words, call centre staff generally knew that a Banking Ombudsman exists, but lacked an informed awareness of what the Banking Ombudsman does.

The results of these surveys reinforce the finding of the Satyanand review that banks are not doing enough to ensure that information about the complaints process is available to their customers when they need it. Serious consideration needs to be given to some of the suggestions in the review report, such as a Banking Ombudsman sticker on display in bank branches and an annual mail-out of information about the Banking Ombudsman scheme together with account statements.

“was nice to begin with until heard the word complaint”.



Almost all member banks sent staff to at least one of the forums.



Outreach

Particularly since receiving the reviewer's report, the office has increased its efforts to make sure that the Banking Ombudsman scheme is well known in both banks and the community at large. A number of events were conducted to this end during the year.

Forums for complaints handlers in banks were held in Wellington in July 2005 and in Auckland in February 2006, and were well attended. Almost all member banks sent staff to at least one of the forums. In addition, seminars were conducted for groups of managers from most of the major banks, and also for some banks' specialist groups such as fraud departments. A number of presentations were given to regional meetings of FINSIA.

In a continuation of the successful community organisation forum programme of previous years, joint forums were held with the Insurance & Savings Ombudsman and the Electricity and Gas Complaints Commissioner in Waitakere, Whangarei and Hamilton, and with the Electricity and Gas Complaints Commissioner in Otara and Clendon, in South Auckland. The forums are aimed at staff and workers from consumer organisations providing advice to their local communities. We are grateful to the many agencies, ranging from local bodies to community organisations, which assist us in reaching out to all those networks that are offering advice on financial and other consumer problems.

Trans-Tasman cooperation has continued, and the Australian and New Zealand Ombudsman Association (ANZOA) has now compiled a substantial resource of material that has been useful on several occasions, particularly in connection with the review. In accordance with the arrangements for New Zealand representation on its executive, I was re-elected to the executive committee of ANZOA in November 2005.

In September 2005 I attended the International Finance Sector Ombudsman Conference in Toronto, where I had the opportunity to mix with and learn from over 50 finance sector ombudsmen and their staff from a dozen or so countries as diverse as Peru, Pakistan and Trinidad and Tobago, as well as the core group from the United Kingdom, Ireland, Australia, New Zealand, and South Africa, and our hosts from Canada.

Banking Ombudsman Commission

I would like to add my sincere thanks to the Banking Ombudsman Commission to those already expressed by the Chairman of the Commission in his preface to this report. The Banking Ombudsman Commission works hard and well, in a transparent and friendly manner, to ensure the professionalism and independence of the Banking Ombudsman scheme. Like the Chairman, I would like to pay special tribute to Sir John Anderson, now retired from the Commission after 14 years of dedication to the scheme since its earliest days.



Staff

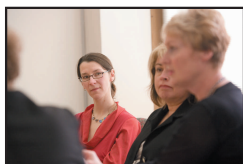
During the year we farewelled two staff members who had been with us for a considerable period.

Ann Sheehan first joined the Office of the Banking Ombudsman in 1993 as a clerk/typist and later became our first enquiries officer before completing her law degree. After her admission as a barrister and solicitor, Ann became an investigator. Her extensive knowledge of the office's systems and processes will be sorely missed, as will her expertise in some of the more specialised areas of banking complaints.

Nicola Schaab had been with us since 1998, and was also a valued member of our team of investigators. We wish Ann and Nicola well in their new positions.

In order to maintain a good range of skills and expertise, we decided to appoint two part-time investigators and one full-time investigator, to replace the two staff who had left us. Bob Welsh joined us in December 2005, having arrived in New Zealand from Guernsey, where he worked for Deutsche Bank. In January 2006 we were joined by Jane Ireland, previously employed in a senior capacity by the Parliamentary Ombudsman, and subsequently a welcome presence in my office on an occasional basis, and also by Pat Caughley, a lawyer with a lengthy and varied career in the public sector.

My thanks to all staff, old and new, for their continuing enthusiasm for the office and its work, and for all the expertise and dedication they have contributed during the year.



Snapshots from the everyday work of the Banking Ombudsman

The case notes volume which traditionally accompanies the Banking Ombudsman's annual report provides an interesting overview of many aspects of our everyday work. But as the annual report has a significantly wider and less specialised readership than the volume of case notes, this year's annual report includes this new chapter. It is intended to convey to our readers a real sense of our everyday work, which covers a broad spectrum ranging from facilitation to conflict determination, and encompasses a diverse range of human experiences. Far from being a formalised ritual, the work of the Banking Ombudsman is intensely human and always interesting, as can be seen from the very few cases featured here.

Some of the cases highlighted in this chapter also figure in the accompanying volume of case notes. Those readers who learn from or enjoy these snapshots of our work may feel encouraged to delve into the case notes as well.

“I have no adverse credit history apart from being bankrupt”

(complainant who could not understand why his loan application had been declined)



CASE 1: The resolution of a complaint at the initial enquiry stage

The caller's 86 year old father had been unknowingly caught up in an international scam operation and had agreed to send NZ\$20,000 to a US bank account.

A call was received from the son of an 86 year old bank customer who, although mentally competent, had granted his son power of attorney. The caller's father had been unknowingly caught up in an international scam operation, and had agreed to send NZ\$20,000 to a US bank account. Much of this had already been sent. When the son discovered what his father had been up to, he checked out the US organisation on the web, and warned his father that he was being scammed, and was exposing himself to a major financial loss. The father called the bank and said "My children tell me this is a scam. Is it?" The bank did not caution him in any way, and even provided him with the contact telephone number of the US organisation. When the father called the US number, he was assured that he was not involved in a scam, and innocently authorised the transfer of a further NZ\$9,000.

When the shocked son reproached the bank for not having cautioned his father about the transfer that he was contemplating, the bank accepted partial responsibility, and agreed to reimburse 50% of the NZ\$9,000 in question. The case was settled on that basis, on the day on which it was first made to our office.

Dear Liz Brown,

感谢您的初审裁决，对您的处理此事的方法十分钦佩。

如果[bank]银行不拒绝您的初审意见，我也不拒绝您的
初审意见，我尊重您的裁决。

再次谢谢您！

[TRANSLATION

Dear Liz Brown,

Thank you for your initial
assessment. I really
admire your way of dealing
with this issue.

If [bank] does not reject
your initial assessment, I
will not reject it either. I
respect your assessment.)



CASE 2: A complaint referred to a bank, and speedily resolved

A customer experienced a delay in repaying a term loan. He requested a revised settlement figure, but was unpleasantly surprised by the increased amount.

One key feature of the Banking Ombudsman scheme is that complaints may generally be considered by the Banking Ombudsman only if they have first been through the bank's own internal complaints process. When the Banking Ombudsman refers a complaint to a bank in this way, the complainant and the bank are aware that she is taking an intelligent interest in the case and is willing to provide the complainant with advice about the complaints process, should this be requested.

A bank customer was advised of a specific settlement figure for repaying a term loan of almost \$200,000. When the customer experienced a delay in proceeding with the settlement, he requested a revised settlement figure, incorporating interest for the nine-day period in question, but was unpleasantly surprised to discover that the settlement amount had in the meantime increased by hundreds of dollars more than had been anticipated. The customer refused to pay the increased amount calculated on this basis, and the bank refused to formally discharge the mortgage until the invoiced amount was paid in full. The amount under dispute was about 0.5% of the term loan.

After the case was referred on by my office, it was addressed by the bank's complaints staff, who investigated and found that the bank had incorrectly calculated the original settlement figure by a few hundred dollars. Although this narrowed the gap between the customer and the bank, an accord could still not be achieved. In the meantime the customer had agreed, under protest and without prejudice, to pay the revised amount requested by the bank to secure the prompt discharge of the mortgage. After further negotiation between the bank and the customer, the bank's offer to reimburse an amount of \$488.30 was accepted by the customer.





CASE 3: A good example of facilitation

They were told that their loan repayments would be \$656 per fortnight. When they went to sign the bank loan documents they were told their repayments were \$1,005.

Ms T and her partner received a very good offer to sell their home. Before accepting the offer they met with their banking consultant to see how much they could afford to borrow to buy a new house.

They were told by the bank that they could afford to buy a property worth up to \$350,000 with the 10% deposit that they had and that their loan repayments would be \$656 per fortnight. They then accepted the offer on their existing home and entered into a contract to buy a new property for \$310,000.

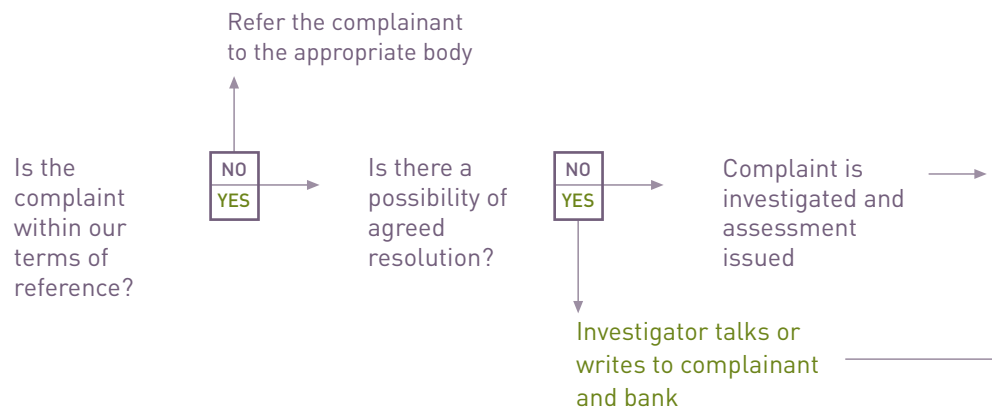
To Ms T's dismay, when she and her partner went in to sign the bank loan documents, they were told that in fact their repayments were \$1,005 per fortnight. When she complained, the bank offered to give Ms T a discount of 0.3% on their 5 year fixed-interest rate which would reduce the fortnightly loan repayments to \$945.

Ms T was not happy with the bank's offer and complained to me. As Ms T had shortly to settle the sale of her existing home and the purchase of the new home, a prompt resolution was required.

After further discussion and negotiation between Ms T, my investigator and the bank, an agreement was reached within two weeks of Ms T making her complaint to my office. It was agreed that the bank would allow Ms T to retain her capped rate loan of \$150,000 that expired in June 2006 and would advance the additional money that she required to buy her new home (\$130,000) for a period of six months on an interest-free basis. The bank also agreed to pay contributions of \$1,200 to Ms T's legal costs, \$500 towards valuation costs on the house and an ex gratia payment of \$2,000 for the stress and inconvenience caused to Ms T and her partner as a result of the bank's mistake.

The quick settlement was helped by the willingness of both Ms T and the bank to negotiate in good faith and reach a settlement with the assistance of my investigator.

How do we handle a complaint?



CASE 4: A case settled after an initial assessment

Mr and Mrs C believed that their guarantee related only to the housing loan, and that they would be liable only for any difference between the amount realised by the sale of the house and the amount outstanding on that loan.

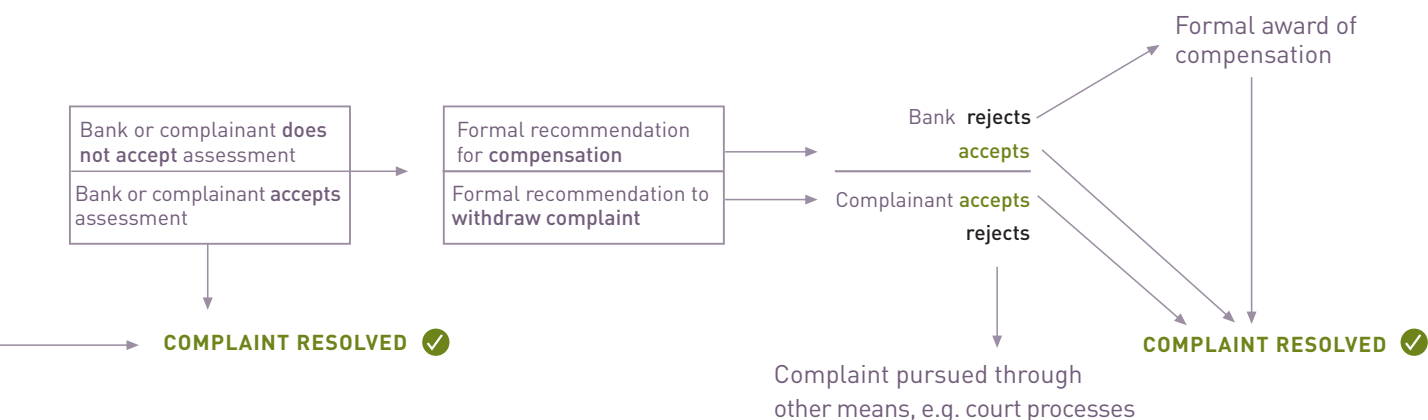
Mr and Mrs C wanted to help their son and daughter-in-law financially by agreeing to guarantee a loan of about \$175,000. Their liability would be limited to \$63,000, with their own home as security. Although they took legal advice before signing the bank guarantee, it subsequently became clear that they lacked an understanding of the full legal and financial implications of what they had done.

About a year later the son and daughter-in-law separated, and their home was sold. After all costs of the house sale had been deducted, less than \$150,000 was available to meet their debts, including about \$12,000 owed to the bank on overdrafts and credit cards.

Mr and Mrs C erroneously believed that their guarantee related only to the housing loan, and that they would consequently be liable only for any difference between the amount realised by the sale of the house and the amount outstanding on that loan, in this case about \$27,000. They also felt that the bank had been remiss in not telling them either about the debts already in existence when they gave their guarantee or about the later debts.

Although the bank guarantee was in this case limited to an amount of \$63,000 (plus some costs and interest), it did not impose any other restrictions on Mr and Mrs C's liability. In other words, it guaranteed all debts owed to the bank, up to the maximum of \$63,000. In particular, there was nothing in the guarantee that would require the bank to use funds realised from the sale of the house or any other source to pay off the guaranteed housing loan before it paid other debts. In making an initial assessment of the complaint, I had no option other than to find that the bank was legally empowered to require Mr and Mrs C to pay the full outstanding amount of \$55,000.

Both the bank and Mr and Mrs C accepted my initial assessment, and in addition the bank noted that Mr and Mrs C's son was repaying the debt, so that there was no need to call on them under the guarantee for the time being. The bank undertook to reassess the position if it should need to call upon Mr and Mrs C in this way. On this basis I concluded my investigation.



CASE 5: A case which could be resolved only through a recommendation

When Ms B's card would not work, the hotel in Tahiti retained her passport and insisted that she remain there until its claim had been met.

Ms B planned to take the "holiday of a lifetime". She decided to spend up to five weeks in the USA, travelling to New York via Tahiti on a special fare. She asked her bank for a foreign exchange package that would work at both destinations.

With insufficient time to arrange for a credit card, Ms B was advised to take cash in US dollars and a debit card that would work in both North America and French Polynesia.

What should have been a relaxing and enjoyable interlude in Tahiti, however, turned into a nightmare for Ms B. She was unable to settle her hotel bill because she had insufficient cash. She said she trawled for cash from about 16 ATM machines, but not one would accept her card.

The hotel retained her passport and insisted that she remain in Tahiti until its claim had been met. Fortunately, the bank in New Zealand was able to send an urgent telexed transfer of US dollars, enabling Ms B – by then "absolutely gutted" – to leave for New York as planned.

On her return Ms B headed for the bank to complain about the extra expense, severe stress, and inconvenience that flowed from her cashless experience in Tahiti.

After investigation, I issued an initial assessment in which I concluded that the bank had given Ms B poor advice, as well as a card which was not appropriate to her needs.

The bank did not accept my assessment, and although it made an offer to Ms B of \$650 as a gesture of goodwill, it denied any responsibility for the uncomfortable situation in which she had been placed.

I eventually recommended that the bank reimburse Ms B her expenses in obtaining the telexed bank draft to meet the hotel's claim, and compensate her by an amount of \$1,500 for the inconvenience and distress she had suffered during her stopover in Tahiti. The bank and Ms B accepted my recommendation, and the case was closed on that basis.

Facts and figures

This year we have greatly reduced the number of charts and tables in this report, in the interest of transparency and simplicity.

There was a small increase in complaints about banks this year, although the apparent increase in dispute cases is probably attributable to a minor change in our classification process, rather than to any real increase in complaints that are not resolved through banks' internal complaints processes.

The complaint figures should be considered in relation to the market share of each bank. It should also be noted that **table A** relates to all cases received by my office, whereas **table B** relates to cases completed. The two are not directly comparable, as some cases received are still under investigation at the end of the reporting year, while completed cases will include some opened in the previous reporting year.

It is clear that banks are working hard to improve their capacity to respond effectively to complaints, but it is also clear that far too many potential complainants know little or nothing of the scheme, and are consequently unable to take advantage of the service it offers. It is likely that the scheme's inaccessibility to many bank customers is a factor in the current low level of complaints, although it is not possible to give a precise indication of the extent to which this impacts on our statistics. It is a significant but unquantifiable variable.

Definitions

Enquiries are complaints made in writing that clearly fall outside the Banking Ombudsman’s Terms of Reference.

Complaints are complaints made in writing that appear to fall within the Banking Ombudsman’s Terms of Reference but have not been through the bank’s internal complaints process.

Disputes are complaints that appear to fall within the Banking Ombudsman’s Terms of Reference and have been considered by the bank’s internal complaints process without being resolved.

Telephone enquiries are complaints made by telephone that would be classified as enquiries or complaints if they were made in writing.

Jurisdiction declined These are cases where the complaint was not obviously outside the Terms of Reference but proved to be so once some enquiries were made.

Abandoned The complainant has failed to respond to correspondence after reminders.

Settled The bank and the complainant have agreed to mutually acceptable settlement of the complaint either at an early stage or after considering the initial findings.

Withdrawn The complainant decided not to pursue the complaint further.

Recommendation - not upheld That the complainant withdraw the complaint.

Recommendation - partially upheld I uphold some aspects of the complaint, but not others.

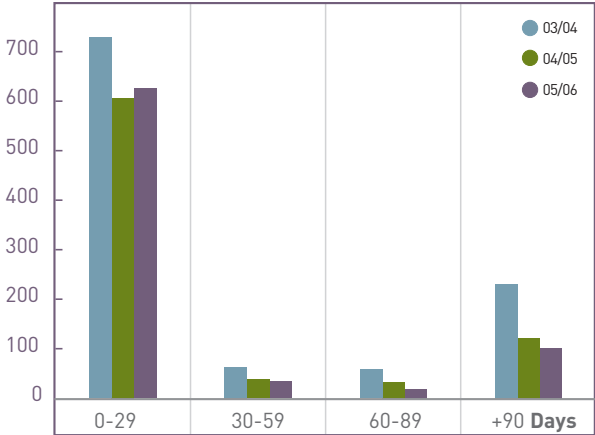
Recommendation - upheld The complaint is fully upheld.

In recent years banks have succeeded in reducing dramatically the proportion of complaints classified as disputes, from 37% in 2001-2002 to 19% in 2004-2005, to 20.5% in the year under review. This can be attributed to the increasing efficiency with which banks are now handling complaints, as well as to the financial disincentives associated with the classification of a case as a dispute.

The proportion of cases resolved in less than 29 working days has steadily increased since 2001-2002, from 62.3% in that year, to 75.8% in 2004-2005 and a peak of 80.25% in the year under review. This excellent result is partly attributable to the increased efficiency of banks’ own complaints handling procedures, and it was particularly pleasing to note that 89% of the cases referred by my office to banks for consideration through their internal complaints processes were resolved by those processes.

In relation to the time taken over disputes, which are almost invariably more complex and challenging than cases which can be resolved through banks’ internal processes, the proportion of disputes resolved in fewer than 29 working days increased to 12.4% in the year under review, from 2.9% and 4.5% in the previous two years. The number of investigations that took a very long time to complete declined substantially, with almost half completed within six months of the complaints being received. At the same time the average complexity of our caseload (on a scale of 1 to 5) has steadily risen from 1.6 in January 2004, when we introduced the measure, to 2.1 at the end of June 2006.

All cases - time taken (3 year comparison)

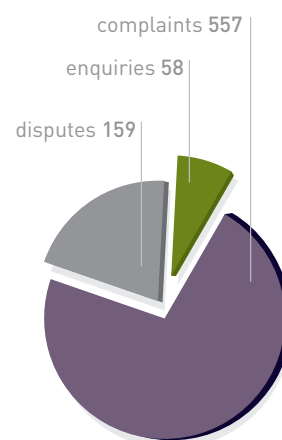


Cases received by bank

A	enquiry	complaint	dispute	04/05	enquiry	complaint	dispute	05/06
ANZ	5	119	25	149	12	82	19	113
ASB	10	63	27	100	8	73	30	111
BNZ	8	116	32	156	4	100	29	133
HSBC	3	14	4	21	1	11	6	18
Kiwibank	3	35	3	41	8	50	5	63
NBNZ	10	86	23	119	13	102	31	146
Rabobank	1	2	0	3	0	2	1	3
Superbank	0	0	1	1	0	1	0	1
TSB	1	6	1	8	1	2	1	4
Westpac	11	123	34	168	11	134	37	182
Total	52	564	150	766	58	557	159	774

Cases received 05/06

774

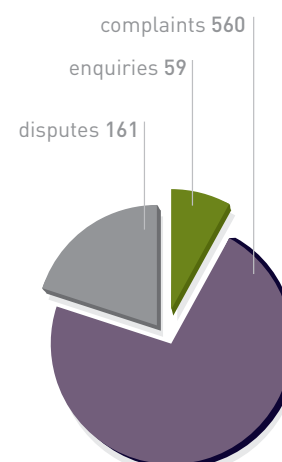


Disputes by bank

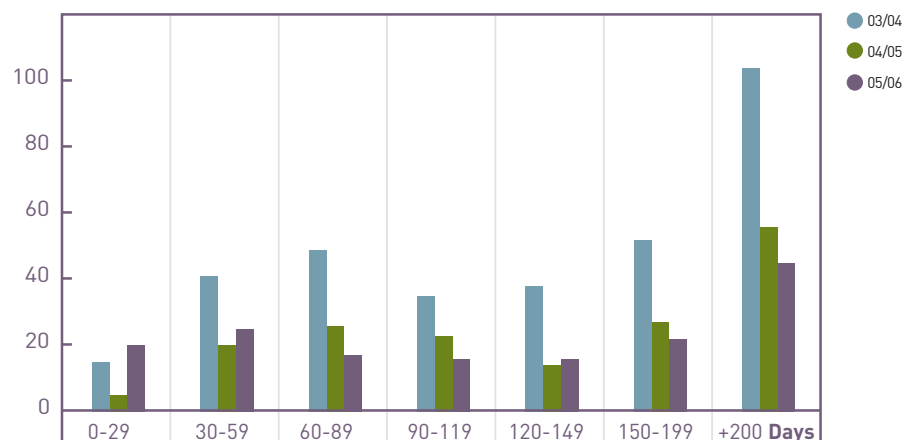
B	Jurisdiction Declined		Abandoned		Settled		Withdrawn		Not Upheld		Partially Upheld		Upheld	
	04/5	05/6	04/5	05/6	04/5	05/6	04/5	05/6	04/5	05/6	04/5	05/6	04/5	05/6
ANZ	2	3	3	2	13	8	2	0	3	4	6	2	2	0
ASB	4	4	4	7	12	8	1	4	3	4	1	1	2	1
BNZ	6	6	7	5	15	17	1	2	6	3	3	2	0	0
HSBC	1	1	0	0	2	3	0	0	1	0	0	1	0	0
Kiwibank	0	0	1	0	0	4	0	1	0	1	0	1	0	0
NBNZ	5	5	5	3	9	13	2	1	3	5	4	4	0	0
Rabobank	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Superbank	0	0	1	0	0	1	0	0	0	0	0	0	0	0
TSB	0	0	0	0	1	0	0	0	1	0	0	0	0	0
Westpac	2	4	8	2	13	15	4	1	5	8	4	4	2	0
Total	20	23	29	19	65	69	10	9	22	25	18	15	6	1

Cases completed 05/06

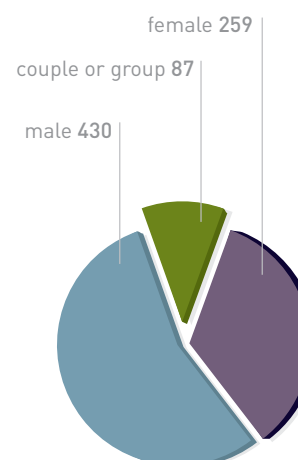
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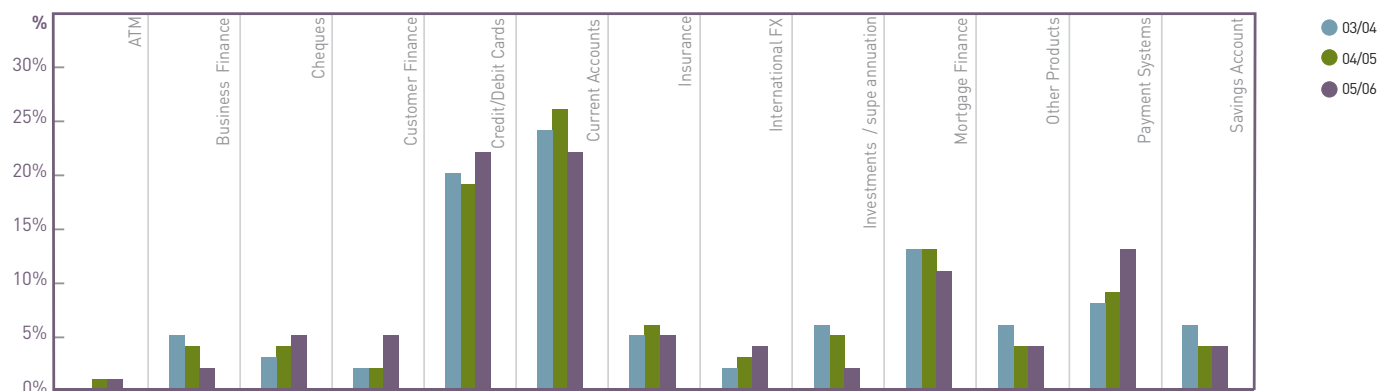
Disputes - time taken (3 year comparison)



Cases by complainant 05/06



Completed cases - by area of business



As far as those cases categorised as **disputes** are concerned, the following significant changes were recorded in relation to 2004-2005: the number of disputes involving cheques increased from 3 to 10, while those involving mortgage finance and credit/debit cards increased as well. At the same time disputes about current accounts and investments/superannuation decreased in relation to the previous year.

A significant change has now been observed in the annual statistics for the past two years in relation to the gender of complainants. Complaints from women declined noticeably from 40% in both 2002-2003 and 2003-2004 to 34% in 2004-2005 and 33% in the current year. A check with other organisations handling consumer complaints has revealed that they do not collect statistics on this point, and are consequently unable to provide information that might clarify whether we have an emerging trend, or a result, as yet inexplicable, which is confined to our statistics. Any observations which banks and community organisations can offer to throw useful light on this phenomenon would be appreciated.

Since the 2004-2005 annual report, we have noted the following significant changes in the categories of **complaint** being referred to us. There was an increase in complaints about both consumer finance and payment systems. During the same period decreases were observed in relation to business finance, current accounts, investments/superannuation, and mortgage finance.

During the year under review bank customers whose complaints were upheld by the Office of the Banking Ombudsman received a total of \$718,520.80 in reimbursements and compensation.

These statistics do not entirely capture a significant emerging development for the Banking Ombudsman scheme. It is more than ever clear that the increasingly complex nature, frequently legal, of those cases that do reach the Banking Ombudsman, as well as the intransigence which can accompany failed attempts at complaints resolution, are placing increasing demands on my team of investigators.

Annual complaints statistics by number of cases 1995-2006

	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Received	539	705	801	1061	1113	1112	1102	1228	997	766	774
Completed	510	663	779	1006	1093	1118	1103	1250	1080	799	780
Carried over	101	143	165	220	240	234	233	211	128	95	89

Banks participating in the scheme as at 30 June 2006

ANZ National Bank Ltd (ANZ and the National Bank of New Zealand)

ASB Bank Limited

Bank of New Zealand

Citibank NA

HSBC Limited

Kiwibank

Rabobank New Zealand Limited

Superbank

TSB Bank Limited

Westpac

Staff as at 30 June 2006

Liz Brown Banking Ombudsman

Susan Taylor Chief Investigator

Janet Boag Administrator

Pat Caughley Investigator

Meryn Gates Investigator

Jane Ireland Investigator

Katrina McLaughlin Senior Administrator

Ross Miller Investigator

Bob Rigg Communications Adviser

Rhonda Singleton Enquiries Officer

Bob Welsh Investigator

Alan Westbury Finance and Administration Manager



The Office of the Banking Ombudsman

PO Box 10 573, Wellington 6143

Freephone 0800 805 950

Email help@bankombudsman.org.nz

Website www.bankombudsman.org.nz