



The Banking Ombudsman



Annual Report 2003-2004

ABOUT THE SCHEME

The Banking Ombudsman scheme took effect from 1 July 1992.

Its purpose is to provide a completely independent and impartial arbitrator of unresolved disputes about the provision of banking services. The Banking Ombudsman's help is free. Anyone dissatisfied with a banking service in New Zealand from a participating bank, even if not a bank customer, can submit a complaint. Sole traders, partnerships, clubs and companies are covered by the scheme.

The Banking Ombudsman's Terms of Reference give jurisdiction to deal with complaints about all types of banking business normally transacted through bank branches, over the telephone, or by electronic means, including complaints about bank credit cards and products sold by banks such as insurance and savings schemes. However the Banking Ombudsman cannot deal with complaints about general bank policy or about commercial judgement decisions on lending unless there has been maladministration. The Banking Ombudsman has power to award compensation to cover direct losses of up to \$120,000 (or in some cases \$150,000), inconvenience up to \$4,000 and some costs.

The Banking Ombudsman is appointed by, and is responsible to, the Banking Ombudsman Commission which consists of five members, two consumer representatives and two banking representatives and an independent chairman, the Hon Sir Ian Barker QC. The functions of the Commission are to ensure the independence and impartiality of the Banking Ombudsman, to give general guidance and to monitor the Terms of Reference. The Commission is not involved in the Banking Ombudsman's decisions on specific cases.

A list of participating banks to the scheme can be found on the inside back cover of this report.

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FOREWORD BY THE CHAIRMAN

It is with pleasure that I introduce the Banking Ombudsman's Annual Report for the year ending 30 June 2004, the eleventh year of operation for the Banking Ombudsman Scheme. The year under review has been notable in that, for the first time in the history of the scheme, a decline in the number of complaints requiring investigation has been recorded.

This circumstance has been beneficial. Older and complex complaints have been able to be finalised more expeditiously. Targets for the timely resolution of complaints have been more achievable for new complaints received over the period. Staff have been able to devote time to establishing a knowledge management system which aims to record the accumulated experience of the Banking Ombudsman Scheme and of the very diverse complaints which have arisen covering most facets of banking.

One reason for the lower number of complaints is the improvement by all member banks in strengthening their internal complaint procedures by appointing knowledgeable and effective staff in this area. Bank staff are far better attuned to referring dissatisfied customers to the bank's internal complaints processes. Many complaints can thus be resolved internally without the complainant having to approach the Banking Ombudsman.

Nevertheless, it is a matter of concern that most banks do not have written information available readily to potential complainants, either about the bank's own complaint processes or the customer's right to approach the Banking Ombudsman. This comment comes out of the survey of bank branches conducted by the Banking Ombudsman by way of a "mystery shopper" exercise. This exercise showed that fewer branches were found to be displaying relevant brochures, as compared with the results of a similar exercise two years previously. All banks have now given a commitment to better performance in this area. A further survey will be carried out later this year to see whether there has been an improvement.

Statistics relevant to individual banks have been provided in the Annual Report. All the larger banks had fewer complaints and the level of disputes

declined, in some cases substantially. Those referring to these tables should bear in mind the comments of the Banking Ombudsman in her report when interpreting them.

The Banking Ombudsman's report shows a decline in investment advice complaints which usually have given rise to complex investigations. It cannot be said that any particular sort of complaint in the period under review is predominant. I note a decline in the number of disputes concerning a customer's right to reimbursement after a card fraud.

The survey of complainants carried out during the course of the year does raise one matter of some importance. Some complainants were concerned with a perceived lack of independence by the Banking Ombudsman and the Commission on the basis that the scheme is funded by the banks. It cannot be emphasised too often that the Commission, the Banking Ombudsman and her staff act independently of the banks and the New Zealand Bankers' Association. Banks do not have a majority on the Commission. There are two consumer representatives, two banking representatives and an independent Chair.

I can categorically state that in my time as Chairman of the Banking Ombudsman Commission, there has never been an attempt by any bank to influence decisions of the Banking Ombudsman or the Commission. All banks have paid their levies to the scheme promptly and without question. It is significant to note that, in the period under review, banks paid total compensation to complainants of \$909,779.

The membership of the Commission has been static during the year in question. Sir John Anderson and Mr Sam Knowles continue to represent the Bankers' Association and Mr David Russell and Ms Helen



Hon Sir Ian Barker QC

Walch the consumer interests. I am grateful to my fellow Commission members for their wise and sensible stewardship of the scheme throughout the year in question.

The Banking Ombudsman, Mrs Liz Brown, has again performed her duties to the great satisfaction of the Commission and I thank her on behalf of the Commission. She is recognised as a leader in her field internationally and has been asked to deliver papers at conferences overseas. She and the Insurance and Savings Ombudsman hosted a most successful conference of Financial Service Ombudsmen in Wellington in July 2003 at which there were representatives from United Kingdom, Australia, Canada and South Africa.

I pay tribute also to the loyal and efficient staff at the Banking Ombudsman's office. There have been no changes to the investigatory staff who continue to

bring to bear, with dedication, the wisdom and experience accumulated over the life of the scheme.

I commend the Annual Report, not just to banking professionals, but to all users of banking services throughout the country. It is instructive to read the accompanying compendium of case notes which demonstrate the huge variety of circumstances which have been considered by the Banking Ombudsman and her staff.



Hon. Sir Ian Barker QC

Chairman, Banking Ombudsman Commission



*Banking Ombudsman
Commission.*

From left:

*Sir John Anderson,
Mrs Liz Brown,
Mr Sam Knowles,
Ms Helen Walch,
Sir Ian Barker,
Mr David Russell.*

REPORT OF THE BANKING OMBUDSMAN

The year to the end of June 2004 has been notable as the first one in the history of the Banking Ombudsman scheme when there has been a decline in the number of complaints requiring investigation. From mid 1999, the number of investigations commenced per month has fluctuated around the mid-thirties, and this pattern was maintained during the first six months of this reporting year. From January 2004, the intake fell sharply. Since 1 January I have commenced only ninety-five new investigations, an average of slightly less than sixteen per month. Effectively the intake has halved in recent months.

There are also many complainants who contact my office without having had their complaint considered by the relevant bank's internal complaints process. No investigation is commenced in these cases, but they are referred to the bank for consideration through its internal complaints process. The total number of complaints of this kind made to my office has declined from last year's record level, but is still high when compared to previous years.

The reasons for the movements in the case numbers are discussed below, but I am happy to acknowledge here the contribution made by banks' internal complaints processes. I reported last year that banks' internal complaints processes had all been functioning reasonably well and I can now say that as at 30 June 2004 all major banks had well-resourced and effective internal complaints processes. Very few of the complaints that came to me for investigation this year could have been easily resolved at an earlier stage, and those that did fall into that category were almost always identified and resolved quickly.

I still have some concerns about the information given to complainants about the complaints process, especially when their first approach is not to a branch or to a bank's designated internal complaints process. There is also some evidence from our survey of bank branches (reported more fully below) that information about the complaints process is less readily available through branches than it was some years ago. I am, however, satisfied that part of the decline in dispute cases is attributable to better processes in banks,

particularly as regards the handling of complaints made by customers who have been the victims of fraud.

Complaints about investments and investment advice, which have made up a substantial proportion of our more complex cases for the past two years, are beginning to tail off, and no new major issues have come to the fore this year. Instead we have had small groups of new types of complaints or complaints with a similar background. It is noticeable, for example, that we have received numbers of complaints from recent immigrants to New Zealand. Some of these complaints had their roots in language difficulties, but more often there were problems because the customer was unfamiliar with the concepts and systems that bank staff take for granted that their customers understand.

Partly as a result of increased contact from complainants whose first language is not English, our website now offers basic information about the Banking Ombudsman scheme in six languages.

Once again, I am publishing a table showing the number of complaints received against each bank that participates in the Banking Ombudsman scheme. It can be seen that almost all banks have had fewer complaints against them and that almost all have also seen a reduction (in some cases quite a dramatic reduction) in the number of investigations I have had to commence.

In addition to the table of cases received, this year I am including a table showing the results of each bank's dispute investigations completed during the year. After considering some of the comments received about last year's table, it seemed fair to give



Liz Brown

some indication of the extent to which complaints were settled or found to be sustainable.

The decline in new dispute cases has been a welcome respite for investigating staff who have been able to put in some solid work on older cases and make substantial inroads into the backlog that built up over the years when we were faced with a continually increasing workload. At 30 June 2004, the caseload was lower than it had been at any time since 1996.

The lower caseload is beginning to be reflected in the time taken to complete investigations, although I do not expect the full effects to be apparent until next year. It has also enabled us to start work on establishing a knowledge management system to ensure that the accumulated experience and knowledge of investigators is recorded in a useful and easily accessible form.

The Banking Ombudsman scheme has been very fortunate in the stability of its staffing arrangements, and the combined experience and knowledge of investigators and enquiries staff is truly awesome. So too is their patience with complainants who may be confused or inarticulate. It is worth recording the following comment from a complainant who had some language difficulties. "The investigator of my case was [name of investigator]. She was very kind and sensible. I felt she was working independently, just like a fair judge. Thank you very much." I would like

to echo his comments and say to all staff of the office "Thank you very much".

Thank you also to the Banking Ombudsman Commission and its Chairman, Sir Ian Barker, who have worked together to ensure that the independence and integrity of the Banking Ombudsman scheme are maintained to the highest standards. At the same time they have ably represented the interests of banks and consumers in their role as Commissioners. Sir Ian, now in his seventh year as Chairman, has presided over the Commission with skill and good humour, and has given me invaluable support in performing the many tasks that a Banking Ombudsman is called on to undertake.

COMPLAINT STATISTICS RELEVANT TO INDIVIDUAL BANKS

Table A shows the number of complaints received against each participating bank during the year and the equivalent figures for the 2002/3 year. It can be seen that all the larger banks had fewer complaints, and that the level of dispute cases also declined, in some cases substantially.

The number of disputes is generally a good indicator of the effectiveness of a bank's internal complaints procedures, especially when compared to the number of complaints. It is only to be expected, however, that banks with a large customer base will receive

TABLE A

CASES RECEIVED BY BANK	Enquiry	Complaint	Dispute	2002-03	Enquiry	Complaint	Dispute	2003-04
AMP Bank Limited	0	9	5	14	0	5	1	6
ANZ Banking Groups (New Zealand) Ltd	22	169	64	255	20	157	57	234
ASB Bank Limited	9	70	61	140	12	64	47	123
Citibank, N.A.	0	1	0	1	0	0	0	0
Bank of New Zealand	20	125	61	206	16	99	35	150
The Hongkong and Shanghai Banking Corporation Limited	1	1	0	2	1	20	7	28
Kiwibank Ltd	1	14	1	16	3	36	2	41
The National Bank of New Zealand Limited	16	138	39	193	16	98	37	151
Rabobank New Zealand Limited	0	1	0	1	0	1	0	1
St George Bank of New Zealand Limited (Superbank)	0	1	0	1	0	4	1	5
TSB Bank Limited	1	6	3	10	0	9	3	12
Westpac Banking Corporation	32	213	144	389	23	154	69	246
TOTAL	102	748	378	1228	91	647	259	997

more complaints than smaller banks, and the figures should be read against that background. Similarly, a low level of complaint may mean that a bank is providing excellent service, or it may mean that the bank's customers have difficulty accessing the complaints process.

Table B shows the outcome of complaint investigations completed by my office. Please refer to the box on p7 for an explanation of the classifications.

It is not possible to make a direct comparison between the information in table A and that in table B. Some of the cases received during the year will still be under investigation either in my office or in banks' internal complaints processes, while some of the outcomes noted will relate to complaints received in an earlier year.

GENERAL COMPLAINT STATISTICS

The main feature of the statistics is the very substantial decrease in dispute investigations commenced. This in turn has resulted in a decrease in investigations completed.

The cause of the drop in dispute cases is not immediately obvious. It seems likely that banks are resolving more complaints through their internal complaints processes, but if this is the case, their success does not extend to the complaints referred

to them by my office. The ratio of complaints requiring investigation to complaints resolved, or presumed resolved, through banks' internal complaints processes has hardly changed since last year. In 2002/3 about 21% of cases referred to banks eventually came back to my office for investigation while in 2003/4 the comparable figure was 19%. It seems that the decline is almost entirely in cases where the complaint has been made direct to the bank, has not been resolved through the bank's process and has then been referred to me for investigation: in other words, complaints that by the time they first reach my office are already "deadlocked".

Our liaison staff in banks assure me that there has been little change in the numbers of complaints referred to them through the banks' own systems. There seem therefore to be two possible explanations for the apparent discrepancy – either banks are not advising customers of their right to take a complaint to the Banking Ombudsman, or complaints made direct to banks have some qualitative difference from complaints made in the first instance to my office and are therefore easier to resolve. It is probable that the second explanation accounts for most of the difference.

I have some concerns on the first score, but they are longstanding and apply equally to the information given to customers about banks' own processes. It

ENQUIRIES, COMPLAINTS, DISPUTES AND TELEPHONE ENQUIRIES

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.

seems improbable that banks have suddenly lowered their standards of compliance with their obligation to give their customers the requisite information. The key to the question is more likely to be the area from which complaints are coming. I note, for example, that this year we (and banks) have received considerably fewer complaints about mortgage finance. In the past many of these complaints have been about banks' treatment of customers when they are having difficulties meeting their repayment commitments. Such complaints are not easily resolved through banks' own processes and there is a proportionately greater likelihood that they will become disputes. Full employment, a robust economic performance and easy access to credit make it easier for customers to meet their commitments so that complaints are less likely to arise.

Similarly, as noted below, we are seeing considerably fewer disputes about customers' rights to reimbursement for losses incurred through the unauthorised use of their cards. Such complaints are more likely than most to be made direct to banks as the customer will have to contact the bank to cancel the card and will usually have dealings with the bank's fraud department.

There has been little change in the outcomes of investigations in the past year. 27% of disputes investigated required a formal recommendation as opposed to 25% last year, but a smaller proportion were withdrawn or abandoned. These results probably

reflect the improvement in the timeliness of investigations, so that complainants were less likely to become disenchanted with the process and to decide not to pursue the complaint.

There have been some quite substantial changes in the areas of business from which the complaints came. Both complaints and disputes about mortgage lending have declined to a level not seen since 1998, and a similar pattern is observed in relation to complaints about debit and credit cards. As noted above, there is probably a real drop in the former type of complaint, but as regards card complaints it is more likely that there has been little overall decline and the figures reflect the fact that complaints are now more likely to be made to and resolved by banks without the intervention of my office.

There has been a moderate increase in complaints about current accounts and a smaller increase in disputes from this area. Many of these complainants are seeking explanations of apparent discrepancies in their accounts or the refund of wrongly charged fees and interest, and such complaints are usually easily resolved. Misunderstandings about clearance times for transfers of funds, and about authority to operate accounts also fall into this category and can be more difficult.

We received rather fewer complaints about investment advice and investment products this year, but they

TABLE B

DISPUTES BY BANK BY RESULT 2003-2004								
	Jurisdiction Declined	Abandoned	Settled	Withdrawn	Not upheld	Partially Upheld	Upheld	Total
AMP Bank Limited	0	0	1	0	0	0	0	1
ANZ Banking Group (NZ) Ltd	10	10	31	3	5	3	2	64
ASB Bank Limited	10	9	17	4	8	7	2	57
Citibank, N.A.	0	0	0	0	0	0	0	0
Bank of New Zealand	4	6	14	8	4	5	0	41
The Hongkong and Shanghai Banking Corporation Limited	0	0	3	0	0	0	0	3
Kiwibank Limited	1	0	0	0	0	1	0	2
The National Bank of New Zealand Limited	6	3	8	4	5	1	1	28
Rabobank New Zealand Limited	0	0	0	0	0	0	0	0
St George Bank of New Zealand Limited (Superbank)	0	0	0	0	0	0	0	0
TSB Bank Limited	0	1	1	0	1	0	0	3
Westpac Banking Corporation	12	22	38	16	26	17	2	133
Total	43	51	113	35	49	34	7	332

still made up 13% of the investigation caseload at the end of the year, and in view of their complexity they probably occupied a greater proportion of our time than any other type of case.

The figures for time taken to complete investigations do not yet reflect the decrease in the caseload as our first priority was to complete some long outstanding and difficult cases. Ideally even the most difficult case should take no more than 300 working days to conclude, and this limit was exceeded in eighteen of the dispute investigations completed during the year.

Newer cases are receiving more prompt attention, and over half of the investigations concluded were either closed or had had an initial assessment issued within six months of receipt.

Banks paid a total of \$909,779.62 in compensation to complainants who had made a complaint to the Banking Ombudsman. This is an unusually high figure

and reflects some substantial payments of compensation to customers who had been advised to put money into investments that were not suitable for their purposes, or about which they had been misled.

COMPLAINT ISSUES

Investment advice

Although we received fewer complaints about investment advice this year than we did last year, they continued to feature prominently in our caseload, and are one reason why the time taken to conclude investigations has not dropped as much as I would like now that our caseload is lower.

Most complaints about investment advice conform to a pattern, and a standard approach has been developed to cases that fall into this category. Details of the approach will be found in recent casenote publications.

CLASSIFICATION OF COMPLAINTS

1. ***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.
2. ***Abandoned:*** The complainant has failed to respond to correspondence after one or more reminders.
3. ***Settled:*** The bank and the complainant have agreed a mutually acceptable settlement of the complaint either at an early stage or after considering my initial findings and proposed recommendation.
4. ***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 an early stage, or because he or she accepted my initial findings in favour of a bank, or for any other reason.
5. ***Recommendation – not upheld:*** I have recommended that the complainant withdraw the complaint.
6. ***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.
7. ***Recommendation – upheld:*** I have recommended that the bank pay the full claim made by the complainant.

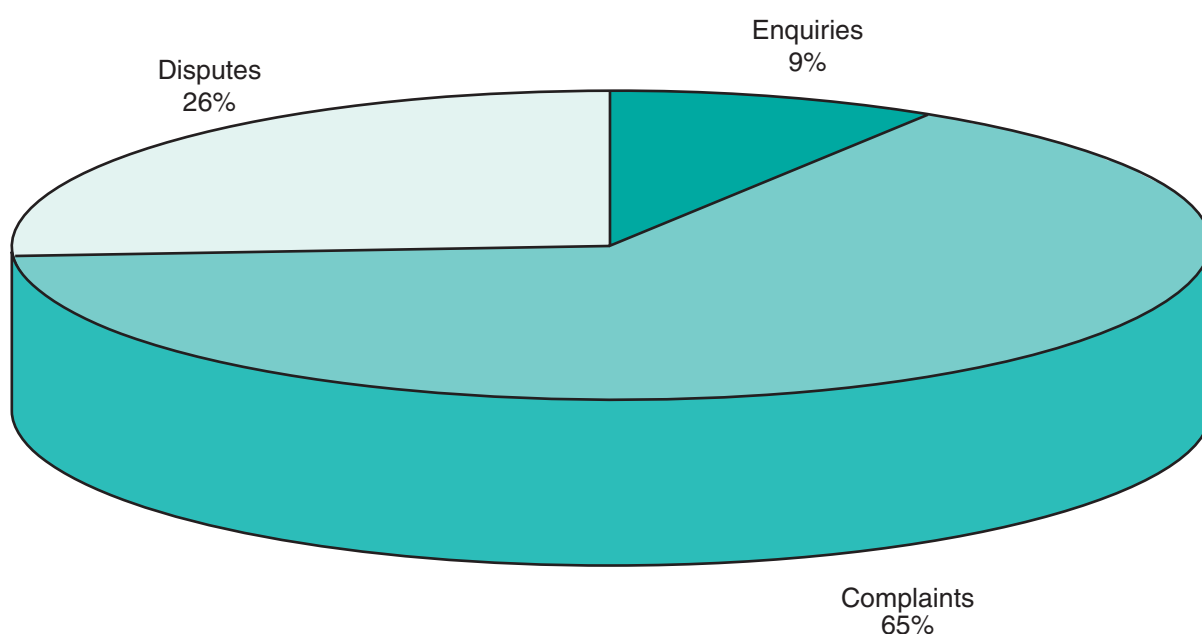
There remains a substantial minority of cases that do not conform to the pattern, or that raise additional issues or otherwise need to be considered on their own particular facts. Because such complaints often involve the consideration of advice given or said to have been given some years before the poor investment performance gave rise to the complaint, there are usually evidential difficulties in these cases. Contemporaneous records may have been lost or

destroyed, and recollections may be inaccurate and affected by subsequent events. Extensive investigation is sometimes needed to make sure that we have identified all evidence that may support either the complainant's or the bank's account of events.

Unauthorised use of cards

There has been a very substantial drop in disputes concerning a customer's right to reimbursement when

**ANALYSIS OF CASES RECEIVED 2003-2004
BY CASE CATEGORY**



ANNUAL STATISTICS 2003 - 2004

TABLE 1	1992-3	1993-4	1994-5	1995-6	1996-7	1997-8	1998-9	1999-00	2000-01	2001-2	2002-3	2003-4
Received	241	348	423	539	705	801	1061	1113	1112	1102	1228	997
Completed	180	313	453	510	663	779	1006	1093	1118	1103	1250	1080
Carried over	61	96	72	101	143	165	220	240	234	233	211	128

TABLE 1A	Cases Received	2001-02	%	2002-03	%	2003-04	%
Enquiries		105	10	102	8	91	9
Complaints		588	53	748	61	647	65
Disputes		409	37	378	31	259	26
Total		1102	100	1228	100	997	100

TABLE 1B	Cases Completed	2001-02	%	2002-03	%	2003-04	%
Enquiries		106	10	105	8	93	9
Complaints		598	54	758	61	655	60
Disputes		399	36	386	31	332	31
Total		1103	100	1249	100	1080	100

TABLE 1C	1994-5	1195-6	1996-7	1997-8	1998-9	1999-00	2000-01	2001-02	2002-03	2003-04
Telephone enquiries	729	1588	1623	2417	2512	3091	3079	2920	2720	2173

he or she has been the victim of card fraud. Only seven investigations of this type of dispute were commenced in the first six months of 2004.

There is now a well settled approach to cases where a customer's card has been stolen or lost and used with the correct PIN to make ATM or EFT transactions, and it is likely that most of these cases are now resolved in banks' own processes. However, I do have anecdotal evidence that banks are offering to settle claims of this kind for less than the amount claimed without necessarily advising customers of their rights under the Code of Banking Practice and hence under the terms and conditions on which the card was issued.

We have also had cases where the customer's claim was declined, the bank saying that it had done nothing wrong and the matter was for the Police to take action on.

In the event of unauthorised card transactions, a customer is entitled to full reimbursement of the loss (less \$50) unless the evidence indicates that he or she has breached the conditions on which the card was issued, for example, by disclosing the PIN to someone else or delaying in reporting the loss of the card. It is important that customers are clearly advised of their rights if a bank is going to make an offer of settlement for less than the amount claimed.

Controlling excessive spending

We routinely receive complaints from bank customers and their families when banks breach safeguards that had been put in place (or were thought to have been put in place) to protect customers against their own spending habits. The customer usually has a drug, alcohol or gambling addiction. Recently we have been receiving more of these complaints, probably as a result of easier access to credit.

One case involved a son whose father had become severely indebted as a

result of his gambling addiction. The son paid his father's debts, including a credit card debt. The two of them went into the father's bank, paid the amount outstanding, closed the account and cut up the card. The son said that he was assured that no further credit cards would be issued to his father, but two months later the father re-opened the account, obtained a new card and ran up more debt.

A similar case involved a couple who had changed the signing instructions on their account from joint and several to joint only, with the aim of controlling the husband's expenditure. The bank then allowed him to make withdrawals over his signature only.

The difficulty with such cases is that although the bank has sometimes acted wrongly, either in failing

ANALYSIS OF COMPLETED CASES BY RESULT

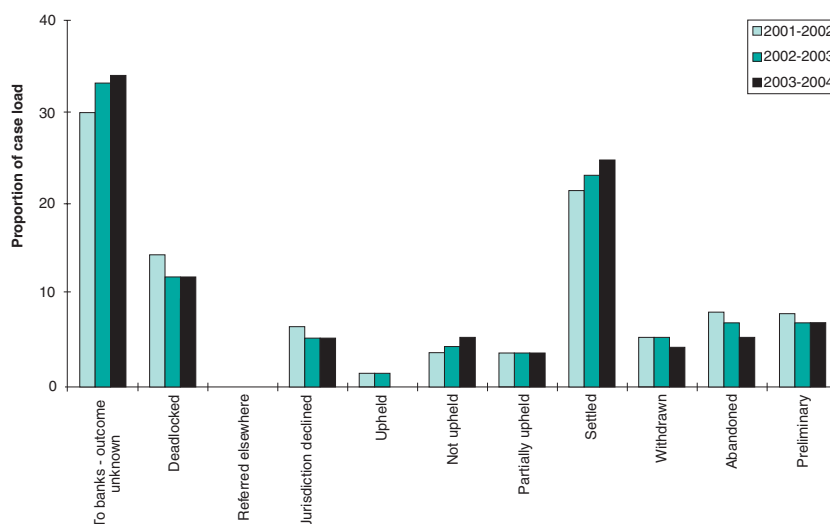


TABLE 2A

All cases by result

	2001-02	%	2002-03	%	2003-04	%
To banks - outcome unknown	339	30	417	33	363	34
Deadlocked	150	14	156	12	125	12
Referred elsewhere	2	0	1	0	1	0
Jurisdiction declined	62	6	69	5	56	5
Upheld	11	1	10	1	7	0
Not upheld	36	3	52	4	49	5
Partially upheld	34	3	36	3	34	3
Settled	250	22	283	23	266	25
Withdrawn	53	5	65	5	44	4
Abandoned	90	8	84	7	57	5
Preliminary	88	8	82	7	78	7
	1115	100	1255	100	1080	100

to act in accordance with the assurances it has given, or in giving assurances that it cannot implement, it is usually the customer's family who has suffered any financial loss or inconvenience.

In other words, the complaint is usually brought by or on behalf of the customer, but at least part of the claim is for loss or inconvenience suffered by someone else. My Terms of Reference are clear that I may only award compensation for loss or inconvenience suffered by the complainant. It is obviously inappropriate in most cases to award compensation to the customer for a "loss" consisting of funds which belonged to him or her in circumstances where he or she has deliberately circumvented the measures put in place to prevent access.

In one recent case I suggested (while making it clear that I could not recommend) that the bank should

make a small goodwill payment to the complainant's family, who understood the bank had agreed that no further credit would be extended to the customer and later found that he had acquired a further credit card.

If banks' processes do not allow them to carry out the checks that would detect a withdrawal or an application for credit from a customer with whom or with whose family there has been an agreement to limit access to funds, then they must make this very clear to customers who approach them for assistance in curtailing their spending.

Powers of Attorney

Several recent cases have involved problems arising out of the use of powers of attorney. It has become clear that bank staff are often not familiar with the use of these instruments. Problems have included:

- A failure to understand the difference between an ordinary power of attorney and an enduring power of attorney.
- A failure to realise that the donor of a power of attorney retains the right to act for him/herself, or a failure to explain this to the holder of a power of attorney.
- Ignoring limitations on a power of attorney given for a specific purpose only.
- Accepting instructions from the holder of a power of attorney after the death of the donor.

ANALYSIS OF COMPLETED DISPUTES BY RESULT

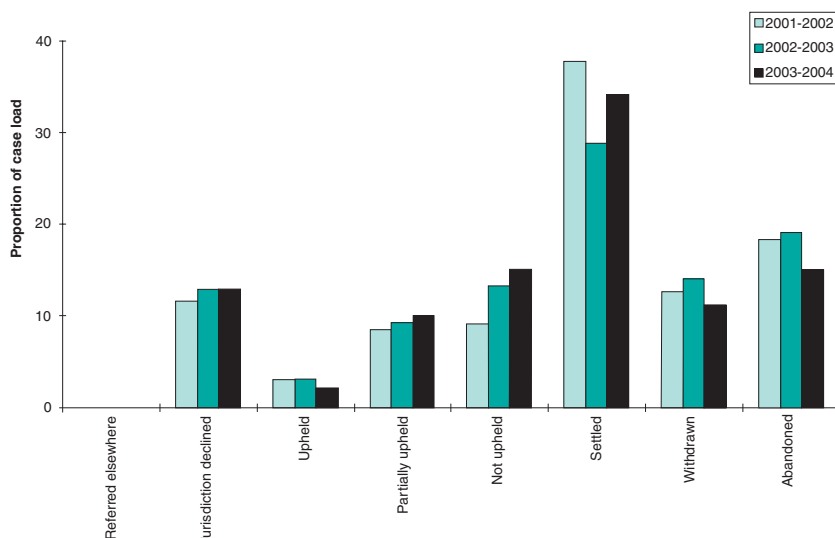


TABLE 2B

Disputes by result

	2001-02	%	2002-03	%	2003-04	%
Referred elsewhere	1	0	0	0	0	0
Jurisdiction declined	47	12	51	13	43	13
Upheld	11	3	10	3	7	2
Partially upheld	34	8	36	9	34	10
Not upheld	36	9	52	13	49	15
Settled	152	38	113	29	113	34
Withdrawn	47	12	55	14	35	11
Abandoned	73	18	73	19	51	15
	401	100	390	100	332	100

On bringing these problems to the attention of banks there was some acknowledgement that front line staff are not given, or not given enough, training in this area. Training programmes are being reviewed, and in at least one case, powers of attorney have already been added as a training topic.

Survey of bank branches

In 2001, I commissioned a “mystery shopper” exercise to establish the extent to which information about the complaints process was available to bank customers. The results were somewhat disappointing and several banks undertook to review their policies and their staff training. A further exercise was carried out in 2003 to see if there had been an improvement.

In the interim the Code of Banking Practice had been reviewed and the provisions about making complaint information available to customers had been strengthened. It was expected that there would be an increase in the number of branches displaying the bank’s own brochure, and a substantial increase in the number displaying the Banking Ombudsman brochure. Although some banks performed well, it was disappointing that in general the expectation was not met and that substantially fewer branches were found to be displaying the bank’s own brochure.

In 45% of branches no information about the bank’s complaints process could be found. This compared poorly with the 2001 result where information was lacking in only 26% of branches. A few participants said that branch staff had difficulty in locating a brochure themselves. When survey participants could find a brochure, they almost invariably had a high opinion of the information in it. They found it comprehensive and easy to understand.

The Banking Ombudsman’s own information brochure was on display in 28% of branches visited (29% in 2001), and the Code of Banking Practice in 13% (12% in 2001).

Survey participants were also required to ask branch staff about the complaints process and to rate the responses on a scale of 1-10 for knowledgeability and for willingness to help.

In respect of willingness to help, 12% of the branches were given the highest possible rating as against 21% in 2001, while the percentage scoring the lowest rating was almost unchanged. There was some polarisation of results towards the bottom end of the scale. In both surveys, 47% of branches were given one of the three highest ratings, but in 2003 nearly 30% fell into the bottom four ratings as against only 16% of those surveyed in 2001.

There was a small improvement over the 2001 results in bank staff’s knowledge of the complaints process.

The results of the survey were discussed with each bank, and they were reminded of their obligations under the Code. All banks have given a commitment

ANALYSIS OF COMPLETED CASE BY PROBLEM HEADING

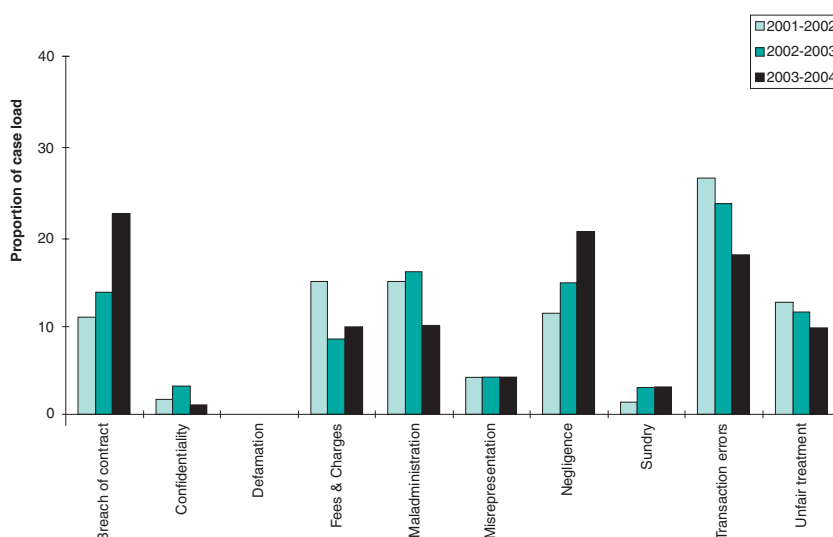


TABLE 3 Cases by problem heading

	2001-02	%	2002-03	%	2003-04	%
Breach of contract	126	11	179	14	249	23
Confidentiality	24	2	31	3	27	1
Defamation	0	0	0	0	0	0
Fees & Charges	163	15	114	9	92	10
Maladministration	168	15	194	16	112	10
Misrepresentation	48	4	51	4	40	4
Negligence	135	12	193	15	222	21
Sundry	25	2	38	3	34	3
Transaction errors	287	26	300	24	197	18
Unfair treatment	139	13	155	12	107	10
Total	1115	100	1255	100	1080	100

to better performance, and a further survey will be carried out later this year in the hope of finding an improvement.

Survey of complainants

In the first part of 2004 we repeated the survey of complainants that was first done in 2001. In order to obtain a good comparison, the methodology used was identical except that we added some questions about our website.

The first part of the survey had to do with information about the Banking Ombudsman scheme. It was good to see that more complainants had heard about the scheme through their banks, 42% as opposed to 35% in 2001. About the same proportion as in 2001 had heard about us through family and friends but significantly fewer through the media or through their lawyers. There was a small increase in complainants who had heard about us through community organisations.

The great majority of complainants (over 80%) found the information we gave them, in writing or over the phone, to be useful, and all those who had visited our website found it either quite useful or very useful.

Fewer complainants (6% as opposed to 12% in 2001) found it hard to talk to the investigator allocated to their complaint, and nearly all of them felt able to ask for explanations of anything they did not understand.

Some complainants (16%) found it difficult to supply the information we asked for, but the accompanying comments made it clear that this was mostly because the information did not exist or was not accessible rather than because there was any lack of clarity in the request or the request itself was unreasonable.

Most complainants considered their complaint had been investigated thoroughly or in some depth, though 17% thought it had not been investigated thoroughly at all. This is not surprising as some of the complaints had been resolved at an early stage or found to be outside the Banking Ombudsman's Terms of Reference.

There was an increase (from 16% to 24%) in the proportion of complainants who considered the Banking Ombudsman had not

ANALYSIS OF COMPLETED CASES BY AREA OF BUSINESS

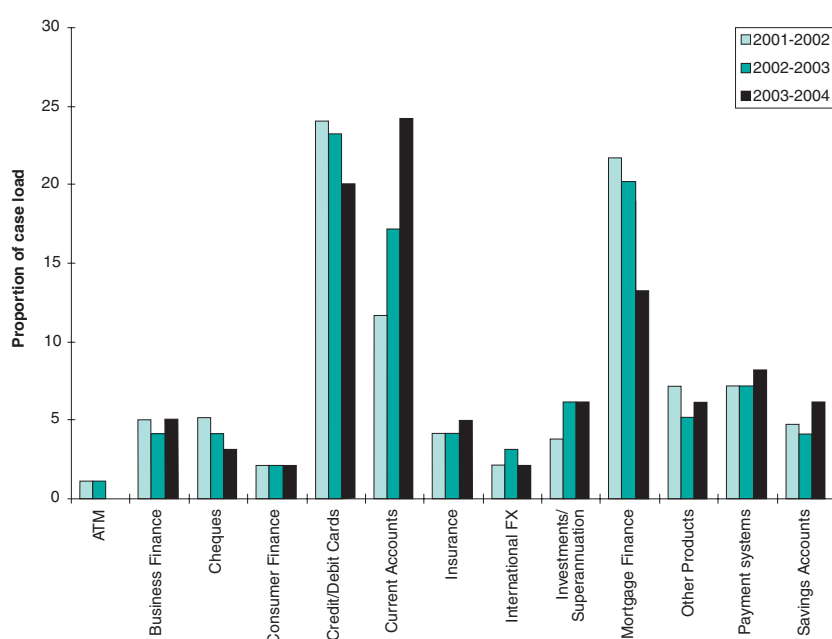


TABLE 4A

Cases by area of business

	2001-02	%	2002-03	%	2003-04	%
ATM	15	1	15	1	7	0
Business Finance	59	5	52	4	58	5
Cheques	56	5	54	4	38	3
Consumer Finance	26	2	21	2	18	2
Credit/Debit Cards	272	24	288	23	212	20
Current Accounts	129	12	216	17	259	24
Insurance	46	4	55	4	50	5
International FX	23	2	32	3	21	2
Investments/Superannuation	40	4	70	6	62	6
Mortgage Finance	239	22	247	20	144	13
Other products	78	7	64	5	61	6
Payment Systems	79	7	84	7	84	8
Savings Account	53	5	57	4	66	6
	1115	100	1255	100	1080	100

investigated their complaints from an independent point of view. Not surprisingly, these comments came almost exclusively from complainants whose complaints had been found to be outside the Terms of Reference or who had not received the outcome they wanted at the conclusion of the investigation.

It is of concern that several complainants commented on the fact that the Banking Ombudsman scheme is funded by the banking industry, apparently in ignorance of the role of the Banking Ombudsman Commission in ensuring the Banking Ombudsman's independence. I take some comfort, however, from two complainants who commented that they had had some concerns at the start of the investigation, but these were soon put to rest.

Although we were beginning to clear our backlog of cases during the period covered by the survey, progress on some cases was still slow, and it is not surprising that many complainants had concerns about the time taken over their complaints. Rather more surprising was the fact that over 40% of complainants found the time taken over the investigation of their complaint was as expected or shorter than expected.

Despite the comments made by complainants about timeliness and perceptions of independence, a higher proportion of them than in 2001 (69% as opposed to 61%) rated the overall performance of the Banking Ombudsman in dealing with their complaint as good or very good and most would recommend the Banking Ombudsman's services to a friend with a similar problem.

CONTACT WITH OTHER DISPUTE RESOLUTION SCHEMES AND THE WIDER COMMUNITY

The Banking Ombudsman scheme in New Zealand has always

maintained relationships with similar schemes overseas, and in July 2003 we took great pleasure in hosting, jointly with the Insurance & Savings Ombudsman, an international finance sector ombudsman conference in Wellington attended by our counterparts from the UK, Australia, Canada and South Africa as well as a number of New Zealanders.

Also in July 2003, an Australia and New Zealand Ombudsman Association was formed to provide a framework for regular consultation and for discussion and study of topics of common interest. An ambitious

ANALYSIS OF COMPLETED DISPUTES BY AREA OF BUSINESS

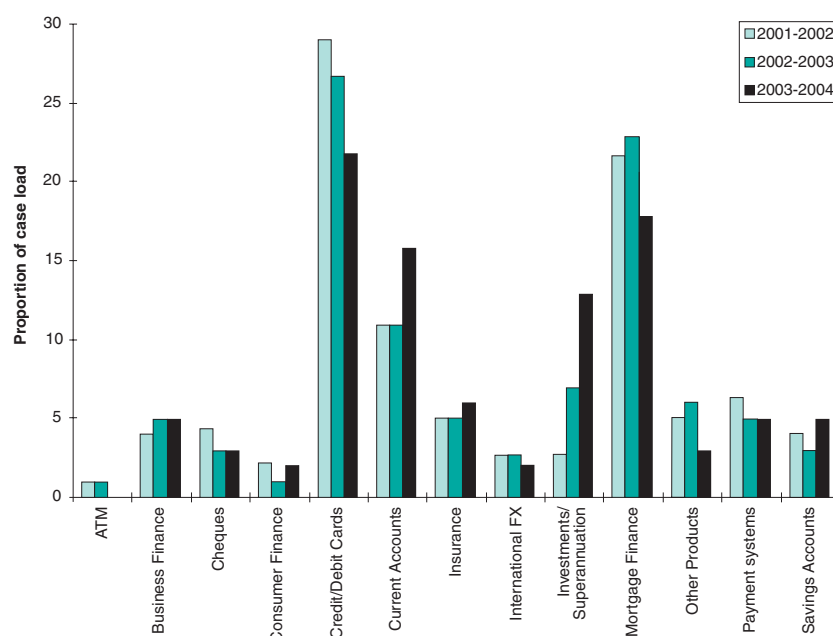


TABLE 4B Disputes by area of business

	2001-02	%	2002-03	%	2003-04	%
ATM	4	1	2	1	1	0
Business Finance	18	4	20	5	17	5
Cheques	17	4	13	3	10	3
Consumer Finance	10	2	5	1	6	2
Credit/Debit Cards	116	29	107	27	73	22
Current Accounts	43	11	41	11	52	16
Insurance	19	5	19	5	20	6
International FX	11	3	11	3	6	2
Investments/ Superannuation	13	3	28	7	42	13
Mortgage Finance	89	22	88	23	59	18
Other Products	22	5	24	6	11	3
Payment systems	23	6	21	5	18	5
Savings Accounts	16	4	11	3	17	5
	401	100	390	100	332	100

TABLE 5

Cases by complainant

	2001-02	%	2002-03	%	2003-04	%
Female	422	38	507	40	435	40
Male	538	48	576	46	486	45
Couple or Group	123	11	123	10	131	13
Company	25	2	36	3	22	2
Society	7	1	10	1	4	0
Partnership	0	0	3	0	2	0
Total	1115	100	1255	100	1080	100

TABLE 6A

Time taken - all cases

	2001-02	2002-03	2003-04
0 to 29 days	695	859	728
30 to 59 days	90	75	63
60 - 89 days	65	69	58
90 days plus	265	252	231

TABLE 6B

Time taken - disputes

	2000-01	2001-02	2002-03	2003-04
0 to 29 days	20	21	22	15
30 to 59 days	46	65	60	41
60 - 89 days	37	50	59	49
90-119	43	53	46	35
120-149	45	50	54	38
150-199	53	53	53	52
over 200	119	107	96	104

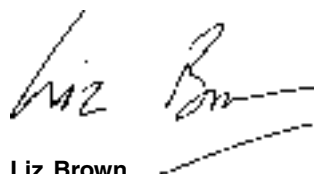
work programme was established and some useful results have already been obtained.

In March 2004, I attended a much larger finance sector ombudsman conference in London, organised by the UK Financial Services Ombudsman and attended by finance sector ombudsmen from all round the world. Over 100 ombudsmen attended the conference, and it was an invaluable opportunity to learn from their experience.

Back in New Zealand, I have continued to maintain regular contact with other dispute resolution services, and have again joined with the Insurance & Savings Ombudsman and the Electricity Complaints

Commissioner to run community education forums and to address electorate workers.

My special thanks go to those community organisations, especially Citizens Advice Bureaux, who have allowed me to interview complainants or hold meetings at their premises, and have assisted with the administration involved in such meetings.



Liz Brown
Banking Ombudsman

TERMS OF REFERENCE

Definitions and Interpretations

In these Terms of Reference: -

- (a) the following expressions have the following meanings: -
- “Participating Bank” means a registered bank for the time being entered into the Register as a participating bank of the Banking Ombudsman Commission, including all:
- (i) wholly owned subsidiary companies of Participating Banks except those notified by the New Zealand Bankers' Association to the Banking Ombudsman Commission as exempt from the scheme; and
 - (ii) companies within the same corporate group as the Participating Bank (other than wholly owned subsidiaries of the Participating Bank) including subsidiaries in which the Participating Bank has a majority interest, notified by the New Zealand Bankers' Association to the Banking Ombudsman Commission as participating in the scheme

As at 1 April 2002 the Participating Banks are:

AMP Bank Limited
ANZ Banking Group (New Zealand) Limited
ASB Bank Limited
Bank of New Zealand
Citibank N.A.
The Hongkong and Shanghai Banking Corporation Limited
Kiwibank Ltd
The National Bank of New Zealand Limited
Rabobank New Zealand Ltd
St George Bank of New Zealand Ltd (Superbank)
TSB Bank Limited
Westpac Banking Corporation

“banking services” means all financial services provided by each of the Participating Banks in New Zealand in the ordinary course of their business to individuals or groups, including the use overseas of credit or debit cards issued by Participating Banks, and advice and services relating to insurance and investments.

A Participating Bank provides a banking service to an individual or group when it has the benefit of a guarantee or charge given or created by the individual or group in favour of the Bank to guarantee or secure any monies owing to it by another individual or group. It also provides a banking service to the payee of a cheque drawn on the Bank, whether or not the payee is a customer of the paying Bank and to the drawer of a cheque collected by the Bank, whether or not the drawer is a customer of the Bank.

“Banking Ombudsman Commission” means the Banking Ombudsman Commission established in accordance with the Rules of the Banking Ombudsman Commission;

“Chairman of the Banking Ombudsman Commission” means the chairman appointed pursuant to the Rules of the Banking Ombudsman Commission;

“complainant” means an individual or a group making a complaint to the Banking Ombudsman;

“Participating Bank named in the complaint”, or “Participating Bank concerned” means any Participating Bank against which a complaint is made;

“commercial judgement” means assessments of risk, of financial or commercial criteria, or of character;

“decisions about lending or security” include any decision (or the consequence thereof) concerning any advance or similar facility, guarantee or security;

- (b) references to the provision of banking services include, where the context admits, references to their non-provision;
- (c) references to the singular number (including without limitation references to “individual”, “complainant” and “Participating Bank”) include, where the context admits, the plural number and vice versa;
- (d) references to paragraphs are to paragraphs of these Terms of Reference;
- (e) references to dollar amounts are to amounts in New Zealand dollars.

PRINCIPAL POWERS AND DUTIES OF THE BANKING OMBUDSMAN

1. The Banking Ombudsman's principal powers and duties are:
- ◆ to consider at no cost to the complainant complaints over claims not exceeding \$120,000 arising out of the provision within New Zealand of banking services, or \$150,000 in the case of banking services relating to insurance, by any

Participating Bank principally to individuals but also to groups of individuals whether incorporated or unincorporated; and

- ◆ subject to paragraphs 18, 19, 20, 21 and 22 to facilitate the satisfaction, settlement or withdrawal of such complaints whether by agreement, by making recommendations or awards or by such other means as seem expedient.

2. The Banking Ombudsman may give advice on the procedure for referring a complaint to him or her. It is not a function of the Banking Ombudsman to provide information about Banks or banking services.

PROCEDURE

3. Subject to the other provisions of these Terms of Reference, the Banking Ombudsman shall, in his or her own discretion, decide the procedure to be adopted by him or her in considering complaints. He or she shall also decide whether or not a complaint falls within the Terms of Reference, and in reaching this decision shall consider representations from the complainant and from the Participating Bank concerned. When requested, he or she shall give the reasons in writing and within a reasonable time for his or her decision on whether or not a complaint falls within the Terms of Reference.
4. The Banking Ombudsman shall promptly produce to the Participating Bank named in the complaint any waivers of that Participating Bank's duty of confidentiality referred to in paragraph 22(g) that have been received by the Banking Ombudsman.
5. The Banking Ombudsman may require a Participating Bank named in a complaint to provide any information which in the view of the Banking Ombudsman relates to that complaint. If the Participating Bank possesses such information, it shall as soon as is reasonably practicable disclose it to the Banking Ombudsman (unless the Participating Bank certifies to the Banking Ombudsman that the disclosure of such information would place the Participating Bank in breach of its duty of confidentiality to a third party whose consent has been refused after the Bank had used its best endeavours to obtain such consent).
6. If any party to a complaint supplies information to the Banking Ombudsman and requests that he or she treat it as confidential, the Banking Ombudsman shall not disclose that information to any other party to the complaint or any other person, except with the consent of the first-mentioned party.
7. Where any party to a complaint requests access to any information on the Banking Ombudsman's file, the Banking Ombudsman shall, subject to paragraph 6, make this information available.
8. Where any party to a complaint supplies information to the Banking Ombudsman under paragraph 6, and the Banking Ombudsman facilitates the satisfaction, settlement or withdrawal of the complaint he shall return any information supplied by the party to that party as soon as is reasonably practicable.
9. The Banking Ombudsman may take account of a Participating Bank's security measures of which he or she has knowledge notwithstanding that no disclosure of those measures has been or will be made to the complainant.
10. Notwithstanding paragraph 16 the Banking Ombudsman shall not be bound by any legal rule of evidence.
- 10A. While a complaint is under consideration by the Banking Ombudsman, a Participating Bank will not commence legal proceedings against the complainant in connection with the subject matter of the complaint unless it has first:
- (a) obtained the consent of its chief executive to the commencement of proceedings; and
 - (b) advised the Banking Ombudsman of its intention to commence proceedings (and where practical, give five working days notice of this intention).

SETTLEMENTS, RECOMMENDATIONS AND AWARDS

11. At any time that a complaint is under consideration by him or her the Banking Ombudsman may seek to promote a settlement or withdrawal of the complaint by agreement between the complainant and the Participating Bank concerned.
12. If there is no such agreement, the Banking Ombudsman, at the request of the complainant or the Participating Bank concerned, may make a recommendation for settlement or withdrawal of the complaint. He or she shall first however give the complainant and the Participating Bank one month's notice of his or her intention to make such recommendation, and during the period of that notice (or such longer period as the Banking Ombudsman may

agree) the complainant and the Participating Bank may make further representations to the Banking Ombudsman in respect of the complaint.

A recommendation shall be in writing and shall include a summary of the Banking Ombudsman's reasons for making his or her recommendations.

13. If:

- (a) the Banking Ombudsman is minded to:
 - (i) propose that a complaint be settled or withdrawn on terms which appear to him or her to be acceptable to both the complainant and the Participating Bank named in the complaint, or
 - (ii) make a recommendation for the settlement or withdrawal of a complaint; and
 - (b) that settlement or withdrawal would involve the provision by the Participating Bank of valuable consideration (whether in the form of a money payment or otherwise);
- then the Banking Ombudsman's proposal or recommendation shall, unless the Participating Bank has otherwise requested or agreed, state that it is open for acceptance by the complainant only if he or she accepts it in full and final settlement of the subject matter of the complaint.

14. If the Banking Ombudsman has made a recommendation which, within one month after it is made, has been accepted by the complainant but not by the Participating Bank named in the complaint, the Banking Ombudsman may make an award against the Participating Bank.

An award shall comprise a money sum not exceeding \$120,000, or in relation to a complaint about the provision of banking services relating to insurance, \$150,000. No award shall be of a greater amount than in the opinion of the Banking Ombudsman is appropriate to compensate the complainant for direct loss or damage suffered by him or her by reason of the acts or omissions of the Participating Bank against which the award is made. The Banking Ombudsman may in addition to the money sum grant to the complainant such additional amount as is in the opinion of the Banking Ombudsman appropriate to reimburse the complainant for incidental expenses reasonably incurred by the complainant in making and pursuing the complaint.

14A. Notwithstanding the provisions of Paragraph 14 an award by way of compensation not exceeding \$4000 may be made to compensate the complainant for inconvenience suffered by him or her by reason of the acts or omissions of the Participating Bank against which the award is made.

15. An award shall be in writing and shall state the amount awarded and a summary of the Banking Ombudsman's reasons for making the award. The award shall state that, if within one month after its issue the complainant agrees to accept it in full and final settlement of the subject matter of the complaint, the award shall be binding on the complainant and (in accordance with its undertaking to the Banking Ombudsman Commission) the Participating Bank against which it is made.

The Banking Ombudsman shall issue a copy of the award to the complainant and the Participating Bank against which it is made and shall issue to the complainant a form (addressed to the Banking Ombudsman and the Participating Bank) to be completed by the complainant whereby he or she may accept the award in full and final settlement of the subject matter of the complaint.

16. In making any recommendation or award under these Terms of Reference the Banking Ombudsman shall do so by reference to what is, in his or her opinion, fair in all the circumstances, and:

- (a) shall observe any applicable rule of law or relevant judicial authority (including but not limited to any such rule or authority concerning the legal effect of the express or implied terms of any contract between the complainant and any Participating Bank named in the complaint); and
- (b) shall have regard to general principles of good banking practice and any relevant code of practice applicable to the subject matter of the complaint.

The Banking Ombudsman shall not be bound by any previous decision made by him or her or by any predecessor in his or her office. In determining what are the principles of good banking practice he or she shall consult within the industry.

17. The Banking Ombudsman shall not make a recommendation or award except in accordance with the provisions of paragraphs 12 to 16.

LIMITS ON THE BANKING OMBUDSMAN'S POWERS

18. The Banking Ombudsman shall have power to consider a complaint made to him or her except:

(a) subject to paragraph 19, if at any time it appears to the Banking Ombudsman that:

- (i) the amount which the complainant has claimed or could claim in respect of the subject matter of the complaint exceeds \$120,000 or in the case of a complaint relating to the provision of banking services in relation to insurance, \$150,000, or
- (ii) the claim comprised in the complaint is part of a larger claim which the complainant has made or could make, or is related to another claim which the complainant has made or could make, and the aggregate amount of all such claims exceeds \$120,000 or in the case of a complaint relating to the provision of banking services in relation to insurance, \$150,000;

(b) to the extent that the complaint relates to a Participating Bank's commercial judgement in decisions about lending or security (as defined herein) or insurance, but this shall not preclude the Banking Ombudsman from considering complaints about administration in lending matters;

(c) to the extent that the complaint relates to a Participating Bank's interest rate policies;

(d) if at any time it appears to the Banking Ombudsman that it is more appropriate that the complaint be dealt with by a court, under another independent or statutory complaints or conciliation procedure or under an arbitration procedure;

(e) if any Participating Bank named in the complaint gives the Banking Ombudsman a notice of the kind described in paragraph 23.

(f) if it appears to the Banking Ombudsman that on the basis of the facts presented by the complainant the relevant Participating Bank has made a reasonable offer in settlement of the complaint.

19. The Banking Ombudsman shall have the power to make a recommendation or award in respect of a complaint over a claim in excess of \$120,000 (or in the case of a complaint relating to the provision of banking services in relation to insurance, \$150,000) or in respect of a complaint that would otherwise be outside his or her power to consider by virtue of Paragraph 22 (a), (b), (c), (d), (e) or (h) where the Participating Bank named in the complaint consents to the Banking Ombudsman considering that complaint.

20. The Banking Ombudsman shall have no power to make a recommendation or award in respect of a complaint to the extent that it relates to a practice or policy of a Participating Bank which does not itself give rise to a breach of any obligation or duty owed by the Participating Bank to the complainant.

21. Subject to the other provisions of these Terms of Reference, the Banking Ombudsman may consider a complaint which relates to charges made by a Participating Bank for banking services, but, in doing so, he or she shall have regard to any scale of charges generally applied by that Participating Bank.

22. The Banking Ombudsman shall only consider (or continue to consider) a complaint made to him or her if he or she is satisfied that:

- (a) The complaint is made to him or her by or on behalf of the individual or group of individuals to whom or for whom the Participating Bank's services in question were provided;
- (b) the complaint has been fully considered by the internal complaint procedures of the Participating Bank named in the complaint (set up as required by the New Zealand Bankers' Association Code of Banking Practice) and the complainant has not accepted any observations made or conditions of settlement or satisfaction offered by that Participating Bank and deadlock has been reached, or the Participating Bank has not advised the complainant that deadlock has been reached within 3 months of the complaint being formally made to it;
- (c) the complaint is made to him or her not later than two months after the Participating Bank has informed the complainant that deadlock has been reached, and informed him or her also of the existence of the Banking Ombudsman and of the two months limit;
- (d) the act or omission giving rise to the complaint:
 - (i) first occurred on or after 1 January 1992; or
 - (ii) first occurred not earlier than six months prior to that date, but the complainant did not become aware of it, and could not with reasonable diligence have become aware of it, until on or after that date;

Provided that the Banking Ombudsman may in his or her discretion decide not to consider (or continue to consider) a complaint if the complainant has had knowledge of the act or omission giving rise to the complaint for more than

12 months before the complaint is made to the Banking Ombudsman.

- (e) except where relevant new evidence is available, the subject matter of the complaint was not comprised in a complaint by the same complainant (or any one or more of them) previously considered by the Banking Ombudsman;
- (f) neither the complaint made to him or her nor any other complaint by the same complainant (or any one or more of them) in respect of the same subject matter is, has been or becomes to the knowledge of the Banking Ombudsman the subject of any proceedings in or before any court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or of any investigation by a Statutory Ombudsman;
- (g) the complainant and any other person to whom any Participating Bank named in the complaint owes a duty of confidence in respect of any information which the Banking Ombudsman may request that Participating Bank to produce to him or her for the purpose of his or her consideration of a complaint have waived in writing that duty of confidence;
- (h) the complaint is being pursued reasonably by the complainant and not in a frivolous or vexatious manner.

“TEST CASES”

- 23. At any time before the Banking Ombudsman has made an award a Participating Bank named in the complaint may give to the Banking Ombudsman a notice in writing containing:
 - (a) a statement, with reasons, that in the opinion of the Participating Bank the complaint involves or may involve:
 - (i) an issue which may have important consequences for the business of the Participating Bank or Banks generally or
 - (ii) an important or novel point of law; and
 - (b) an undertaking that, if within six months after the Banking Ombudsman's receipt of the notice either the complainant or the Participating Bank institutes in any Court in New Zealand proceedings against the other in respect of the complaint, the Participating Bank will:
 - (i) pay the complainant's costs and disbursements (to be taxed, if not agreed, on a solicitor and own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Participating Bank (except by way of respondent's notice, cross-appeal or other similar procedure) and
 - (ii) make interim payments on account of such costs if and to the extent that it appears reasonable to the Participating Bank to do so.
- 24. Providing the Banking Ombudsman concurs with the Participating Bank's statement, he or she shall cease to consider the complaint and he or she shall inform the complainant in writing of the receipt of the notice, the date of its receipt and the effect of the notice upon the complaint.

OTHER POWERS AND DUTIES

- 25. The Banking Ombudsman shall be responsible for the day to day administration and conduct of the business of the Banking Ombudsman. He or she shall have power to incur expenditure on behalf of the Banking Ombudsman Commission in accordance with the current financial budget approved by the Banking Ombudsman Commission.
- 26. The Banking Ombudsman shall not exercise any power which the Rules of the Banking Ombudsman Commission expressly gives to the Banking Ombudsman Commission or any other person.

- 27. In consultation with the Chairman of the Banking Ombudsman Commission and subject to his or her approval, the Banking Ombudsman shall have power on behalf of the Banking Ombudsman Commission to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement.
- 28. Except as agreed between the Banking Ombudsman and the Banking Ombudsman Commission the Banking Ombudsman shall attend each meeting of the Banking Ombudsman Commission and shall give the Banking Ombudsman Commission any information and assistance (including general information about any reference) which they reasonably request.
- 28A. Personal information collected by the Banking Ombudsman in the exercise of the powers described in these Terms of Reference shall be used solely for the purpose of carrying out his or her duties under these Terms of Reference. Such information may be used in public reports and case notes prepared by the Banking Ombudsman only if they do not include any information from which it might be possible to identify the person to whom the information relates. Personal information will not be retained longer than is necessary for the purpose for which it was collected and will in any event be destroyed not later than seven years after the discontinuation of the investigation to which it relates.
- 29. Except as provided in paragraph 30 or as required by any competent authority or as otherwise required by law or as properly and reasonably required in connection with any legal proceedings instituted by or against the Banking Ombudsman Commission or any of its officers or for the purpose of consultation with the Insurance and Savings Ombudsman when a question arises as to which Ombudsman should consider a complaint, the Banking Ombudsman shall not disclose to any person (including a member of the Banking Ombudsman Commission) any information concerning a complaint considered by him or her from which it would or might be possible to identify the complainant or any Participating Bank named in the complaint or any other information of a confidential nature which he or she has obtained in the course of his or her duties. Provided that the Banking Ombudsman should obtain the consent of the complainant before disclosing potentially identifying information about him or her to the Insurance and Savings Ombudsman.
- 30. Paragraph 29 shall not prohibit the disclosure of any information to the complainant and any Participating Bank named in the complaint, or to the Chairman of the Banking Ombudsman Commission or any authorised deputy of the Chairman of the Banking Ombudsman Commission, or to any employee, consultant, independent contractor or agent of or with the Banking Ombudsman Commission to the extent that such information is reasonably required by that person for the purpose of performing his or her duties to the Banking Ombudsman. The Banking Ombudsman shall report to the Participating Bank concerned any threat to Participating Bank staff or property of which he or she becomes aware in the course of his or her duties.
- 31. At least twenty-eight days before the Annual General Meeting of the Banking Ombudsman Commission the Banking Ombudsman shall send to the Banking Ombudsman Commission a report containing, in relation to the preceding financial year of the Banking Ombudsman, a general review of his or her activities during that year and such other information as the Banking Ombudsman Commission may reasonably direct.
- 32. To inform the community of his or her activities the Banking Ombudsman shall publish an Annual Report.
- 33. The Banking Ombudsman may make recommendations to the chairman of the Banking Ombudsman Commission from time to time in relation to the Terms of Reference or any relevant Codes of practice which may be introduced and which have a bearing on the discharge of his or her responsibilities

MEMBER BANKS

Participating Banks in the Banking Ombudsman scheme year to 30/6/04:

AMP Bank Ltd

ANZ Banking Group (New Zealand) Limited

ASB Bank Limited

Bank of New Zealand

Citibank NA

The Hongkong and Shanghai Banking Corporation Limited

Kiwibank Ltd

The National Bank of New Zealand Limited

Rabobank New Zealand Ltd

St George Bank of New Zealand Ltd (Superbank)

TSB Bank Limited

Westpac Banking Corporation

OFFICE OF THE BANKING OMBUDSMAN

Liz Brown – Banking Ombudsman

Susan Taylor Chief Investigator

Chris McIntyre Investigator

Ross Miller Investigator

Rhonda Singleton Enquiries Officer

Nicola Schaab Investigator

Chantelle Nicholson Enquiries Assistant/
Assistant Investigator

John Olds Investigator

Ann Sheehan Investigator

Meryn Gates Investigator

Alan Westbury Finance and Administration Manager

Katrina McLaughlin Senior Administrator

Janet Boag Administrator

