



The Banking
Ombudsman



Annual Report 2001-2002

10
YEARS RESOLVING
BANKING PROBLEMS

FOREWORD BY THE CHAIRMAN

Ten years resolving banking problems

This year's report of the Banking Ombudsman celebrates the 10th anniversary of the commencement of the Banking Ombudsman scheme on 1 July 1992. The scheme was a first for New Zealand in that it provided for independent dispute resolution between the providers of a private sector essential service and their customers. Financed by the banks at no cost to the public, it has been the forerunner of and a model for similar schemes covering other major industries which serve the public.

The scheme owes much to the vision and wisdom of Sir John Anderson, then as now, Chief Executive of the National Bank of New Zealand Limited and the Rt Hon. Sir Gordon Bisson, my predecessor as Chairman of the Commission. The first Banking Ombudsman, Mrs Nadja Tollemache and the foundation members of the Commission also bear much credit for the initial success and continued wellbeing of the scheme. Besides Sir John, Mr David Russell of the Consumers' Institute is a foundation member of the Commission.

The present Banking Ombudsman, Mrs Liz Brown, has held that position since 1995. She continues to rely upon and to enhance the operational and administration systems, put in place by her predecessor. The achievements of Mrs Brown and her staff can be seen from a perusal of this Annual Report. Many types of complaint (eg those involving use of credit cards) recur every year. In more recent years, other types of complaint are prominent because of changes in the banking scene. A growing public awareness of the scheme also generates more enquiries for the Banking Ombudsman's staff.

The period covered by this Annual Report has been one of quiet efficiency and success for the Banking Ombudsman's office. The number of aged complaints has reduced considerably, as has the

time taken to resolve complaints generally. Despite performance criteria which are always under review, some complaints necessarily take a long time to resolve. Many require detailed and time-consuming investigation. Both complainant and bank have to be fully informed of developments in the course of the investigation: natural justice requires that comment be invited from each at various stages.

During the year, the draft Code of Banking Practice, issued by the New Zealand Bankers' Association, has been the subject of submissions from the public at large and from many consumer and special-interest groups. I was asked to be the independent assessor to review these submissions. The process should be completed soon.



Hon Sir Ian Barker QC

The Banking Ombudsman made detailed submissions on the draft Code – many of which will be incorporated in the new Code. She is required to monitor the operation of the Code.

During the year, the limits on the amount that the Banking Ombudsman may require a bank to pay a complainant have been increased. \$120,000 (\$150,000 in the case of a claim involving bank-related insurance) can now be awarded for proven monetary loss. \$4,000 can now be awarded for non-monetary loss, such as stress and inconvenience. In practice, few recommendations from the Banking Ombudsman reach these ceilings.

The Commission continues to monitor the operation of the scheme. It notes an improvement generally in bank complaint-handling procedures. Often, the need for the involvement of the Banking Ombudsman will be reduced if a bank has in place a robust and efficient system for dealing with

customer complaints, staffed by competent people with the necessary seniority.

There has been no change of consumer representatives on the Commission, Mr Russell and Ms Margy-Jean Malcolm continue to serve. Sir John Anderson continues as one of the banking representatives. The other banking representatives during the year were Dr Murray Horn (ANZ), Mr Tom Gallagher (Westpac Trust) and Mr Sam Knowles (Kiwibank). I take the opportunity of thanking all members of the Commission for their continued guidance and support of the scheme. I also welcome Kiwibank as a new entrant to the scheme.

I extend the thanks of the Commission to the Banking Ombudsman, Mrs Liz Brown, for her dedicated and efficient administration of the scheme and of the office. Mrs Brown is becoming recognised as a leader in the international banking ombudsman scene. She was invited to give a paper at a conference of Banking Ombudsmen in South Africa earlier this year and is called upon by overseas agencies to provide comment. She is frequently asked to speak to community groups, universities and business organisations about the scheme.

The Commission has always been fortunate in being able to attract dedicated and loyal staff who

deal with complainants with good humour and humanity. The 3 investigators appointed when the scheme commenced, Ms Susan Taylor, Mr Chris McIntyre and Mr Ross Miller, are still in those positions. There are now 6 full time investigators – an indication of how the workload of the office has increased. They bring a wealth of experience to their task. Tribute must also be paid to all the other members of the staff – many of whom have been with the office for some years. Together, they provide an efficient public service.

The accompanying volume of case notes show the variety of situations that the Banking Ombudsman encounters. The collection makes interesting reading. It is with pleasure that I commend this Report and its accompanying case-notes as a record of the achievement of the Banking Ombudsman scheme.



Hon Sir Ian Barker QC
Chairman
Banking Ombudsman Commission



*Banking Ombudsman Commission.
From left:
Sir John Anderson,
Mrs Liz Brown,
Mr Sam Knowles ,
Ms Margy-Jean Malcolm,
Sir Ian Barker,
Mr David Russell.*

REPORT OF THE BANKING OMBUDSMAN

Reflections on ten years experience

seems an appropriate time to reflect on the changes that have occurred since it was set up.

On 1 July 1992, the Banking Ombudsman scheme commenced operations. At that stage the scheme's staff consisted of the Banking Ombudsman and her personal assistant, though shortly afterwards four more staff were appointed. In its first year the scheme received 241 formal written complaints and 59 telephone enquiries or complaints from bank customers (it also received 451 enquiries from banks).

Ten years later, besides the Banking Ombudsman it employs six investigators and five other full or part time staff. In the year under report it received 1102 formal written complaints and 2920 telephone enquiries or complaints from bank customers. These figures are themselves an answer to the concerns expressed in 1992 that consumers would be reluctant to use a dispute resolution scheme set up and funded by the banking industry.

During the ten years of its operation, there has been very little change to the structure of the Banking Ombudsman scheme or to the Banking Ombudsman's Terms of Reference. Those changes that have been made were either for the benefit of complainants, such as the power given to the Banking Ombudsman in 1996 to award compensation for inconvenience, or were needed to clarify the original provisions and ensure the smooth running of the scheme. All changes have been made on the recommendation of the Banking Ombudsman Commission and none have been initiated by the banking industry.

The absence of major change over a period that has seen great changes in the banking industry itself testifies to the soundness of the structure that was set up in 1992 to ensure the independence and

The Banking Ombudsman scheme is now ten years old, and it

effectiveness of the Banking Ombudsman scheme. My only concern is that the structure is not always well understood by members of the public who see that the scheme is funded by a levy on banks without realising that the amount of the levy is set by the Banking Ombudsman Commission where bank representatives are in a minority. The Commission is a highly effective guardian of the scheme's independence and is continually reviewing and assessing the scheme's standards and processes.

It has been pleasing to see that new arrivals in the banking industry in New Zealand have all become members of the Banking Ombudsman scheme. AMP Bank was the first new member after the scheme was set up, followed by Rabobank and this year we

have welcomed Kiwibank as the first entirely new bank to join us. The only banks to have left the scheme have done so as a result of ceasing to provide banking services to the public in New Zealand.

One of the welcome changes that has occurred during the past ten years is the very substantial improvement in banks' internal complaints processes. In 1992 many banks either had no formal internal complaints process, were setting up an internal complaints process or had at best an employee who was the collection point for complaints, resolving some of them and referring others elsewhere within the bank. Some banks regarded complaints as attacks on their staff and processes and took a very defensive attitude towards customers who complained. Similarly some banks saw complaint handling as the province of their legal department, when the legal department saw its role as the deflection or discouragement of complaints rather than their resolution.



Liz Brown

The number of dispute investigations commenced by my office has increased almost every year since the office was set up, but it has not increased nearly as much as the number of complaints referred (formally or informally) to banks. It is truer than ever that most valid complaints are now quickly and satisfactorily resolved by banks themselves. All the major banks have a dedicated complaints-handling team and almost all members of the teams are well trained and experienced both in the bank's systems and processes and in the people skills necessary to help customers who may be confused, angry or distressed. The internal complaints processes are not perfect, as noted below, but New Zealand banks have much to be proud of in their handling of customer complaints.

One thing that has not changed over the years is the support my predecessor and I have received from the Banking Ombudsman Commission. The Commission has been fortunate in the ability and eminence of its two successive chairmen, Sir Gordon Bisson and Sir Ian Barker. This year again I am pleased to have the opportunity to express my thanks to Sir Ian for his wisdom and encouragement throughout the year, and my thanks to all Commission members for their continued interest in and support of my office and its role in dispute resolution.

COMPLAINT ISSUES

Several issues have either emerged this year or have become a more common element in complaints to my office. The main ones are noted below and are also illustrated by the case notes that appear in the compendium accompanying this report.

Investment advice

The year to 30 June 2002 has seen an unusually large number of complaints about investment advice given by bank staff. While in previous years I would have received up to 12 complaints on this subject and carried out three or four investigations, this year there were 40 complaints, 13 investigations were completed and 10 disputes are still under investigation. From 1% of the complaint intake, investment cases have risen to 4%. The numbers are not great, but the increase is substantial.

To a certain extent this was expected. The occasional bad year for the sharemarkets should come as no surprise to an investor who has been properly advised about risk and has taken the time and trouble to think about and understand that advice, but poorly performing investments show up weaknesses in the selling process and there are always some customers who clearly make no real effort to understand the investment they are taking on and panic when they find they are losing money. Some complaints are justified, and some are not.

Many of the complaints raise real concerns about the selling process. The main issues that have emerged are:

1. Several banks instruct their tellers that if they see a customer has a substantial sum in a savings account or on term deposit, they should offer the services of an investment adviser. While this is good customer service if done on an occasional basis, complainants say that they feel under pressure when they are constantly being asked if they want investment advice and told that they will then be able to get a better return on their funds - and if they see a different teller each time they visit the bank, this is what happens.
2. When a customer is referred to an investment adviser, the adviser often assumes that the referral has been made because the customer wants a better rate of return than is available on a term deposit. He or she therefore focuses on the risks and returns to be expected from the bank's range of investment products while the customer may well be quite content with the return on a term deposit if a greater return is going to mean any risk of capital loss.
3. Although bank staff do not usually sell on a commission basis, they usually have sales targets to meet, either individually or for their branch or department. Some operate on a bonus system. There is no requirement that such targets or bonuses be disclosed and thus there is a lack of transparency in the process that may later heighten a customer's sense of grievance.
4. Bank staff are usually reasonably knowledgeable about the products they are selling, and the

investment statement and other information is usually well drafted. However, where training may be deficient is in communicating with the customer on an individual basis.

- Great care needs to be taken in explaining the risk of capital loss. It is a common misapprehension among customers that phrases such as “negative returns” or “fluctuations in the value of your investment” mean that returns on the investment may vary from year to year, and that in some years there may be a loss of some of the returns from previous years, but do not indicate that there may be a loss of some of the funds originally invested. Bank staff are naturally reluctant to emphasise the disadvantages of the product they are selling, and in the cases I am seeing, there seems to have been a focus on the good returns achieved over recent years, possibly without enough stress on the fact that there will also be bad years. It is quite clear that in most cases the customer did not realise that it was possible for the investment to have a substantial and immediate decrease in value. The reasons for the misapprehension vary and are not all due to the selling process.

Credit reference agencies

An increasing number of complainants question a bank’s right to list their unpaid debts as defaults with credit reference agencies, especially in circumstances where an agreed repayment programme is in place. It is difficult to be specific about the numbers of such complaints as often the issue of the default listing is only one of the concerns the complainant expresses about the debt recovery process.

A default listing with a credit reference agency, especially one made by a bank, can have a major effect on the debtor’s future ability to obtain credit. Such a listing cannot (and should not) be removed unless it was made in error or otherwise should

not have been made in the first place, and it will remain in effect for some years, usually for five years. It is not removed when the debt is repaid, though it should be updated to record the repayment.

A bank that is intending to make such a listing if a default is not remedied, or if a repayment programme is not kept up, should ensure that the debtor is given notice of its intentions and of the serious effects that a listing is likely to have.

The discussion document produced as part of the review of the Code of Banking Practice (which at the time of writing had not been completed) contains a new provision requiring banks to give their customers notice before making a listing and to explain the effect the listing may have on the customer’s ability to obtain credit in the future. It also includes an undertaking to tell the credit reference agency if the information supplied to it is later agreed to be incorrect.

These new provisions are welcome, and by complying with them banks should avoid most complaints of the type that have recently been made.

Costs of debt collection

A listing with a credit reference agency is often made at the time a debt is passed to the agency for

OVERALL STATISTICS

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

TABLE 1A	Cases Received	1999-00	%	2000-01	%	2001-02	%
Enquiries		160	15	133	12	105	10
Complaints		582	52	615	55	588	53
Disputes		371	33	364	33	409	37
Total		1113	100	1112	100	1102	100

TABLE 1B	Cases Completed	1999-00	%	2000-01	%	2001-2	%
Enquiries		165	15	135	12	106	10
Complaints		600	55	623	56	598	54
Disputes		328	30	360	32	399	36
Total		1093	100	1118	100	1103	100

TABLE 1C	1994-5	1995-6	1996-7	1997-8	1998-9	1999-00	2000-01	2001-02
Telephone enquiries	729	1588	1623	2417	2512	3091	3079	2920

collection. As a collection agency is normally entitled to add its collection costs to the debt and to recover them from the debtor, it is particularly

important that the debtor is clearly advised of the potential cost of a failure to pay the debt, or to comply with an agreed repayment programme.

ANALYSIS OF COMPLETED CASES BY RESULT

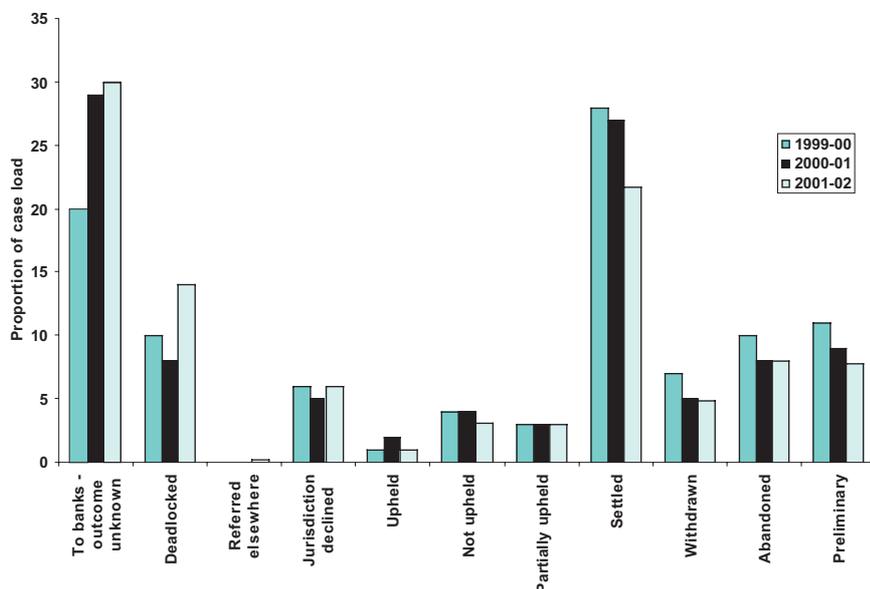


TABLE 2A All cases by result

	1999-00	%	2000-01	%	2001-02	%
To banks - outcome unknown	220	20	328	29	339	30
Deadlocked	112	10	96	8	150	14
Referred elsewhere	2	0	0	0	2	0
Jurisdiction declined	59	6	51	5	62	6
Upheld	9	1	17	2	11	1
Not upheld	40	4	44	4	36	3
Partially upheld	31	3	38	3	34	3
Settled	307	28	310	27	250	22
Withdrawn	78	7	54	5	53	5
Abandoned	112	10	93	8	90	8
Preliminary	123	11	104	9	88	8
Total	1093	100	1135	100	1115	100

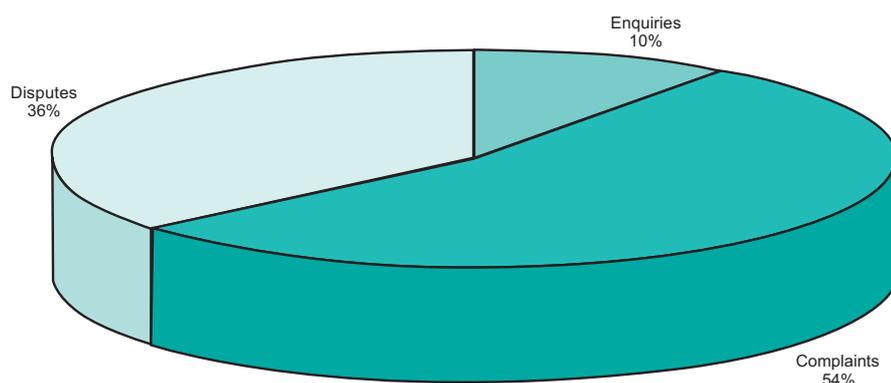
Costs are also a concern in the recovery of loan arrears by the mortgagee sale process. It is not unusual to find that once a demand for arrears is served costs quickly mount up to the point where they exceed the amount of the arrears. In many cases there is no prospect of the debtor paying either the arrears or the costs, and in such cases it is in the interests of all concerned that the security be realised quickly and efficiently.

In a minority of cases, however, the debtor is able to scrape up enough to pay the arrears but cannot immediately meet all the costs. He or she is then faced with a moving target - the process continues, so that even if funds are found to pay the original costs, more costs have since been incurred. In such circumstances it is particularly important that the debtor keeps the bank informed about prospects of repayment and that the bank is prepared to suspend the process if it judges those prospects to be realistic.

Relationship property settlements

“My bank will not recognise a legal agreement between me and my ex-husband” writes an aggrieved customer. In complaints coming to me after the division of assets and liabilities that have accrued during a relationship, it is becoming more common to find that the parties to the relationship do not realise that the agreement they have reached between themselves is not binding on their mortgagee bank. In some

ANALYSIS OF CASES COMPLETED 2001-2002 BY CASE CATEGORY



cases I have concerns about the quality of the legal advice the parties have received.

When a relationship has broken down it is important that the parties to a property settlement understand that if they have joint borrowings secured against the family home, then no matter what they have agreed between themselves, they remain jointly and severally liable to the mortgagee bank unless and until the mortgage is discharged and the title transferred into the name of one party only (or a third party in the case of a sale). It is also important that they understand that the bank has no obligation to refinance the loan in the name of one party only. Normal lending criteria must be met and the bank may well have legitimate concerns about the servicing ability or credit record of that party.

While the loan remains a joint loan, both parties are entitled to loan account statements. The party who is not making the loan repayments should be advised to check the statements and ensure that repayments are being made. In several cases that have come to me, the party who was not making payments did not realise that arrears were mounting up until they had reached a sum that was beyond his or her means to remedy.

Mortgage underfunding

Mortgage underfunding occurs in cases where for some reason the bank has miscalculated mortgage repayments or has made a data entry mistake that has resulted in the deduction of repayments at a lower rate than required to repay the loan within the original term. The customer usually discovers the mistake some months (occasionally years) after its occurrence, at which point the loan principal is higher than it should have been if all repayments had been made at the correct rate.

If the bank is entirely responsible for the error and there is no contributory fault on the part

of the customer, my practice has been to try to negotiate a resolution that is acceptable to both parties, but if agreement is not possible to recommend that the bank compensate the customer for the direct loss suffered. There would usually also be a recommendation of compensation for inconvenience in view of the disruption to the complainant's financial planning.

In these cases it is difficult to establish the direct loss with any accuracy. Account should be taken of the benefit the customer received from the underpayments made before the mistake was discovered as well as the increased cost in the future if the loan is to be repaid within the original term.

ANALYSIS OF COMPLETED DISPUTES BY RESULT

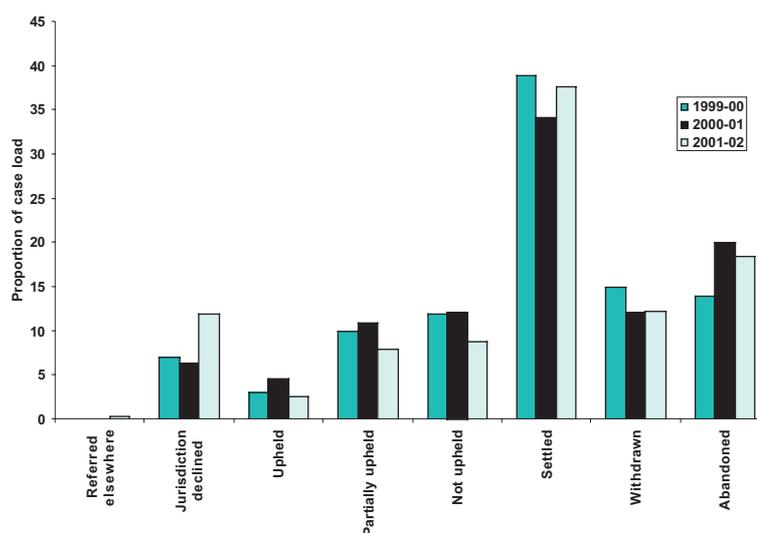


TABLE 2B Disputes by result

	1999-00	%	2000-01	%	2001-02	%
Referred elsewhere	0	0	0	0	1	0
Jurisdiction declined	23	7	23	6	47	12
Upheld	9	3	17	5	11	3
Partially upheld	31	10	38	11	34	8
Not upheld	40	12	44	12	36	9
Settled	129	39	124	34	152	38
Withdrawn	50	15	44	12	47	12
Abandoned	46	14	73	20	73	18
Totals	328	100	363	100	401	100

When cases are broken down by problem heading or area of business the number is greater than the total number of cases since one case may involve several problems or areas of business

For the purpose of calculating the direct loss, I had adopted a formula which calculates the net present value of the extra payments to be made in the future. The figure that results is then deducted from the value of the underpayments made in the past. It is not possible to make a completely accurate calculation because of uncertainty about future interest rates. The formula is complex and many complainants do not understand it. Some bank staff do not understand it either, and have difficulty in calculating it.

After consultation with the Banking Ombudsman Commission I have decided to adopt an approach which ignores the notional benefit to the customer of the underpayments and requires the bank to place the customer in the position that he or she would have been in if all repayments had been

made at the correct rate, ie to write off the relevant portion of the debt. There will not normally be any compensation for inconvenience. I emphasise that this is the approach where there is no fault on the part of the complainant and no reason to believe that the correct repayments would not have been made if there had been no mistake. If the complainant has been at fault, for example by ignoring loan statements that should have alerted him or her to the problem, any compensation will be adjusted according to the degree of fault.

COMPLAINT STATISTICS

A new trend has become apparent this year in our complaint statistics. In previous years the dispute intake - those complaints that had become deadlocked and were taken up for investigation - and the overall intake have followed similar patterns

so that when one increased or decreased, the other did likewise. This year there has been a reasonably substantial (12%) increase in disputes but a small drop in "complaints" and a larger drop in "enquiries". There has also been a small drop in telephone enquiries.

"Enquiries" are those initial complaints that fall outside my Terms of Reference for reasons other than the fact that they have not been considered by the relevant bank's internal complaints process. A few of them are complaints that are not about banks at all. Although it cannot be verified from the figures in Table 2A, I am inclined to believe that the drop in enquiries reflects fewer complaints that are generally directed at new or increased fees and charges, and which therefore fall outside my Terms of Reference. If this is the case, the decrease has been offset by an increase in complaints about misapplied fees, complaints about failures to advise about fee exemptions and other complaints about the administrative aspects of the application of fees and charges.

The increase in disputes is not so easily explained. The increase in problems with investment products does not account for

ANALYSIS OF COMPLETED CASES BY PROBLEM HEADING

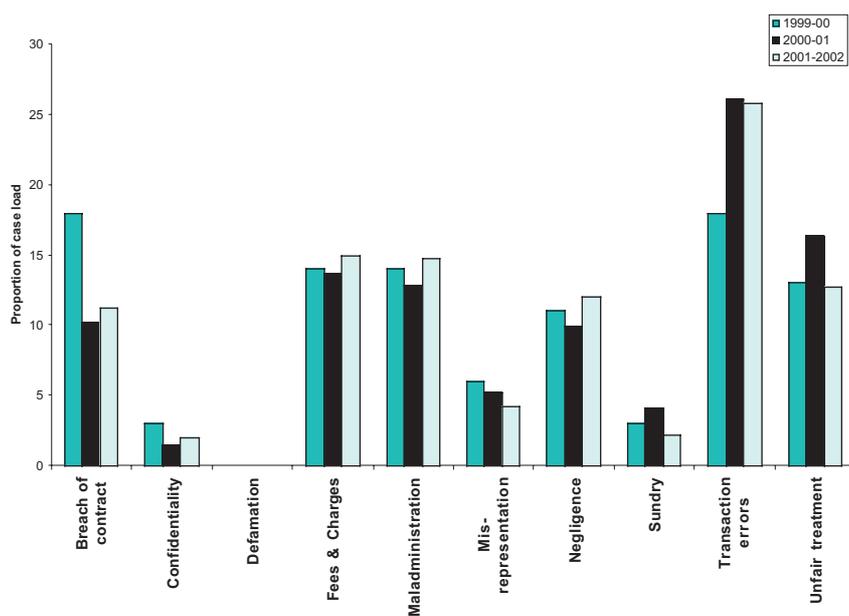


TABLE 3 Cases by problem heading

	1999-00	%	2000-01	%	2001-2002	%
Breach of contract	198	18	116	10	126	11
Confidentiality	34	3	17	1	24	2
Defamation	0	0	0	0	0	0
Fees & Charges	155	14	155	14	163	15
Maladministration	147	14	146	13	168	15
Mis-representation	65	6	59	5	48	4
Negligence	119	11	113	10	135	12
Sundry	34	3	47	4	25	2
Transaction errors	197	18	296	26	287	26
Unfair treatment	144	13	186	16	139	13
Total	1093	100	1135	100	1115	100

all of it, and nor do the continued delay problems in one bank's internal complaints process, as mentioned below.

It is apparent that we opened more dispute investigations at times when banks' internal complaints-handling teams were short-staffed. Some of these disputes were resolved shortly after an investigation commenced and could well have been resolved earlier by the bank if a little more time and care had been spent on the matter.

While these three factors contributed to the increase, I suspect that a fourth factor underlies them. Anecdotal evidence indicates that there has been a general increase in complaints to banks' internal complaints processes, and if this is the case, it would seem that banks have become better at directing complainants to that process in the first instance. This would account both for the decrease in initial complaint contact with my office and for the increase in disputes as the unresolved complaints become deadlocked.

Whatever the cause of the change in complaint trends, I am pleased to record that with no increase in staff, we completed 39 more dispute investigations than in 2000/1 and carried over very slightly fewer investigations to the next year.

The overall settlement rate of complaints as shown in Table 2A appears to be decreasing, and there is an increase in deadlocked complaints - those complaints that revert to my office after having been referred to banks' internal complaints processes. This may indicate a greater volume of complaints being made direct to banks and settled there, though in view of the increase in settlements after my office has become involved (Table 2B), it could also be evidence that banks are not always resolving those cases where an agreed settlement is possible.

I am glad to see a decrease in disputes going to a formal recommendation after the

substantial increase last year. As the reduction is greatest in cases where the complaint was not upheld, it seems likely that the improvement in the time taken to conclude investigations (see below) has contributed to this outcome. The longer a complainant has to wait for his or her complaint to be addressed, the lower the likelihood that he or she will withdraw a complaint that is based on a mistaken understanding of banks' systems or that he or she will acknowledge that the problems underlying the complaint are not the bank's responsibility.

Once again, I am pleased to record that no award has been necessary.

ANALYSIS OF COMPLETED CASES BY AREA OF BUSINESS

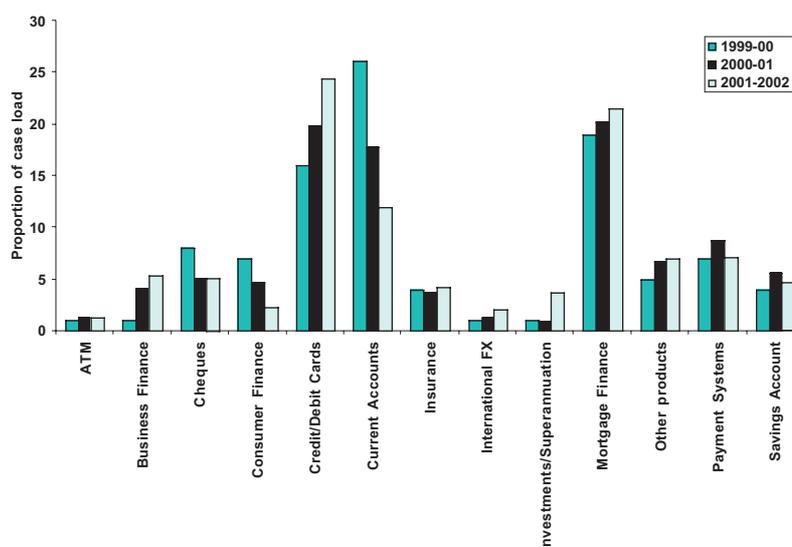


TABLE 4A Cases by area of business

	1999-00	%	2000-01	%	2001-2002	%
ATM	14	1	14	1	15	1
Business Finance	15	1	46	4	59	5
Cheques	84	8	58	5	56	5
Consumer Finance	78	7	53	5	26	2
Credit/Debit Cards	172	16	225	20	272	24
Current Accounts	285	26	202	18	129	12
Insurance	41	4	42	4	46	4
International FX	15	1	15	1	23	2
Investments/Superannuation	12	1	10	1	40	4
Mortgage Finance	202	19	229	20	239	22
Other products	59	5	77	7	78	7
Payment Systems	73	7	100	9	79	7
Savings Account	43	4	64	6	53	5
Total	1093	100	1135	100	1115	100

Apart from the increase in complaints and disputes to do with investment products, as mentioned above, there has been little change in the types of complaint brought to my office.

It is noticeable that a trend apparent in previous years has continued and complaints about debit and credit cards which have increased each year since the Banking Ombudsman scheme was first set up have finally replaced complaints about mortgage finance as the single largest group of complaints brought to my office. Most of these complaints will have a background of fraud.

A minor increase, which may have some significance for the future, occurred in complaints

about foreign exchange and international transactions. It reinforces my view that we are seeing an increase in cross-border transactions, often by bank customers who do not have much understanding of exchange rates or of the telegraphic transfer process and who may not have the language skills necessary to read and understand bank forms and information leaflets.

We continue to process all initial complaints speedily. All those who make a formal complaint to this office are sent at least an acknowledgement within five working days, and in almost all cases those complaints that are to be referred to a bank's internal complaints process are referred within that time frame also.

ANALYSIS OF COMPLETED DISPUTES BY AREA OF BUSINESS

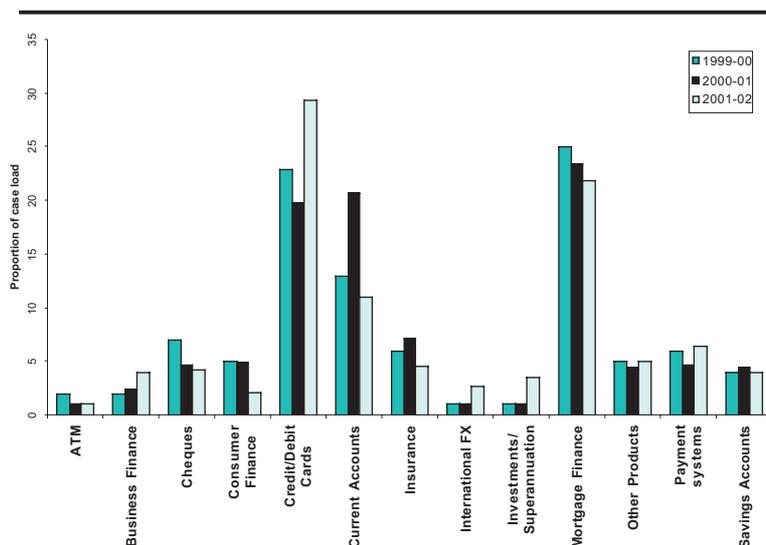


TABLE 4B Disputes by area of business

	1999-00	%	2000-01	%	2001-02	%
ATM	5	2	4	1	4	1
Business Finance	7	2	9	2	18	4
Cheques	23	7	17	5	17	4
Consumer Finance	17	5	18	5	10	2
Credit/Debit Cards	76	23	72	20	116	29
Current Accounts	44	13	75	21	43	11
Insurance	21	6	26	7	19	5
International FX	4	1	4	1	11	3
Investments/Superannuation	3	1	4	1	13	3
Mortgage Finance	81	25	85	23	89	22
Other Products	16	5	16	4	22	5
Payment systems	19	6	17	5	23	6
Savings Accounts	12	4	16	4	16	4
Total	328	100	363	100	401	100

The time taken to resolve disputes is improving. This year 22% of disputes were resolved within 90 working days, as opposed to 18% last year. 27% of disputes took more than 200 working days to resolve whereas last year 33% fell into that category. Very few of the complaints that take a long time to resolve have been affected by substantial delays in this office. The usual reason for a lengthy investigation is delay on the part of the complainant or the bank in responding to requests for information or comment. Some investigations have been suspended while a complainant is out of the country or recovering from a period of ill health.

As indicated in last year's annual report, one of the main points at which delay occurs in the process is when the investigatory work on a complaint has been concluded and an assessment needs to be written. In most cases no more than six weeks elapses, but there have been delays of up to five months this year. This is not satisfactory, and I hope to see improvements in the coming year.

Fewer complainants this year have written after the conclusion of an investigation to express their views about the investigation of their complaints. Of those who did write, 103 expressed satisfaction while 27 were dissatisfied.

A total of \$472,622.76 was paid in compensation by banks to complainants who had lodged a complaint with my office. This figure is rather lower than in comparable years in the past as there were no substantial settlements involving insurance claims.

BANKS' INTERNAL COMPLAINTS PROCESS

In the first half of the 2001/2 year, we continued to experience problems with delays in one bank's internal complaints process and with its subsequent provision to my office of reports and other information. Several cases reached dispute status when they ought to have been resolved by the bank, but where the three month rule applied. If a complaint is not resolved within three months of the date on which it was formally made to the bank, I may commence a dispute investigation even though the complaint may not have been fully considered by the bank's internal complaints process.

Similarly, if a complainant has had to wait an unreasonable length of time for telephone calls to be returned or letters to be written, he or she is likely to develop a stronger sense of grievance and be less inclined to accept explanations and offers of settlement even if made within the three month limitation period.

Matters improved greatly in the second half of the year, although the position is still rather fragile, with a recurrence of delays and other problems during periods of staff leave. This is a problem that affects other banks as well and highlights the need to ensure that complaint-handling teams have sufficient resources to provide a consistent service to bank customers.

REVIEW OF THE CODE OF BANKING PRACTICE

The New Zealand Bankers' Association reviewed the Code of Banking Practice and published its discussion document in the form of an amended Code in 2001.

It was pleasing to see the draft addressing some of the standards that need to be set as a result of the increased use of electronic banking since the Code was last reviewed. It also contains new and useful

provisions on, for example, the information to be given to customers when a bank proposes to list them with a credit reference agency.

The draft Code placed a much greater emphasis than either of its predecessors on customer obligations. There are, of course, obligations on both sides of the bank/customer relationship, but I question the appropriateness of including extensive material on customer obligations in a code which is expressed to be a code setting out banking standards.

I also had some concerns about provisions in the draft that appeared to give little consideration to the information imbalance between banks and their customers. The normal bank/customer relationship is not a relationship of equals. Most bank customers do not have access to the same level of information, experience and expertise as banks can call on. Particularly where information needs to be

TABLE 5 Cases by complainant

	1999-00	%	2000-01	%	2001-02	%
Female	385	35	408	36	422	38
Male	451	41	512	45	538	48
Couple or Group	170	16	152	13	123	11
Company	73	7	55	5	25	2
Society	10	1	7	1	7	1
Partnership	2	0	1	0	0	0
Total	1091	100	1135	100	1115	100

TABLE 6A Time taken - all cases

	1999-00	2000-01	2001-02
0 to 29 days	724	739	695
30 to 59 days	84	82	90
60 - 89 days	52	45	65
90 days plus	233	269	265

TABLE 6B Time taken - disputes only

	1998-9	1999-00	2000-01	2001-02
0 to 29 days	11	16	20	21
30 to 59 days	40	45	46	65
60 - 89 days	51	41	37	50
90-119	40	35	43	53
120-149	30	41	45	50
150-199	62	56	53	53
over 200	55	94	119	107

exchanged to enable the relationship to function effectively, there should be an obligation on the bank not only to provide the information needed for the customer to make an informed choice but also to make sure that the customer understands what sort of information he or she needs to provide to the bank. It is unfair to penalise a customer for failing to provide information that he or she did not know was relevant or to make it the customer's obligation to obtain sufficient information to make an informed choice when the customer cannot reasonably be expected to know how to go about such a task.

I made substantial submissions on the discussion document, and I understand that a number of other persons and organisations did likewise. These submissions were still under consideration at time of writing.

TERMS OF REFERENCE

There have been some changes to the Banking Ombudsman's Terms of Reference during the year, effective from 1 April 2002.

1. The limit on the Banking Ombudsman's jurisdiction to award compensation for direct loss or damage resulting from a bank's wrongful act or omission has been increased from \$100,000 to \$120,000 in most cases and to \$150,000 in complaints about banking services relating to insurance. The limit on awards of compensation for inconvenience is now \$4,000.
2. Changes have been made to the definition of "Participating Bank" so that banks may bring into the Banking Ombudsman scheme some of their associated companies that were not previously eligible for membership as they were not wholly owned subsidiaries of the participating bank.
3. Participating banks have undertaken not to commence legal proceedings against a complainant while the complaint is under consideration by the Banking Ombudsman unless they have first obtained the consent of their chief executive and given the Banking Ombudsman notice of the intended proceedings.

4. Banks may no longer consent to the Banking Ombudsman conducting an investigation of a complaint that would otherwise fall outside her Terms of Reference because:

- (a) the complaint has been the subject matter of court proceedings or proceedings before another dispute resolution authority; or
- (b) the appropriate waivers of confidentiality have not been produced.

A full copy of the Terms of Reference will be found at the end of this report.

A POTENTIAL OVERLAP OF JURISDICTION

Kiwibank is now a member of the Banking Ombudsman scheme, but as a publicly owned entity, it is also subject to the Ombudsmen Act 1975 and the Official Information Act 1982 and hence the jurisdiction of the parliamentary Ombudsmen. Accordingly a protocol has been agreed with the Chief Ombudsman, Sir Brian Elwood, for handling complaints where we may both have jurisdiction.

In essence we are agreed that if the Ombudsmen receive complaints to do with the provision of banking services by Kiwibank, such complaints will be referred to this office. When I receive complaints about Kiwibank that fall outside the Terms of Reference they will, depending on the circumstances, either be referred directly to the Ombudsmen or advice will be given to the complainant about the right of access to the Ombudsmen.

Complainants will be reminded about their rights of access to the Ombudsmen when I make a formal recommendation. They are already reminded of their rights of access to the courts in such circumstances.

CONTACT WITH OTHER OMBUDSMAN SCHEMES

In July 2001, I visited the Canadian Banking Ombudsman in Toronto and took the opportunity to study the Canadian process that sees each bank appoint its own ombudsman, with the industry ombudsman considering only those complaints that

cannot be resolved by the bank ombudsmen. I met two of the bank ombudsmen and found that in practice the system is not very different from the most effective complaints-handling processes in New Zealand banks, where the manager in charge of the central complaints handling team has sufficient authority to overrule decisions made elsewhere in the bank and sufficient separation from the bank's operations to be able to form a reasonably objective view of the merits of complaints. The main difference is that the Canadian system is formalised and is marketed to bank customers as an opportunity for an independent review of complaints.

From Toronto I went to London where I called on the Financial Services Ombudsman and the Banking Ombudsman. In July 2001, the amalgamation of various separate dispute resolution bodies in the finance sector was not yet complete and there were interesting insights to be had into the formation of a new type of private sector ombudsman scheme that has a different basis from existing schemes as well as being much larger.

In April 2002 I attended an international meeting of finance sector ombudsmen in South Africa. As well as a substantial contingent from the host country, there were attendees from the UK, Canada, Australia, and Botswana. It was an excellent opportunity to learn about ombudsman operations in different sectors of the finance industry as well as in different cultural and regulatory environments.

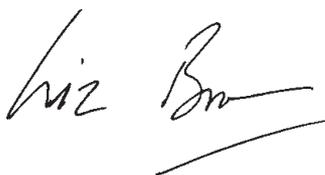
It is always pleasing to be consulted on proposals for new dispute resolution schemes, and during the year I was happy to discuss proposals for a Milk Commissioner and for dispute resolution in regard to utility services. Assistance has been provided to the Electricity Complaints Commissioner who commenced operations in April 2002.

STAFF

The Office of the Banking Ombudsman has been very fortunate in the stability of its staff, and during the year to 30 June 2002, no permanent staff left or were appointed.

In the second half of 2001, we arranged a highly successful exchange with the office of the Australian Banking Industry Ombudsman. Ann Sheehan of this office spent six months in Melbourne and in return Darren Hexter of the Australian Banking Industry Ombudsman's office spent six months with us. As the Australian Banking Industry Ombudsman handles a very much greater volume of complaints than we do, while in New Zealand we have a wider jurisdiction and a more flexible process, it was a useful learning experience for all parties.

As ever, my thanks go to the dedicated and professional team of investigators, enquiries staff and administrators who enable the office to run smoothly and who deal with the most distressing and difficult complaints with patience and expertise. I would like to acknowledge in particular the contribution made by Susan Taylor as Chief Investigator, and by Chris McIntyre and Ross Miller as investigators, all of whom have been with the office since 1992. Special mention should also be made of Ann Sheehan who was employed as a typist in 1992 and who is now a much-valued investigator, having completed her professional qualifications during her employment with us.



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:
- 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
 - 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 (incorporating Postbank)
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
TSB Bank Limited
WestpacTrust

“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

- 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 provi-

sion 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.
- 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

- 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.
- 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.
- 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).
- 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.
- 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.
- 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.
- 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.
- Notwithstanding paragraph 16 the Banking Ombudsman shall not be bound by any legal rule of evidence.
- 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:
 - obtained the consent of its chief executive to the commencement of proceedings; and
 - 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

- 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.