

# The Banking Ombudsman



**Annual Report 2004-2005**

# KEY FACTS ABOUT THE BANKING OMBUDSMAN SCHEME

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The New Zealand Banking Ombudsman scheme – the first such scheme to be established in the private sector – commenced operations on 1 July 1992. Its purpose is to consider complaints by customers who are dissatisfied with banking services.

Any customer may submit a complaint relating to a service they have received from any bank, including a bank which is not their own. Only after bank customers have first complained to the bank in question can we investigate their case.

The service that we provide is free to bank customers, and avoids both the expense and the formality that can frequently be associated with the resolution of disputes.

Our working method is independent, impartial, and non-adversarial, and we base our findings and recommendations on a scrupulous examination of all relevant facts and arguments. Many cases can be resolved quickly and informally through our facilitation, although cases that raise more complex factual and legal issues may take longer to resolve.

If we find in favour of a complainant, we then seek to resolve the case by mutual agreement. If all else fails and we are unable to resolve differences or conflicts in this way, the Banking Ombudsman is able to impose settlements on banks, including the payment of compensation. Any such findings are, however, not binding on bank customers, who are free to initiate further action, if they want to.

Our service is confidential – we do not disclose any information that might enable the identification of those who have entrusted their complaints to us.

# FOREWORD BY THE CHAIRMAN



*Hon Sir Ian Barker QC*

Much has happened in the banking sector in the seven years since I wrote my first foreword as Chairman of the Banking Ombudsman Commission, in the Annual Report on 1998-1999. It gives me great pleasure to offer this report on the year 2004-2005 – a year perhaps dominated by the commencement of two different reviews, whose outcomes will be reported on in the next Annual Report.

One major challenge for the New Zealand Banking Ombudsman scheme in the coming year will be to make the New Zealand public more aware of the service which it offers. Until the scheme becomes accessible to a broad cross-section of customers of New Zealand banks, it is not achieving a key objective. The Commission also needs to establish the extent to which the scheme is accessible to all cultures and languages of a changing and diverse society.

One of the investigators from the Office of the Banking Ombudsman who recently addressed a third-year law class studying banking law was somewhat surprised to learn that less than 20% of the students had known of the existence of the Banking Ombudsman before their course began.

Although banks, at a national level, generally produce quality information about the Banking Ombudsman scheme for use by their staff members and customers, surveys have shown that, when dealing with customers, their branch staff are often unable to share useful information about the scheme. The reasons for this may be some or all of the following: they may themselves be ill-informed or uninformed; information about the scheme may not be readily available to them; or they may fear that, if they advise customers of the existence of the scheme, they are encouraging them to take their case beyond the bank's internal complaints process.

While banks experience a fairly high turnover of staff at branch level, their training must be a high priority, to ensure customer satisfaction and loyalty. One dimension of the required service needs to be a sound understanding of the fundamental principles of the Banking Ombudsman scheme. I hope that banks will find it possible to include in their staff training and refresher programmes a component on the Banking Ombudsman, who is happy to advise about information and materials that may be suitable for this purpose.

The accessibility of the Banking Ombudsman scheme will be a key consideration in a major independent Review of the scheme to be conducted by Anand Satyanand, a long-serving District Court judge and former Parliamentary Ombudsman. This Review was decided on by the Commission because 13 years have elapsed since the inception of the scheme (the first private sector ombudsman in New Zealand) and because the fast pace of corporate and technological change in the banking sector necessitated a comprehensive review of all aspects of the scheme.

The Review will ensure that the scheme reflects both the reality of the contemporary banking marketplace and the increasingly sophisticated needs of today's bank customers, as well as international standards of best practice. As the Review has already commenced, it is

inappropriate for me to comment specifically on matters falling within its Terms of Reference, which will measure the scheme against six benchmarks: accessibility, independence, fairness, accountability, efficiency, and effectiveness. The independent reviewer will submit his report to the Commission at the beginning of February 2006.

At the same time as the above Review, the New Zealand Bankers' Association began the regular triennial review of its own Code of Banking Practice. This Code sets out minimum standards of good banking practice, and provides benchmarks for banks' internal processes, as well as for investigations by the Banking Ombudsman. The Code specifies that such reviews are designed to reflect and accommodate changes in banking practice, technology and legislation.

Because Internet banking has developed rapidly in the last decade, the present Code provides little more than general guidelines in relation to such transactions. When complaints on this topic are referred to the Banking Ombudsman, she and her investigators often find themselves working in a grey area characterised by the absence of defined procedures and responsibilities. The Banking Ombudsman Commission is looking forward to the outcome of the Bankers' Association review, in the hope that it will define, clarify and codify key problem areas of Internet banking, as well as other matters that need to be addressed. This will benefit, not merely banks and their customers, but also the Office of the Banking Ombudsman, which will submit detailed proposals for improvement.

I wish to recognise with appreciation the commitment of the members of the Banking Ombudsman Commission. As has been the custom, the Commission's deliberations have been informed by a shared wish to work together on a consensus basis to ensure the highest standards of performance.



*Banking Ombudsman Commission.*

*From left:*

*Sir Ian Barker*

*Sir John Anderson*

*Mrs Liz Brown*

*Ms Helen Walch*

*Mr Sam Knowles*

*Mr David Russell*

I would like to thank the members of the Commission for their unstinting service: Sir John Anderson, Mr Sam Knowles, Mr David Russell, and Ms Helen Walch.

Liz Brown, the Banking Ombudsman, and her staff have once again worked hard and well, not just with efficiency, but also with dedication to the high standards of professional independence and integrity which lie at the heart of the Banking Ombudsman scheme. The Commission very much appreciates their professional and personal commitment to their work.

By the time of the Chairman's foreword to next year's Annual Report, the Banking Ombudsman Commission will have considered the report of the independent review of its own scheme, and the Code of Banking Practice will have been reissued. The Office of the Banking Ombudsman will then be well equipped to discharge its important function as an independent arbiter of last resort in disputes between banks and their customers.

**Hon. Sir Ian Barker QC**

Chairman, Banking Ombudsman Commission

# REPORT OF THE BANKING OMBUDSMAN

The Banking Ombudsman scheme was set up some thirteen years ago. Since then there have been many changes in the banking industry and in society at large, and there have also been developments in the ombudsman concept both in New Zealand and overseas.

Although from time to time there have been amendments to the rules under which the scheme operates and to the Banking Ombudsman's Terms of Reference, there has never been a systematic review to determine whether the scheme is still meeting internationally recognised standards of best practice and whether it is still meeting the needs of New Zealanders and their banks for a demonstrably independent and effective resolution process for banking disputes.

For these reasons the Banking Ombudsman Commission has decided to commission an independent review of the Banking Ombudsman scheme, to be conducted by former Ombudsman, Judge Anand Satyanand. He will assess the scheme against established benchmarks of accessibility, independence, fairness, accountability, efficiency and effectiveness.

The review is both timely and welcome. I look forward to an outcome that will not only tell us whether the scheme is currently fulfilling the purposes for which it was set up, but will also point the way towards the future.



*Liz Brown*

The recent tendency for the volume of complaints to decline continued during the period under review in this report.

Although there was a substantial decrease in complaints communicated to my office in writing, there was a less marked decline in complaints made by telephone or email. This is at least partly attributable to a general move away from formal to less formal means of communication in contemporary society.

There has been a decline both in the number of complaints requiring investigation by my office and in their proportion to the total number of complaints received. Complaints that require investigation are those that banks have been unable to resolve through their internal complaints processes.

I continue to have concerns about some banks' compliance with their obligation, under the Code of Banking Practice, to provide their customers with easily accessible information about the options offered by the Banking Ombudsman scheme. The 2004 customer survey carried out by my office showed some improvement in the availability of information from bank branches, although it is noteworthy that these improvements did no more than return banks to the modest levels of achievement recorded four years ago, in 2001.

Those concerns aside, I am satisfied that much of the decline in the volume of complaints requiring consideration by my office can be attributed to continuing improvements in banks' internal complaints processes, with the consequence that most complaints are resolved by banks without the need for a Banking Ombudsman investigation. It is also notable that, in a number of cases involving some assistance from my staff, complaints were resolved within the context of the banks' own internal complaints processes, thus avoiding the need for a formal investigation on our part.

Whilst it has not been customary to publish information about the finances of the Banking Ombudsman scheme, it seems appropriate to record that the total amount contributed by banks to fund the operation of the scheme during the year under review was \$1.25 million.

## ISSUES ARISING FROM COMPLAINTS

### *Internet banking*

Some extensively publicised cases of internet banking fraud generated public debate about the standards to be observed by banks in providing secure access to internet banking services. Complaints were received from customers who had been the victims of fraudulent practices and who felt that their banks should bear at least part of the responsibility for their losses. It should be noted that such cases are few and far between, and that my office continues to receive considerably more complaints involving more traditional forms of fraud.

Internet banking fraud is new, however, with the consequence that neither existing legislation nor the Code is able to offer clear guidance concerning the allocation of risk between banks and their customers. It is to be hoped that the 2005 review of the Code, which is now under way, will help to remove uncertainties and to establish standards in this increasingly important area of banking practice. In the meantime my office is principally guided by the specific form of contract between banks and their individual customers. If a contract apparently requires a customer to bear the risk associated with unauthorised internet transactions, we next consider whether there is any reason, in either legislation or the Code, why that contract may not be applicable in that particular case.

Unfortunately, some banks appear to have updated and amended only some sections of their standard contracts when they introduced internet banking services, with the consequence that we sometimes identify fundamental inconsistencies between different parts of the same contract, making it difficult if not impossible to apply their terms in a coherent manner.

### *Reversing suspect transactions*

It is unfortunately true that more than one person or entity may be the victim of a single fraudulent act. Funds may be fraudulently transferred from one customer's account to another customer's account, either at the same bank or at a different bank, and may then be removed from that second account on a plausible excuse. The case note compendium accompanying this report contains interesting examples of such cases of fraud.

At the time when apparent cases of such fraud are discovered, and the full facts have not yet been determined, banks should hesitate before reversing, or accepting requests to reverse transfers if it appears probable that fraud may indeed have occurred. Placing a hold on the account into which the transfer was made will generally preserve the status quo until it can be determined whether there is a fraud and, if so, which party should carry the loss, or indeed whether it should be shared between the parties. In some cases encountered this year, transactions were reversed when the bank either had no legal right to do so, or had advised the customer that the transferred funds had been cleared and were available for use.

### *Credit cards*

Most standard mortgage documents in use among New Zealand banks stipulate that the security given, usually in relation to a home loan, also secures all other debts – past, present, and future – that may be owed by the mortgagor to the bank. Few customers realise that the mortgage agreement they have entered into means that banks can legally recover debt on their credit cards from whatever they have offered as security for their mortgage – usually their home.



Bank customers do not usually perceive credit card debt as a form of secured debt. Banks are quite willing to offer cards to customers whose mortgage is with another bank; customers are not asked to provide security when taking out a credit card; and banks certainly do not charge interest on credit card debt at the low rates normally associated with a secured debt.

When customers refinance their secured debt, banks accordingly can and sometimes do require the simultaneous repayment or refinancing of credit card debt. At the very least, banks should formally notify their customers some time before a refinancing settlement of any intention on their part to require the repayment of credit card debt on settlement. If banks require credit card debt to be repaid in full when a mortgage or loan is being refinanced – without prior notice – this can be extremely unfair to customers. In some cases it is not appropriate for banks to require this of their customers at all.

## COMPLAINTS STATISTICS IN RELATION TO INDIVIDUAL BANKS

My office has received fewer complaints in relation to almost all banks this year, with ANZ and Westpac recording a substantial improvement over previous years. The five major banks are now reasonably similar in their performance, particularly when their market share is taken into account.

Despite their merger in 2004, ANZ Bank and the National Bank of New Zealand continued to operate as separate banks with separate internal complaints processes, and are accordingly treated separately for statistical purposes.

TABLE A		All cases received, by bank						
	Enquiry	Complaint	Dispute	2003–04	Enquiry	Complaint	Dispute	2004–05
AMP	0	5	1	6	0	0	0	0
ANZ	20	157	57	234	5	119	25	149
ASB	12	64	47	123	10	63	27	100
BNZ	16	99	35	150	8	116	32	156
HSBC	1	20	7	28	3	14	4	21
KiwiBank	3	36	2	41	3	35	3	41
NBNZ	16	98	37	151	10	86	23	119
RaboBank	0	1	0	1	1	2	0	3
SuperBank	0	4	1	5	0	0	1	1
TSB	0	9	3	12	1	6	1	8
Westpac	23	154	69	246	11	123	34	168
Total	91	647	259	997	52	564	150	766

**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 relevant 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 relevant 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 had been made in writing.

During the year AMP Bank discontinued its business in New Zealand and withdrew from the Banking Ombudsman scheme. The one investigation that was still under way in relation to this bank was completed, and the result is recorded below in Table B.

I am pleased to be able to record that all banks had fewer cases requiring labour-intensive investigation as a dispute, with most dispute cases being settled by agreement, as can be seen from Table B below.

It is not possible to make a direct comparison between the information in Tables A and B. At the end of each reporting period some cases received during the previous year are still under investigation, either in my office or in banks' internal complaints processes, while some outcomes noted in relation to the current year relate back to complaints received in the previous year. It should also be noted that in a few instances the complaint classifications in Table A are provisional. The status of some complaints received shortly before the end of the reporting year was uncertain at the date of reporting.

Finally, an accurate view of any individual bank's performance in complaint handling can only be obtained by considering this information in the context of that bank's share of the market in New Zealand.

TABLE B Disputes by bank by result 2003–2005																
	Jurisdiction Declined		Abandoned		Settled		Withdrawn		Not upheld		Partially Upheld		Upheld		Total	
	03–04	04–05	03–04	04–05	03–04	04–05	03–04	04–05	03–04	04–05	03–04	04–05	03–04	04–05	03–04	04–05
AMP	0	0	0	0	1	0	0	1	0	0	0	0	0	0	1	1
ANZ	10	2	10	3	31	13	3	2	5	3	3	6	2	2	64	31
ASB	10	4	9	4	17	12	4	1	8	3	7	1	2	2	57	27
BNZ	4	6	6	7	14	15	8	1	4	6	5	3	0	0	41	38
HSBC	0	1	0	0	3	2	0	0	0	1	0	0	0	0	3	4
KiwiBank	1	0	0	1	0	0	0	0	0	0	1	0	0	0	2	1
NBNZ	6	5	3	5	8	9	4	2	5	3	1	4	1	0	28	28
RaboBank	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SuperBank	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
TSB	0	0	1	0	1	1	0	0	1	1	0	0	0	0	3	2
Westpac	12	2	22	8	38	13	16	4	26	5	17	4	2	2	133	38
Total	43	20	51	29	113	65	35	11	49	22	34	18	7	6	332	171

**Jurisdiction declined:** These are cases where the complaint was not obviously outside my Terms of Reference but proved to be so once some enquiries were made about it, or where I exercised a discretionary power to decline to investigate.

**Abandoned:** The complainant has failed to respond to correspondence after one or more reminders.

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

**Withdrawn:** The complainant decided not to pursue the complaint further. This may be because he or she accepted the bank's explanation of events at any early stage, or because he or she accepted my initial findings in favour of a bank, or for any other reason.

**Recommendation - not upheld:** I have recommended that the complainant withdraw the complaint.

**Recommendation - partially upheld:** I have recommended that the bank pay compensation to the complainant but not as much as was claimed, or not in respect of all aspects of the complaint.

**Recommendation - upheld:** I have recommended that the bank pay the full claim made by the complainant.

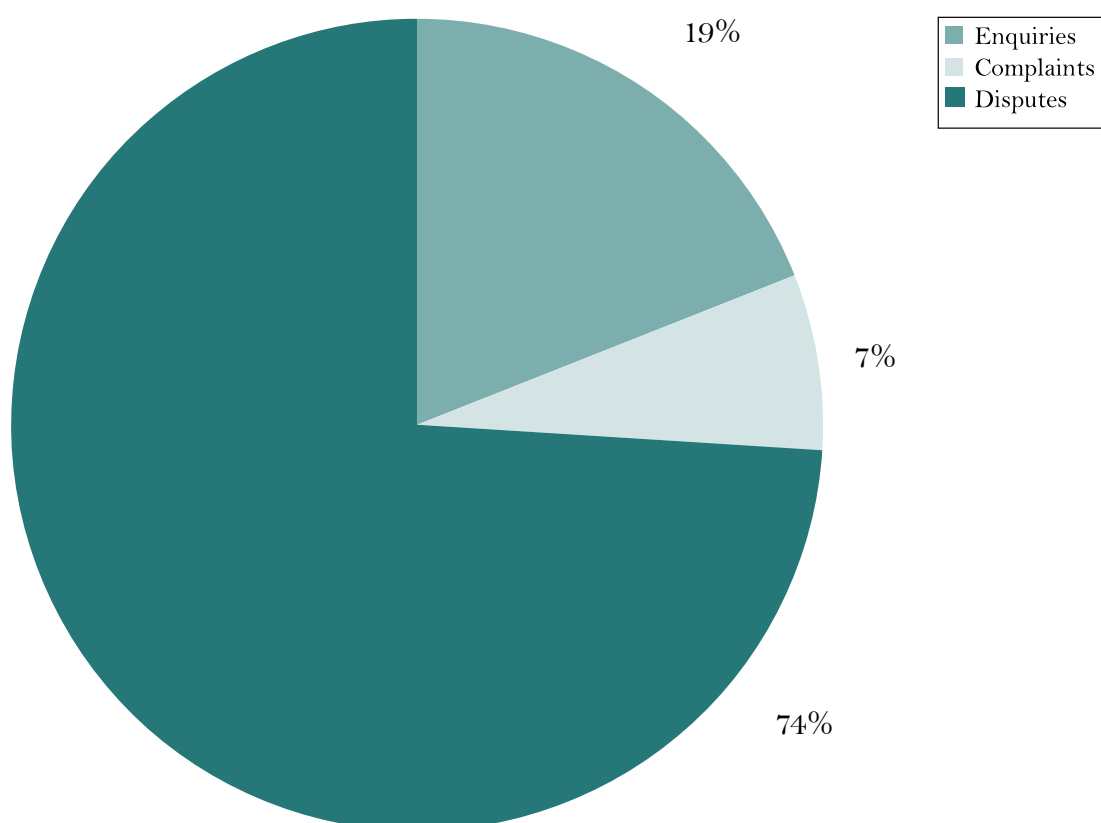


## COMPLAINTS STATISTICS

As noted above, there has been a general decline in the number of complaints in all categories, with a slightly higher proportion of complaints originally made to my office being resolved by banks through their own internal complaints processes.

Over the past four years the trend has generally been for a greater number of complaints to be settled by agreement either in banks' own internal complaints processes or after some investigation by my office. Thirty-eight percent of all investigations were settled at or before the initial assessment stage.

### ANALYSIS OF CASES RECEIVED 2004–2005



If a complaint is withdrawn, this can also indicate that it has been resolved to the satisfaction of all parties. Complainants sometimes withdraw their complaints when a bank has not been at fault and they have been provided with an acceptable explanation of events.

## ANNUAL COMPLAINTS STATISTICS 2004–2005

With comparative figures for previous years

TABLE 1											
	1994–95	1995–96	1996–97	1997–98	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05
Received	423	539	705	801	1061	1113	1112	1102	1228	997	766
Completed	453	510	663	779	1006	1093	1118	1103	1250	1080	799
Carried over	72	101	143	165	220	240	234	233	211	128	95

TABLE 1A		Analysis of cases received 2002–2005 by category				
	2002–03		2003–04		2004–05	
Enquiries	102	8%	91	9%	52	7%
Complaints	748	61%	647	65%	564	74%
Disputes	378	31%	259	26%	150	19%
Total	1228	100%	997	100%	766	100%

For some years I have rarely had to recommend that a complaint be upheld. In most cases where I form the opinion that a complaint has merit and the complainant should be compensated, the bank accepts my view at an earlier stage in the process and an agreed settlement is reached. I might also add that, over the years, a body of Banking Ombudsman case studies has developed, which, when studied carefully, helps banks to identify common patterns in the Banking Ombudsman's mediation and adjudication of complaints. The tendency for banks to increasingly centralise their processing of internal complaints in national offices maintaining ongoing relationships with my office has also improved the quality and consistency of communication about complaints, thus enhancing the chances of an early settlement. The six cases in relation to which I recommended that complaints be upheld all involved either difficult or novel points of banking practice or substantial sums of money.

TABLE 1B		Analysis of cases completed 2002–2005 by category				
	2002–03		2003–04		2004–05	
Enquiries	105	8%	93	9%	53	7%
Complaints	758	61%	655	60%	575	72%
Disputes	386	31%	332	31%	171	21%
Total	1249	100%	1080	100%	799	100

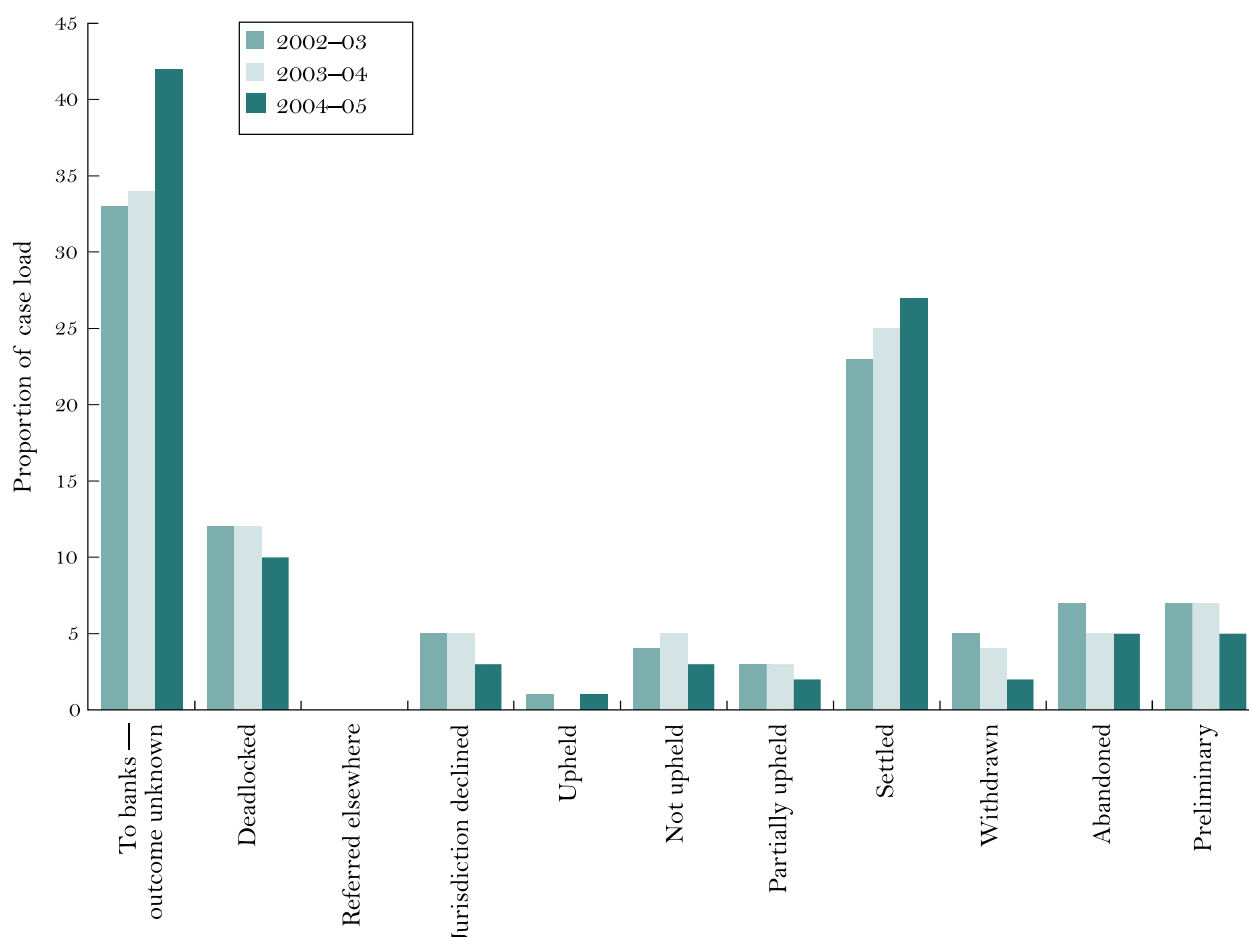
It is much more common for me to recommend that a complaint not be upheld. This is not because I am less likely to find in favour of complainants, but because the latter – the aggrieved parties – are less likely than banks to accept an unfavourable view at an earlier stage of the process.

While it is difficult to be specific about the outcome of investigations, it seems probable that well over half of complainants were satisfied with the outcome of the investigation into their cases. Of those complainants who expressed a view at the conclusion of their investigations, 46 were satisfied, with 17 being dissatisfied. Banks paid a total of \$464,685.84 in compensation to those who had directed their complaints to my office.

The decline in complaints has affected nearly all areas of the banking business. Only the area of foreign exchange has shown an increase in both complaints and disputes. This is generally attributable to an increase in complaints about the time taken for money transferred

TABLE 1C		Number of telephone enquiries 1994–2005									
	1994–95	1995–96	1996–97	1997–98	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05
Telephone enquiries	729	1588	1623	2417	2512	3091	3079	2920	2720	2173	1884

## ANALYSIS OF COMPLETED CASES BY RESULT 2002–2005



electronically to reach its destination overseas. On investigation, such delays can usually be ascribed to recipient banks in foreign countries.

There has been a continuation of the decline in complaints related to mortgage lending (usually home loans). This year complaints of this type made up 13% of all cases received and 12% of disputes investigated, while three years ago the proportions were 20% and 23% respectively. In 2002/3 we completed 88 investigations of this type of complaint, as against

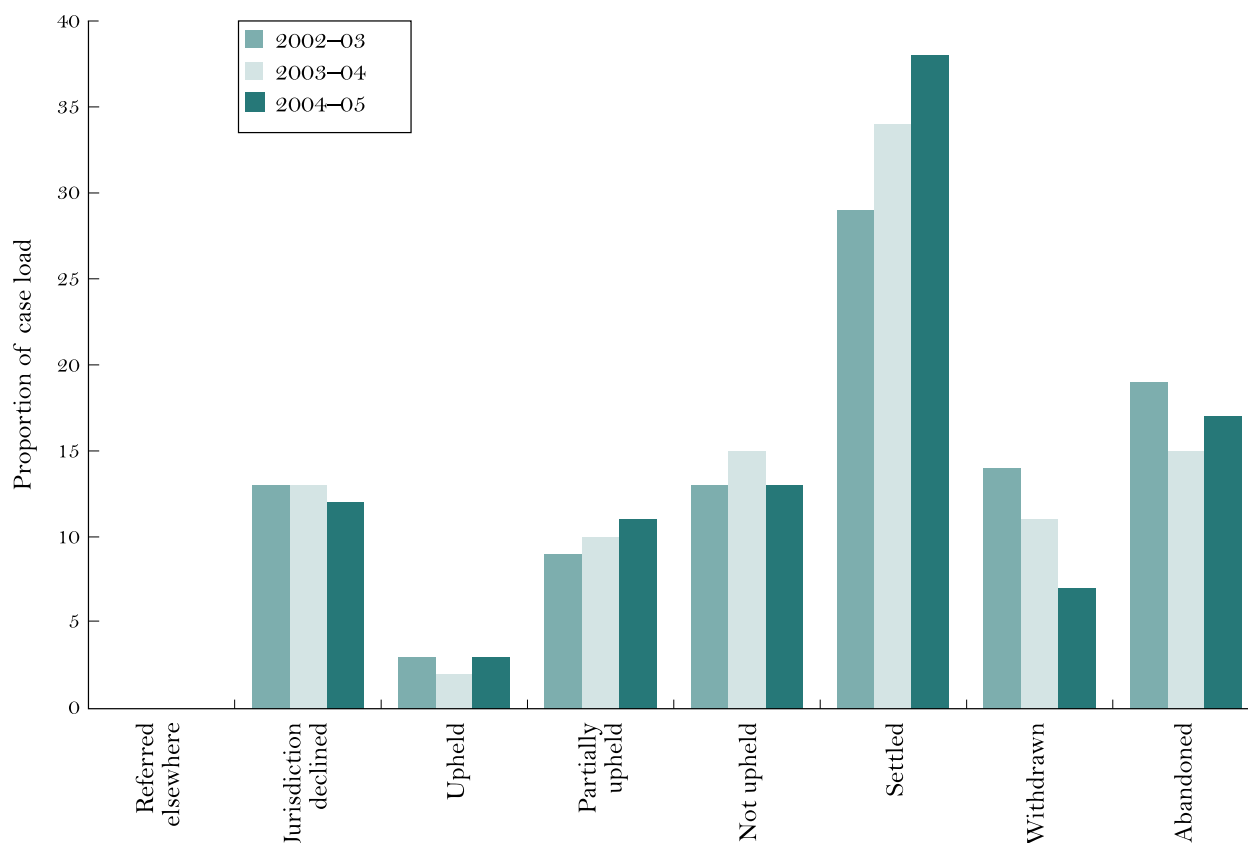
**TABLE 2A**

**All cases by result**

	2002–03		2003–04		2004–05	
To banks — outcome unknown	417	33%	363	34%	330	42%
Deadlocked	156	12%	125	12%	78	10%
Referred elsewhere	1	0%	1	0%	3	0%
Jurisdiction declined	69	5%	56	5%	27	3%
Upheld	10	1%	7	0%	6	1%
Not upheld	52	4%	49	5%	22	3%
Partially upheld	36	3%	34	3%	18	2%
Settled	283	23%	266	25%	218	27%
Withdrawn	65	5%	44	4%	15	2%
Abandoned	84	7%	57	5%	40	5%
Preliminary	82	7%	78	7%	42	5%
	1255	100%	1080	100%	799	100%

21 for the current year. While better complaints handling in banks will undoubtedly have played a part in this reduction in complaints, it seems likely that low unemployment, a robust economic performance, and the easy availability of credit have all contributed as well. Very few of the complaints received this year related to the debt recovery process.

#### ANALYSIS OF COMPLETED DISPUTES BY RESULT 2002–2005

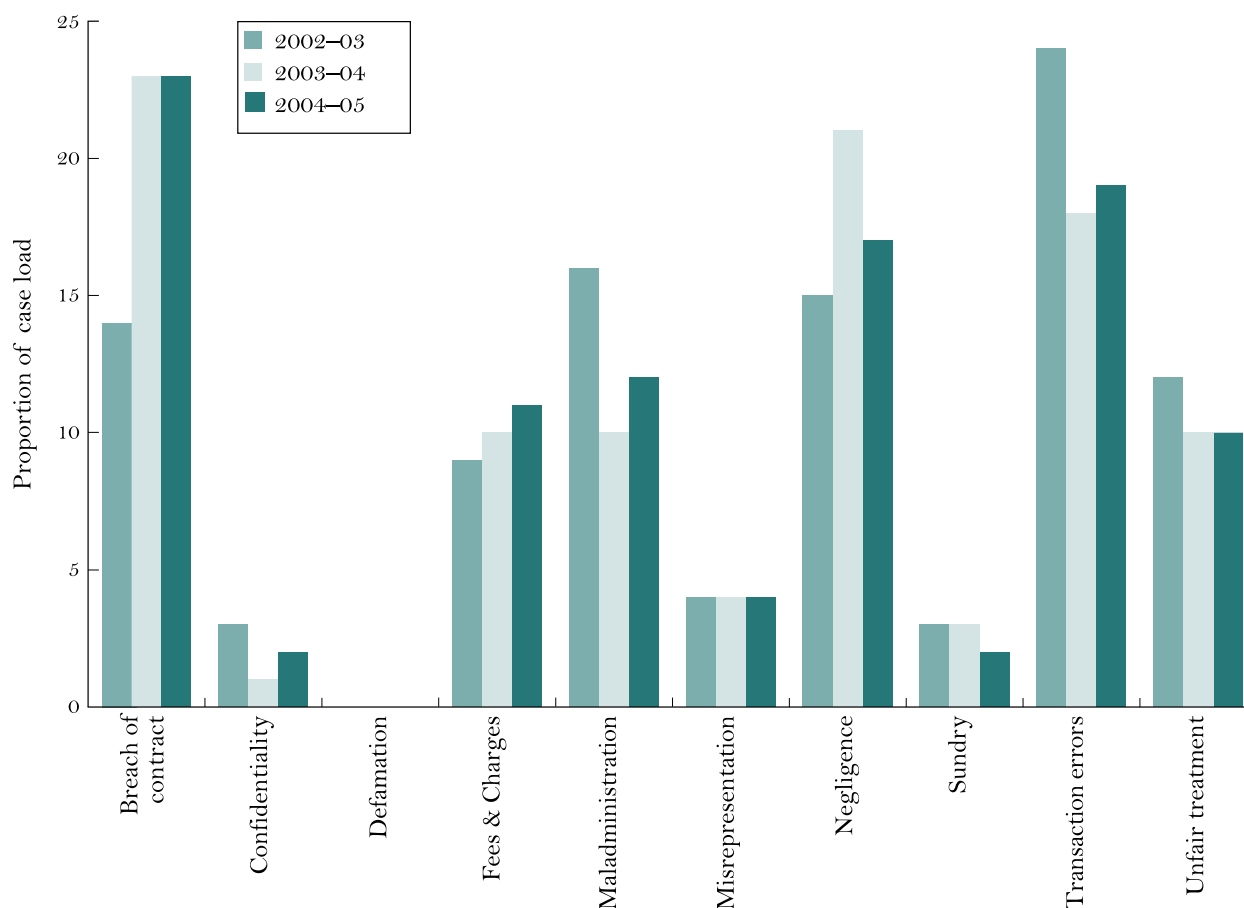


The generally favourable or “bullish” market conditions probably also accounted for a large part of the decline in complaints about investment products and advice. However, we are still receiving more complaints of this kind than we did before world share markets entered into a decline three to four years ago. Although such complaints still make up about 13% of our workload, they have dropped off considerably from their high point in the 2002-4 period.

TABLE 2B	Disputes by result					
	2002-03		2003-04		2004-05	
Referred elsewhere	0	0%	0	0%	0	0%
Jurisdiction declined	51	13%	43	13%	20	12%
Upheld	10	3%	7	2%	6	3%
Partially upheld	36	9%	34	10%	18	11%
Not upheld	52	13%	49	15%	22	13%
Settled	113	29%	113	34%	65	38%
Withdrawn	55	14%	35	11%	11	7%
Abandoned	73	19%	51	15%	29	17%
	390	100%	332	100%	171	100%

Time taken over investigations has not decreased as much as I would have liked, now that our caseload is substantially reduced, although this probably reflects the increased complexity of the issues coming to my office, rather than any delay in the investigation process. Some difficult and protracted investigations were completed during the year under review, with the

#### ANALYSIS OF COMPLETED CASES BY PROBLEM HEADING 2002–2005



result that, by 30 June 2005, only six cases remained that had been under investigation for more than a year – half the number as at 30 June 2004. Well over half the investigations completed during 2004/5 were closed or in their final stages within six months of the relevant complaints being received by my office.

TABLE 3	All cases by problem heading					
	2002–03		2003–04		2004–05	
Breach of contract	179	14%	249	23%	183	23%
Confidentiality	31	3%	27	1%	21	2%
Defamation	0	0%	0	0%	1	0%
Fees & Charges	114	9%	92	10%	85	11%
Maladministration	194	16%	112	10%	96	12%
Misrepresentation	51	4%	40	4%	31	4%
Negligence	193	15%	222	21%	134	17%
Sundry	38	3%	34	3%	18	2%
Transaction errors	300	24%	197	18%	150	19%
Unfair treatment	155	12%	107	10%	80	10%
<b>Total</b>	<b>1255</b>	<b>100%</b>	<b>1080</b>	<b>100%</b>	<b>799</b>	<b>100%</b>

The need to reallocate about 40 investigations towards the end of 2004 because of staff changes inevitably caused delays in the resolution of some cases. However, the majority of the 66 cases taking more than 200 working days to complete either required the issuance of a formal recommendation or involved delays attributable to complainants.

#### ANALYSIS OF COMPLETED CASES BY AREA OF BUSINESS 2002–2005

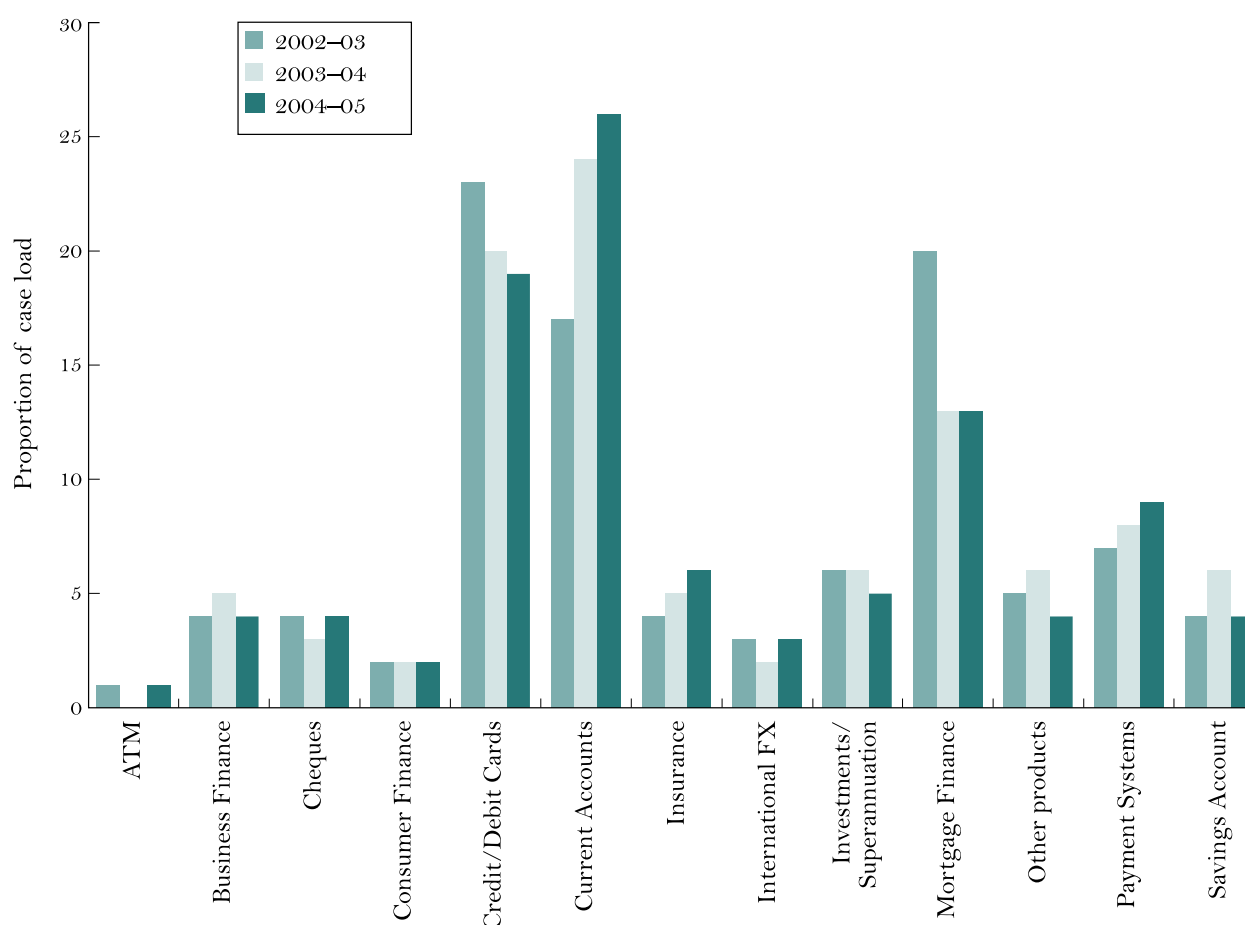
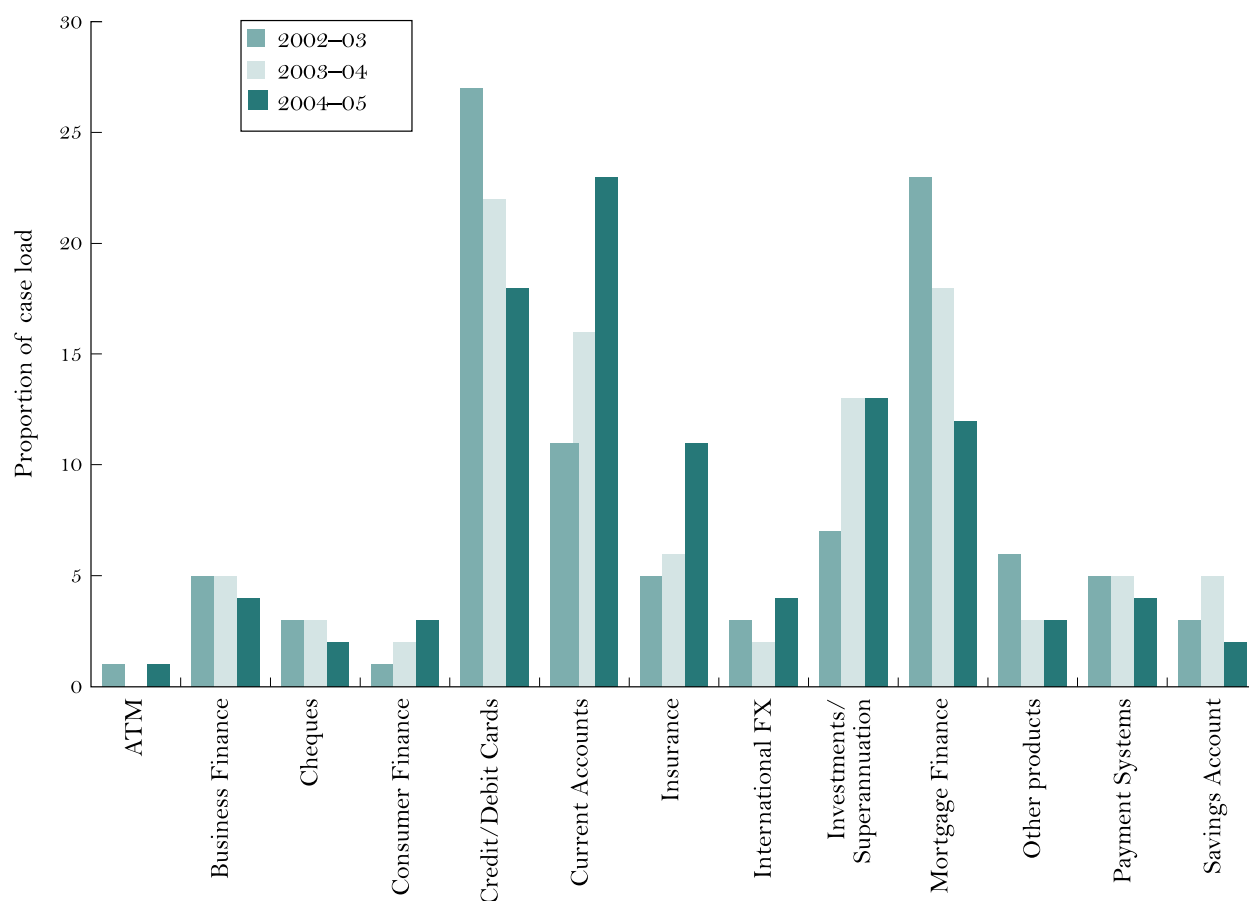


TABLE 4A	All cases by area of business					
	2002-03		2003-04		2004-05	
ATM	15	1%	7	0%	9	1%
Business Finance	52	4%	58	5%	28	4%
Cheques	54	4%	38	3%	32	4%
Consumer Finance	21	2%	18	2%	17	2%
Credit/Debit Cards	288	23%	212	20%	149	19%
Current Accounts	216	17%	259	24%	210	26%
Insurance	55	4%	50	5%	48	6%
International FX	32	3%	21	2%	28	3%
Investments/Superannuation	70	6%	62	6%	38	5%
Mortgage Finance	247	20%	144	13%	101	13%
Other products	64	5%	61	6%	34	4%
Payment Systems	84	7%	84	8%	70	9%
Savings Account	57	4%	66	6%	35	4%
	1255	100%	1080	100%	799	100%



## ANALYSIS OF DISPUTES BY AREA OF BUSINESS 2002–2005



**TABLE 4B**

**Disputes by area of business**

	2002–03		2003–04		2004–05	
ATM	2	1%	1	0%	2	1%
Business Finance	20	5%	17	5%	6	4%
Cheques	13	3%	10	3%	3	2%
Consumer Finance	5	1%	6	2%	5	3%
Credit/Debit Cards	107	27%	73	22%	31	18%
Current Accounts	41	11%	52	16%	39	23%
Insurance	19	5%	20	6%	19	11%
International FX	11	3%	6	2%	7	4%
Investments/Superannuation	28	7%	42	13%	23	13%
Mortgage Finance	88	23%	59	18%	21	12%
Other Products	24	6%	11	3%	6	3%
Payment systems	21	5%	18	5%	6	4%
Savings Accounts	11	3%	17	5%	3	2%
	390	100%	332	100%	171	100%

### *New classification for complaints*

The operation of the Banking Ombudsman scheme is financed by a levy on banks determined by the Banking Ombudsman Commission, the independent body established to oversee the independence of the scheme. As a result of changes in the way banks apportion this levy among themselves, there have been, with effect from 1 July 2005, changes to the classification

TABLE 5	All cases by complainant					
	2002–03		2003–04		2004–05	
Female	507	40%	435	40%	275	34%
Male	576	46%	486	45%	434	54%
Couple or Group	123	10%	131	13%	87	11%
Company	36	3%	22	2%	3	1%
Society	10	1%	4	0%	0	0%
Partnership	3	0%	2	0%	0	0%
Total	1255	100%	1080	100%	799	100%

of complaints for statistical purposes. There will be a new classification of “facilitation” which will apply when a complaint is resolved with some assistance from my office, but without any substantial investigation. It is hoped that the new system will further encourage the early resolution of complaints, while also allowing more accurate reporting of the actual workload of my office, which can devote significant resources to such real but informal mediation work.

TABLE 6A	Time taken — cases		
	2002–03	2003–04	2004–05
0 to 29 days	859	728	606
30 to 59 days	75	63	38
60 to 89 days	69	58	33
90 days plus	252	231	122

## ACCESS TO INFORMATION

During the year under review there have been some difficulties over access to information required for investigation purposes. These difficulties are largely attributable to a tendency on the part of banks to confuse their customers’ general rights of access to information with the Banking Ombudsman’s rights of access to information for the purpose of investigating complaints.

The Banking Ombudsman is empowered by her Terms of Reference to require a participating bank to provide any information which, in her view, relates to the complaint under investigation.

TABLE 6B	Time taken — disputes		
	2002–03	2003–04	2004–05
0 to 29 days	22	15	5
30 to 59 days	60	41	20
60 to 89 days	59	49	26
90–119	46	35	23
120–149	54	38	14
150–199	53	52	27
over 200	96	104	56

The bank is then required to disclose the information unless it can certify, not merely that this disclosure would breach the bank's duty of confidentiality to a third party, but also that the third party has declined to disclose the information after the bank has used its best endeavours to obtain such consent. It should be noted in this regard that responsibility for obtaining the consent of the third party rests, not with the Banking Ombudsman, but with the bank.

Given that information is rarely withheld on the above grounds, the Banking Ombudsman is therefore, practically speaking, entitled to gain access to almost any information relating to an ongoing investigation. However, this does not necessarily mean that she may always pass it on to a complainant. Both the bank and the complainant are entitled to request confidentiality in respect of information they have supplied, and the Banking Ombudsman is then obliged not to disclose that information.

Difficulties can arise when a bank supplies the Banking Ombudsman with information and requests that it not be disclosed to the complainant. It would be procedurally unfair if the Banking Ombudsman were to form an opinion about a complaint on the basis of information which the complainant has neither seen nor had an opportunity to comment on.

When banks request confidentiality, this is most often in order to protect information which, although not relevant to the specific complaint, is contained in the same document as information relevant to the complaint. The withholding of such information is clearly not prejudicial to the interests of the complainant, and does not cause any problems.

When the information in question is relevant to an investigation, the first question to be addressed is whether the complainant has a right of access to it under the Privacy Act. Attempts to withhold information from complainants will serve no useful purpose if they are legally entitled to that information in the first place. In this respect it should be noted that, while information about a company's financial affairs may well consist of information about the company, rather than of personal information about its directors and/or shareholders, information about a partnership's financial affairs is likely to be information about the affairs of the individual partners. Just as each member of a partnership is liable for its actions and obligations, information about the actions and obligations of a partnership is also information about its members. Partners are therefore likely to have rights of access to information about the partnership's financial affairs.

As a matter of general principle, banks ought not to request confidentiality in respect of information solely because a complainant is not legally entitled to it. If specific information is, in the estimation of the Banking Ombudsman, relevant to her investigation of a given complaint and neither the interests of the bank nor those of a third party are likely to be affected by its disclosure, it should then be made available to the complainant for comment.

In a very small number of cases, banks request confidentiality for information which is relevant to the complaint and whose disclosure may, it is felt, adversely affect the interests of the bank. Best practice in such cases is for the bank to discuss the status of such information with the Banking Ombudsman or an investigator before providing it to this office. It is frequently possible to work out a process permitting the disclosure of information strictly relevant to a complaint without in any way prejudicing those interests that a bank is seeking to protect.

## **ACCESSIBILITY OF INFORMATION ABOUT THE BANKING OMBUDSMAN SCHEME**

As noted in my annual report for 2003/4 the survey of bank branches conducted in 2003 produced disappointing results. This survey was first conducted in 2001, to establish the

extent to which information about the complaints process, including the Banking Ombudsman scheme, was readily available to bank customers. The next survey, conducted two years later, in 2003, found that banks' performance in this critical area had worsened significantly. Substantially fewer branches were found to be displaying the banks' own brochure about the complaints process, and bank staff were generally less able to provide information about the entire complaints process, of which the Banking Ombudsman scheme is an integral part.

Concerned at the poor results from the 2003 survey, the Banking Ombudsman Commission decided that the next survey should be conducted, not in 2005, but in 2004. It was pleasing that this survey, which was completed in December 2004, showed some improvement over the results for 2003, but the improvement was not sufficient in most cases to attain the benchmarks already established in 2001. For example, although there was a decrease in the percentage of branches lacking information about the Banking Ombudsman scheme, this still fell short of the figure for 2001. No information leaflet about the Banking Ombudsman could be found in 29% of branches, as opposed to the 2001 figure of 26%.

Forty-nine percent of branches surveyed had the Banking Ombudsman leaflet on display, while 33% were displaying the Code of Banking Practice.

One key assumption made at the inception of the Banking Ombudsman scheme and critical for its success was that both bank staff and bank customers would know of the existence of an independent conciliation and arbitration process for the impartial consideration of complaints which, in spite of the best efforts of the banks, had remained unresolved. If a significant proportion of staff in bank branches neglect to mention the Banking Ombudsman scheme when asked to outline the complaints process, they are inadvertently withholding a critical dimension of information about that process. At the very least, this must mean that a significant proportion of bank customers who are dissatisfied with a bank's handling of their complaint may simply abandon the matter, on the assumption that it cannot be taken beyond the bank's internal process. Until branch staff are able to communicate a basic understanding of the role of the Banking Ombudsman scheme in the context of the overall complaints process (whether directly or by providing the customer with written information), a significant proportion of bank customers will continue to be denied access to the scheme.

The level of understanding of the scheme on the part of branch staff would also be significantly enhanced if the provision of basic knowledge of the Banking Ombudsman scheme became a key ingredient of induction and refresher training for bank staff.

I should emphasise in this regard that the information banks produce at a national level about their own processes and the Banking Ombudsman scheme, frequently in consultation with my office, is excellent. The question is therefore: how can this information be more effectively shared with those staff at branch level who deal on an everyday basis with complaints?

The most recent survey identified a significant improvement over the previous surveys in the willingness of bank staff to provide helpful information about the complaints process. What appears to be missing is the link between the good information leaflets that have been produced by banks, and the willingness of staff to help.

In addition to the survey of bank branches, my office conducted a survey of bank websites to assess the accessibility of information about the Banking Ombudsman scheme.

The relevant information was generally accessible, clear and adequate.

In two cases where information about the Banking Ombudsman scheme could not be found on a bank website, it was subsequently discovered that it was in fact present, but in an inappropriate or inaccessible location or context.

In two other cases it was discovered that information about the scheme had been accidentally deleted or altered during website maintenance. The relevant banks were contacted and corrective action was taken. It is of some concern that these errors were not identified by the banks themselves through a routine process of updating and checking, and might have gone unnoticed if I or my staff had not drawn attention to them.

In the cases where information about the scheme was not easily accessible, the banks have updated their websites.

While nearly all banks had a contact form to facilitate the submission of complaints, this was sometimes a multi-purpose feedback form not specifically tailored to the provision of information about complaints, and could not always be transmitted securely. I have advised the banks of my view that it is good practice to supply a specific form facilitating the submission of complaints confidentially and by email, to avoid the confusion that can arise from attempts to distinguish between complaints and general feedback, while also ensuring that the complaint reaches the appropriate section of the bank.

## REVIEW OF CODE OF BANKING PRACTICE

The Code of Banking Practice was last reviewed in 2002, and the next review has just commenced, with a call for submissions from the community at large and the banking sector in particular. As an interested party, or even as a very interested party, I shall be amongst those to make submissions.

There have been very few problems with the substance of the 2002 Code. My concern is mainly directed at the need to expand the ambit of the Code to include issues that have come to light as the result of technical and other developments since it was last reviewed.

As far as my office is concerned, internet and telephone banking is the area most in need of attention. The current Code has little to say either about the security of internet and telephone banking systems or about liability for unauthorised transactions involving these systems.

I continue to subscribe to the view that banks should, when offering services made possible by modern technology, offer the same or better levels of consumer security and protection as exist in relation to more traditional services – especially as the new medium of internet banking is inherently more vulnerable to misuse or fraud than a traditional bank vault.

There are also issues to be addressed in connection with the process for referring debts for collection and listings with credit reference agencies.

Other areas where the Code could usefully be expanded or amended are commented on in the casenote compendium accompanying this report.

### *Educational and informational programmes*

During the year we held two half-day forums for bank staff handling complaints within the banking system. The programme consisted of formal presentations on matters such as the investigation process, the calculation of compensation for inconvenience, and complaints about

the sale of bank products. There was also time for discussion of written questions previously submitted by attendees. These successful forums are a litmus test for the effectiveness of the relationship which has been developing between banks and the Office of the Banking Ombudsman.

In conjunction with the Insurance & Savings Ombudsman and the Electricity & Gas Complaints Commissioner, I participated in forums for community organisations in Tauranga, Hamilton, Napier, and Hastings during 2005. I am currently reviewing these visits, and am seeking to identify ways and means of maximising their effectiveness in raising the profile of my office in the community at large and with banks. I also intend to target an increasing range of cities, towns, communities from throughout New Zealand, in order to extend and diversify the outreach of my office.

A number of addresses were given to a wide range of organisations including the Australasian Institute of Banking and Finance, legal education courses, Probus clubs and other community organisations.

## STAFF

From the point of view of the internal administration of the office, this has been an unusually unsettled year.

Chris McIntyre, who had been an investigator since the scheme was first set up in 1992, left us in November 2004, while John Olds, who had been with us since 1999, also left in that month. Because of the decline in the office's caseload these investigators were not replaced.

I would like to express my appreciation of Chris McIntyre's long and dedicated service to the office over more than twelve years. A talented lawyer, he also brought considerable personal skills to his role, including a sensitivity to the predicament of individual complainants that never waned over the years. John Olds had been with us for a shorter period, but also made a major contribution, especially in adding to our understanding of the day-to-day business practices of banks.

Earlier, Chantelle Nicholson, who had been our assistant investigator/enquiries assistant, left to take up a position at the Savoy Grill in London. Meryn Gates took parental leave, but will rejoin us later in 2005.

The departure of long serving investigators caused a degree of administrative upheaval in the office, with as many as 40 investigations being re-allocated. I would like to record my special thanks to all staff, and in particular to Susan Taylor, Chief Investigator, for the determination and hard work which they displayed in ensuring that the transition was as smooth as possible, with minimal impact on our relationship with complainants and banks.

Finally, I am pleased to record the creation within the office of the strategically important position of communications adviser, and the appointment of Bob Rigg to that position.



# BANKS PARTICIPATING IN THE BANKING OMBUDSMAN SCHEME

as of 30 June 2005

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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 OF THE OFFICE OF THE BANKING OMBUDSMAN

as of 30 June 2005

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<b>Liz Brown</b>	<b>Banking Ombudsman</b>
<b>Susan Taylor</b>	Chief Investigator
<b>Janet Boag</b>	Administrator
<b>Meryn Gates</b>	Investigator
<b>Katrina McLaughlin</b>	Senior Administrator
<b>Ross Miller</b>	Investigator
<b>Bob Rigg</b>	Communications Adviser
<b>Nicola Schaab</b>	Investigator
<b>Ann Sheehan</b>	Investigator
<b>Rhonda Singleton</b>	Enquiries Officer
<b>Alan Westbury</b>	Finance and Administration Manager

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