

# FOREWORD BY THE CHAIRMAN

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## Another successful year

This ninth report of the Banking Ombudsman not only provides the usual annual overview of the activities of her office but also serves to inform the wider community on just how well this private dispute resolution system is working. As Chairman of the Banking Ombudsman Commission, I am delighted to write this foreword to what is a record of another successful year's operation of the Banking Ombudsman scheme.

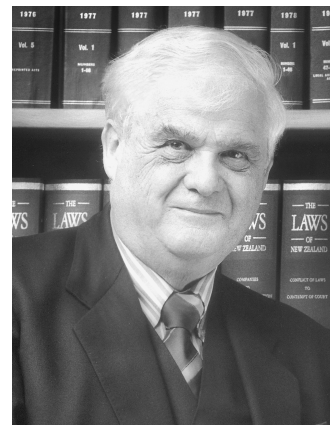
The report and the compendium of case notes which accompanies it demonstrate the independence of the Banking Ombudsman and her staff. This independence has been the principal reason for the success of the scheme since it was established in 1991. Although the scheme is financed by levies on banks at no cost to complainants, independence is assured by the composition of the Commission which consists of an equal number of bankers and consumer representatives and an independent chair. The legal rights of complainants are preserved. A complainant may take legal remedies if not satisfied with the Banking Ombudsman's recommendation, whereas a bank is obliged to accept that recommendation. There are always going to be some complainants unhappy with the result of the process just as there are litigants disappointed with the result obtained in the Court system. The unfettered ability to resort to the Courts allows disaffected persons to test the Banking Ombudsman's judgment. Few such actions have been taken and even fewer have been successful.

Every report of the Banking Ombudsman shows how the same problems continue to arise most years. Some areas of grievance fluctuate as banking conditions change. The report reveals that the total number of complaints, disputes and enquiries received in the year in question was almost the same as that in the previous year but with a greater

number of complaints and slightly fewer disputes. An increasing number of cases involve difficult legal issues and complex situations. Such cases call for considerable skill on the part of the Banking Ombudsman and her staff in bringing them to an effective resolution. Movement towards electronic banking is reflected in the increasing number of complaints about payment systems and the use of debit and credit cards.

The period of stability throughout the year under review has meant that the time involved in bringing cases to a conclusion has improved. There are now fewer cases where the waiting time is greater than desirable. An important feature of the year under review has been the initiatives taken by the Commission and the Banking Ombudsman to ensure that the complaint processes are effective and transparent. The strategies are outlined in some detail in the Banking Ombudsman's report. I am delighted that the enquiry conducted by public law specialists, Chen & Palmer into the Banking Ombudsman's investigation process and their evaluation of that process against stated criteria were positive. The areas examined by them were procedural fairness and impartiality, recommendations, settlements, awards and jurisdictional decisions, protection of confidentiality and effective dispute resolution. Chen & Palmer were given free access to randomly selected files and produced a detailed report which, whilst pointing out areas of improvement, was supportive of the Banking Ombudsman and her processes.

Other key initiatives taken to gauge the effectiveness of the Banking Ombudsman scheme were 'exit surveys' - seeking the views of complainants once a complaint had been finalised and 'mystery shopping' - involving employing students to visit banks to test



*Hon Sir Ian Barker QC*

whether customers were being fully notified of a bank's internal complaints procedures and the workings of the Banking Ombudsman scheme. In over 25 percent of the 69 bank branches surveyed, there was no written information about the complaints procedure. The survey showed that some banks need to take steps to comply with their obligations under the Code of Banking Practice about complaints, while some staff training programmes about complaints processes needed to be enhanced.

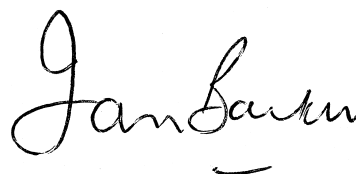
The Code of Banking Practice is due to be revised at the end of 2001. I have accepted the position of facilitating and co-ordinating the submissions to be received by the New Zealand Bankers' Association in this process. The Banking Ombudsman, who is well-positioned to make comments on the Code, intends to make full submissions. No doubt consumer organisations and government agencies concerned with consumer affairs will do the same. My hope is that all who have some comment to offer over any aspect of banking practice will make a submission to the review.

There have been no changes in the membership of the Commission during the year under review. I am grateful to Commission members, Sir John Anderson, Dr Murray Horn, Mr David Russell and Ms Margy-Jean Malcolm for their continued interest

in and support of the scheme and their wise guidance of the affairs of the Commission.

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. I thank all the members of her staff whose loyalty and devotion is outstanding. I note with pleasure that all of the three investigators appointed when the Scheme was commenced, namely Ms Susan Taylor, Mr Chris McIntyre and Mr Ross Miller, are still with the Banking Ombudsman's office. They bring to their task the same enthusiasm and ability as they did when the scheme was in its pioneering stage. All the staff show an efficient and cheerful approach, good humour and tact in dealing with a wide range of complainants.

The report and its accompanying case notes are worthy of study, not just by those involved in the technical side of banking but also by all users of bank services throughout the country.



**Hon Sir Ian Barker QC**

Chairman

Banking Ombudsman Commission



*Banking Ombudsman Commission.*

*From left:*

*Mr. Tom Gallagher (alternate member),  
Sir Ian Barker, Ms Margy-Jean Malcolm,  
Sir John Anderson, Mrs Liz Brown,  
Dr Murray Horn, Mr David Russell.*

# REPORT OF THE BANKING OMBUDSMAN

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## A time of consolidation

The period of stability on which I commented in last year's report has continued in the year to 30 June 2001. The Banking Ombudsman's office continues to process complaints effectively and efficiently while maintaining absolute independence. There have been no new major issues and the complaint level has changed very little. However, there have been changes in the nature of complaints, disputes and enquiries, partly in response to changes in the banking environment.

We have taken the opportunity to evaluate how we deliver our services and while they showed a standard of excellence, some areas to be worked on have been identified. Similarly, in my role of monitoring the Code of Banking Practice, I have made recommendations on areas where banks need to improve their performance.

The Minister of Consumers Affairs' "bankline" exercise, which took place in July and August 2000, resulted in the referral of a substantial number of complainants to my office. A high point of 55 new dispute investigations was reached in August, but many of these complaints were settled very quickly. Nearly two-thirds had been resolved within 120 working days. After August the intake of new complaints dropped and since then new dispute investigations per month have fluctuated around 33.

As a result, it has been possible to make very pleasing progress on reducing the backlog of work that had built up over the period of rapidly increasing complaint intake. There will always be some cases where the complexity of the issues or delays on the part of the complainant mean that a lengthy investigation is inevitable, but over 65 percent of cases are now resolved or at least past the stage of initial assessment within 120 working days of receipt.

## ENSURING A HIGH STANDARD OF SERVICE

In order to deliver a high quality service the Banking Ombudsman scheme must have fair and impartial investigation procedures, must reach those members of the public who are likely to need its services and must provide them with appropriate information and assistance. A number of means have been used to assess our position and ensure that the scheme operates in this way.



Liz Brown

## External Review of Investigation Process.

As foreshadowed in my last annual report, Chen & Palmer (now Chen, Palmer and Partners), public law specialists of Wellington, were engaged to conduct a review of the investigation process and to evaluate it against agreed criteria. Those criteria fell into four categories: procedural fairness and impartiality; settlements, recommendations, awards and jurisdictional decisions; protection of confidentiality; and effective dispute resolution.

Chen & Palmer reviewed a selection of investigation files randomly chosen from all investigations completed during the year to 30 June 2000 and produced an extremely thorough and detailed report which not only assessed the investigation process against the criteria, but also documented it in a way that will be useful for a number of purposes in the coming years.

The following conclusions were reached:

1. Overall, the investigation process of the Banking Ombudsman is fair and impartial.
2. The process of the Banking Ombudsman in relation to settlements, recommendations and jurisdictional decisions (there were no awards made in any of the cases considered) complies with the requirements of the Terms of Reference.

3. Confidential information is appropriately protected from disclosure, although there were some process deficiencies in relation to waivers of confidentiality and the treatment of confidential information following the closure of some investigations.
4. Generally, investigations were timely and conducted according to established procedure, apart from some minor deficiencies in complying with administrative procedures.

Recommendations were made on the deficiencies noted in 3. and 4. above. All recommendations have been accepted and the necessary changes and additions to our procedures have been made. Copies of the Chen & Palmer report are available from the Office of the Banking Ombudsman.

### **Survey of Complainants**

A survey of complainants was undertaken to measure the level of satisfaction with the service we provide. Specifically the main objectives were to establish the level of satisfaction with -

- access to the Banking Ombudsman
- the information supplied by the Banking Ombudsman about the Banking Ombudsman scheme and the complaints process
- the process of investigation
- the general performance of the office.

Questionnaires were sent to all complainants whose investigation files were closed during the six months to 28 February 2001. A response rate of 57 percent was recorded with 137 of the 240 questionnaires being returned. A few respondents were clearly so dissatisfied with the outcome of the investigation of their complaints that they were not prepared to respond positively to any of the questions, but they were probably balanced by those who were very pleased with the outcome and were equally indiscriminating.

In general, complainants had not had difficulty finding information about the Banking Ombudsman scheme or making contact with us. The information we supplied to complainants was highly rated with over 90 percent of respondents finding the information useful or very useful. Most complainants

found it easy to discuss their complaints with investigators and felt their complaints were understood.

Timeliness was a problem, with 50 percent of respondents indicating that the investigation of their complaint took longer than expected. However in view of the problems associated with the rapid increase in workload in the late 1990s, this response was anticipated. In the worst case there was a waiting period of up to three weeks between the receipt of a complaint and its allocation to an investigator, and a further waiting period of up to seven months between completing all the investigatory work and issuing an assessment. Considerable progress has been made since then, but the respondents to the survey would have been among those worst affected by the delays.

Sixteen percent of respondents considered that the Banking Ombudsman did not investigate their complaints from an independent point of view and more had some reservations about independence. It proved difficult to establish how far this response indicated real concern about the independence of the Banking Ombudsman's office as some of the comment attached to the responses to this question, while clearly reflecting dissatisfaction with the outcome of the investigation of the respondent's complaint, did not seem to be alleging bias or any other lack of independence. All those who returned negative answers to this question were clearly dissatisfied with my findings on their complaints, although half these respondents had either agreed to a settlement that saw them receive less than their original claim or had failed to respond to an unfavourable initial assessment of their complaint. In other words, they had had an opportunity to pursue their complaint further but for one reason or another had failed to do so.

Given the outcome of the Chen and Palmer review, I am satisfied there is no actual bias towards either complainants or banks on the part of this office, and very little on which a reasonable perception of bias could be founded. Chen and Palmer found two cases where the wording of letters could have been

better, but in neither case did the wording lead to an allegation of bias. It is, however, clear that it cannot be stressed too often that not only am I and my staff completely independent of the banking industry but the whole Banking Ombudsman scheme is structured to ensure that independence. Complainants have noted that the scheme is funded by the banking industry, but may not be aware that the level of funding is controlled by the Banking Ombudsman Commission, on which banks have only minority representation.

Probably the most pleasing result of the survey was that 67 percent of complainants rated the office's overall performance as good or very good and only 15 percent as poor or very poor.

### Forum For Intermediaries

The final measure in assessing the workings of the Banking Ombudsman scheme was a very successful Community Organisations Forum, held on 22 September 2000. The forum also provided a useful venue to educate and inform those organisations about the scheme.

Invitations were issued to 25 organisations whose role and clientele meant that they either did, or were likely to, act as intermediaries to refer consumers to the Banking Ombudsman service. Representatives from twelve organisations attended, with a further two organisations expressing interest but unable to send a representative. While discussion at the forum tended to focus on specific banking issues that would be more appropriately considered in the context of the review of the Code of Banking Practice, the consensus was that it had achieved its purpose. In particular, its success could be measured by the following:

- new links were forged, especially with disability and beneficiary groups
- assurance was provided that those groups who have regular contact with the Banking Ombudsman are

comfortable with current operation of the scheme

- it highlighted the need to keep developing relationships and communication channels with groups that act as intermediaries to inform consumers about the channels that exist for resolution of their complaints.

### 'Mystery Shopping' Exercise

A further project was aimed at obtaining information about the ease with which bank customers could access information about the complaints process. Students were employed to visit bank branches and look for information about making a complaint, then at a later date to visit the branch again and ask for information about making a complaint.

It was disappointing to note that in 26 percent of the 69 branches surveyed, no written information about the complaints process was found and only in 46 percent was an information leaflet easily found and immediately identifiable. However where information was available from branches, there were very few negative comments about the standard of that information. The relevant brochures provided by banks were generally considered clear and comprehensive.

## OVERALL STATISTICS

<b>Table 1</b>	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
Cases received	241	348	423	539	705	801	1061	1113	1112
Completed	180	313	453	510	663	779	1006	1093	1118
Carried over	61	96	72	101	143	165	220	240	234

<b>Table 1A</b>	Cases received	1998-99	%	1999-00	%	2000-01	%
Enquiries		87	8	160	15	135	12
Complaints		624	59	582	52	623	56
Disputes		350	33	371	33	360	32
Total		1061	100	1113	1112	1118	100

<b>Table 1B</b>	Analysis of Cases Completed 2000-2001 by Case Category						
	1998-99	%	1999-00	%	2000-01	%	
Enquiries	88	9	165	15	135	12	
Complaints	628	62	600	55	623	56	
Disputes	290	29	328	30	360	32	
Total	1006	100	1093	100	1118	100	

<b>Table 1C</b>	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
Telephone enquiries	729	1588	1623	2417	2512	3091	3079

#### ANALYSIS OF CASES RECEIVED 2000-2001 BY CASE CATEGORY

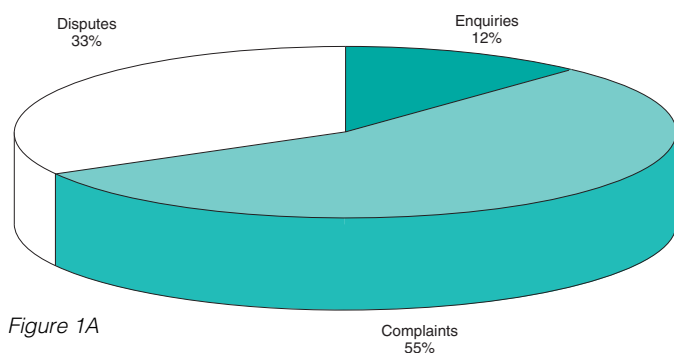


Figure 1A

#### ANALYSIS OF CASES COMPLETED 2000-2001 BY CASE CATEGORY

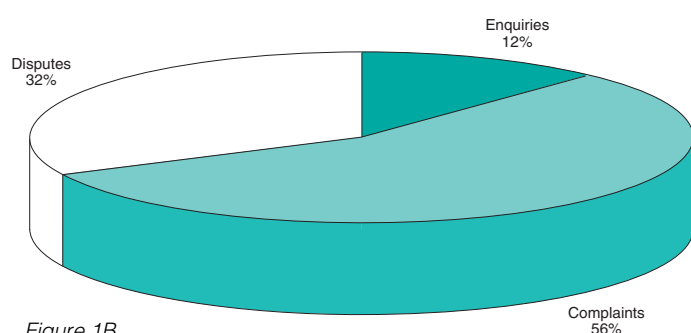


Figure 1B

In seeking information from bank staff, students were asked to rate the responses for helpfulness and knowledgeability. Scores for helpfulness were generally higher than those for knowledgeability, and in some cases staff were clearly anxious to assist but ignorant of their own bank's complaints procedures. In 63 percent of cases, however, students were given a leaflet containing the appropriate information.

To the extent that it is possible to form conclusions from this small-scale survey, I concluded that:

1. Banks need to take steps to ensure that they comply with their obligations under the Code of Banking Practice and have brochures about the complaints process on display in branches at all times;
2. Current information brochures are of a high standard and do not need to be reviewed; and
3. There may be some deficiencies in staff training on the complaints process. All staff should at

least be aware that there is a process for the consideration of complaints and that information about it is contained in standard brochures.

#### ENSURING GOOD BANKING PRACTICE

Early in 2001 the New Zealand Bankers' Association commenced its regular review of the Code of Banking Practice. In the 1996 edition of the Code, the banks undertook to keep the Code under constant review and to submit it for comprehensive public review within five years of 1 November 1996.

There have been very substantial changes in the banking industry since 1996 and a comprehensive review of the Code is certainly due. Along with the Code itself, the Association is also reviewing the Statement of Principles entitled "Banks and Small, Medium Size and Farming Businesses Working Together". The Statement of Principles was issued in June 1999 and extends the greater part of the Code to cover banks' relationships with their business customers as well as establishing some principles to be observed in the lending relationship between banks and their business customers.

The Association is therefore faced with the task of revising the Code so that it incorporates material relevant to business customers as well as making sure that the contents are completely up to date.

In order to assist the Association in its review and fulfil my function of monitoring the Code, in January 2001 I submitted to the Association a preliminary paper on the Code review. To a large extent this was simply a collation of the various comments and recommendations that I had made in previous annual reports. I also advised the Association of those instances where I had conducted a survey of the banking industry in order to establish the principles of good banking practice and had been able to ascertain principles that appeared to be generally accepted as the standard, but had not been incorporated in any edition of the Code.

It seemed to me that there are several areas on which the review needs to concentrate. The first of these concerns recent developments in banking technology and practice. Since the last Code review

there have been substantial changes in banking practice, largely brought about by developments in the available technology. Banks have encouraged their customers to use ATMs and EFTPOS, telephone banking services and now internet banking. Automatic payments and direct debit and credit services are not new but are increasingly used. Bank branches are fewer and banks are encouraging customers to view branches as sales and service centres rather than as the place to conduct their everyday banking transactions.

The 1996 Code still focused largely on traditional banking services along with debit and credit card use. Its section 8 “Other payment services” is brief and lacking in detail. Various issues have arisen out of complaints considered since 1996 and the Code has been of little assistance in determining them. In particular there are issues to do with telephone and internet banking where I would expect banks to provide the same level of consumer protection and security as in other transactions conducted at a distance. The same level of protection against fraud should be offered as is currently offered against card fraud, that is, provided the customer takes reasonable steps to safeguard the telephone and internet banking access details, banks should carry the risk of fraudulent transactions.

Problems also arise out of the reversal of automatic payments and direct debits and of other instances in which funds are transferred electronically between banks. Clearer rules are needed about customers’ entitlement to access funds that have been electronically transferred, and particularly better information is needed about their status as cleared or uncleared funds.

Other issues I have requested the Association to consider in the course of its review are the circumstances in which a bank may place a “freeze” on a customer’s account, the provision of more accurate and timely information about bank fees, and notice to joint borrowers where one borrower seeks unilaterally to increase the amount borrowed or to extend the time for repayment.

It is also timely for banks to consider the rules about liability for unauthorised transactions made using debit and credit cards and, in particular, who should

## ANALYSIS OF COMPLETED CASES BY RESULT

Figure 2A

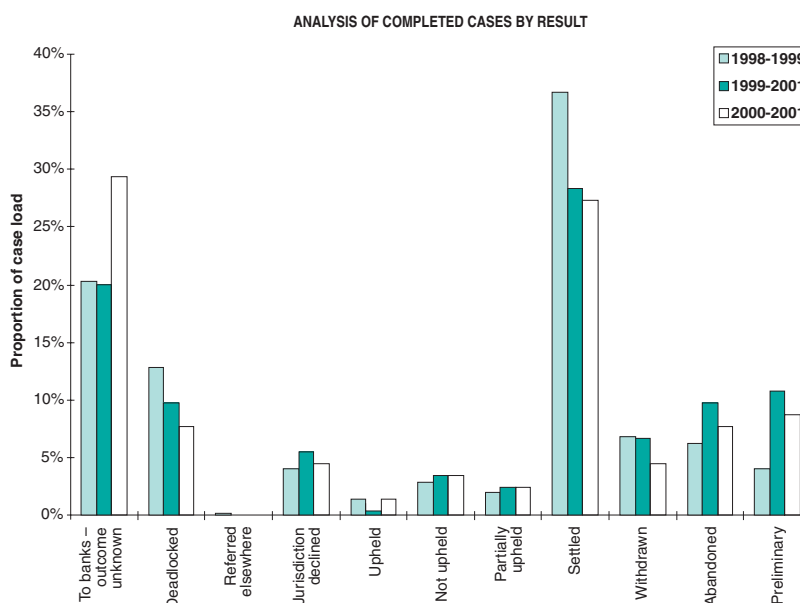


TABLE 2A All cases by result

	1998-99	%	1999-00	%	2000-01	%
To banks - outcome unknown	203	20	220	20	328	29
Deadlocked	131	13	112	10	96	8
Referred elsewhere	1	0	2	0	0	0
Jurisdiction declined	46	5	59	6	51	5
Upheld	15	2	9	1	17	2
Not upheld	34	3	40	4	44	4
Partially upheld	25	2	31	3	38	3
Settled	362	36	307	28	310	27
Withdrawn	73	7	78	7	54	5
Abandoned	67	7	112	10	93	8
Preliminary	46	5	123	11	104	9
Total	1003	100	1093	100	1135	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.*

bear the burden of proof when an unauthorised transaction is made and the bank alleges a breach of contract on the part of the customer such as to negate the usual protection against unauthorised transactions.

I understand that a discussion document will be available for public consultation late in 2001 and I would expect to make further submissions at that time.

### COMPLAINTS HANDLING IN BANKS

The Code of Banking Practice requires each bank to have an internal complaints review procedure which is documented, is accessible to customers and provides for the speedy resolution of disputes in a fair and equitable manner. Only when a complaint has been considered by that procedure without

resolution may the complainant ask the Banking Ombudsman to investigate it.

There have been very substantial improvements in banks' internal complaints processes in recent years. All larger banks have a dedicated complaints-handling team whose task is to consider those complaints that are not resolved at the customer's first point of contact with the bank. These teams have a degree of separation from the operational side of the bank, and in general provide a very fair consideration of complaints to the extent that in some cases they will even act as advocate for customers against other parts of the bank.

The complaints-handling teams also act as liaison between the bank and my office, and in many cases we work together to find a fair solution to a

customer's complaint. We have an excellent working relationship with the teams and I have very few reservations about their effectiveness. However, banks do need to ensure their complaints teams are adequately resourced. When a customer is already dissatisfied with the service provided by the bank, delays and inadequacies in the complaints process can intensify an existing sense of grievance to the point where rational discussion of resolution options becomes impossible. It is no coincidence that over 30 percent of my office's caseload comes from a bank that has had a chronic understaffing problem in its complaints team.

When the Banking Ombudsman scheme was first established, there were effectively two models of complaints-handling in banks. The most successful has been the model described above and now used by all major banks, but there remain traces of the other model where complaints were considered and decisions on them made by managers responsible for the part of the bank where the complaint arose. In such a case, there was usually

## ANALYSIS OF COMPLETED DISPUTES BY RESULT

Figure 2B

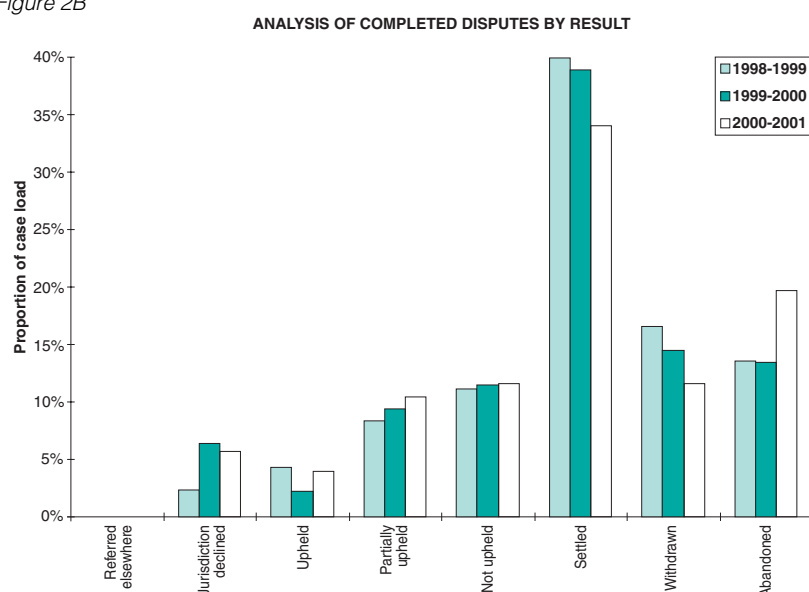


TABLE 2B Disputes by result

	1998-99	%	1999-00	%	2000-01	%
Referred elsewhere	0	0	0	0	0	0
Jurisdiction declined	10	3	23	7	23	6
Upheld	15	5	9	3	17	5
Partially upheld	25	9	31	10	38	11
Not upheld	34	12	40	12	44	12
Settled	115	40	129	39	124	34
Withdrawn	50	17	50	15	44	12
Abandoned	41	14	46	14	73	20
Total	290	100	328	100	363	100



a person nominally taking overall responsibility for complaints but whose main role was to act as a channel for communication between complainants and managers and between my office and managers rather than to take an active part in complaint resolution.

I still find some cases where complaints-handlers are reluctant either to make a commercial decision that a small claim is not worth disputing or to exercise their own judgement of what is fair in the circumstances when they know that the complaint is strongly disputed elsewhere in the bank, especially if senior management is involved. A truly robust internal complaints process should mean that there is someone within the process with the authority and/or support at the most senior levels of management to make a decision on the merits of a complaint without fear of repercussions.

As I have noted in previous annual reports, and as is borne out by the results of the survey of banks conducted in April 2001, the other weak point in banks' internal complaints processes is the point of entry into the process. If information about the complaints process is not easily accessible through bank branches, and in fewer than half the branches surveyed was the information instantly accessible, then I have major concerns for those customers whose main contact with their bank is by telephone. Call centre staff do not necessarily receive the same training as branch staff and their expertise is often confined to specific areas of their bank's operations. I continue to hear from complainants who have been given inaccurate advice about the complaints process by bank staff.

In particular, I am concerned that complainants are (inaccurately) told that small claims are not eligible to be considered by the bank's complaints

process or by the Banking Ombudsman. Many of the complaints I investigate involve only small sums of money but are very important to the customer. There is absolutely no lower limit to the claims I can consider.

I would encourage those banks that are not already doing so to consider strengthening the support and authority given to their complaints-handling team and to review their training of front-line staff to ensure that at the very least they are aware that their bank has a complaints process and that details of it are easily available. Information leaflets about the complaints process - and the Banking Ombudsman process - must be on display in all

## ANALYSIS OF COMPLETED CASES BY PROBLEM HEADING

Figure 3

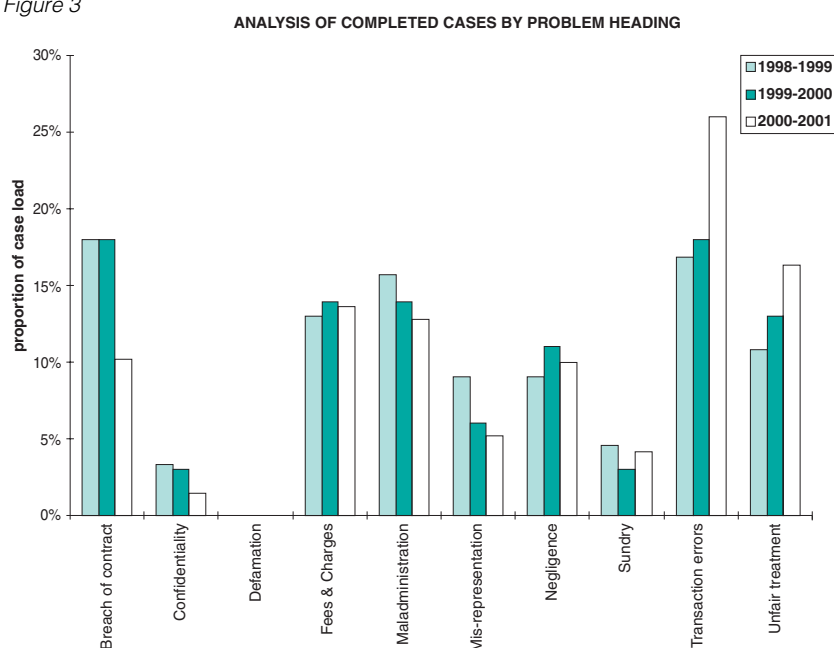


TABLE 3 Cases by problem heading

	1998-99	%	1999-00	%	2000-01	%
Breach of contract	183	18	198	18	116	10
Confidentiality	33	3	34	3	17	1
Defamation	0	0	0	0	0	0
Fees & Charges	125	13	155	14	155	14
Maladministration	159	16	147	14	146	13
Misrepresentation	91	9	65	6	59	5
Negligence	97	9	119	11	113	10
Sundry	44	5	34	3	47	4
Transaction errors	171	17	197	18	296	26
Unfair treatment	106	11	144	13	186	17
Total	1009	100	1093	100	1135	100

branches and should be sent in response to complaint contact made by telephone.

### COMPLAINT STATISTICS

While the total number of complaints, disputes and enquiries received in 2000/01 was almost exactly the same as in 1999/00, the make-up was somewhat different. There were fewer “enquiries”, that is cases that clearly fell outside the Terms of Reference; more “complaints”, that is cases that appeared to fall within the Terms of Reference in all respects except that they had not been fully considered by the relevant bank’s internal

complaints process; and slightly fewer “disputes”, that is complaints that appeared to be deadlocked and where an investigation was commenced. There was also an increase in “multiple cause” cases. These are cases where a single complainant lodges more than one complaint and the complaints are directed at completely different actions or omissions of the bank in question.

There was a very substantial increase in “enquiries” during the 1999/00 year, due at least in part to an increased level of complaint about banks’ fees and charges. Such complaints are generally excluded

from my consideration by the operation of paragraphs 20 and 21 of my Terms of Reference. The reduction this year probably reflects fewer increases in fees and charges and perhaps a degree of resignation among bank customers to a higher level of fees than has been their experience in the past.

There is no obvious reason for the small increase in “complaints” and this may simply be a natural fluctuation. That it has not led to an increase in “disputes” is, in my view, largely attributable to improved complaints handling in most banks’ internal complaints processes.

The effect of the stable intake of new disputes is reflected in the closure rate of dispute investigations. No extra investigating staff have been engaged either this year or last, but now that investigators are no longer struggling with an ever-increasing flow of new investigations, it has been possible to make inroads into the backlog of older cases awaiting assessment. It has also been possible to identify at an earlier stage the cases that may be able to be settled early through discussion and negotiation.

Because of the backlog of older cases, the improvements are not immediately obvious from the figures in Tables 6A

## ANALYSIS OF COMPLETED CASES BY AREA OF BUSINESS

Figure 4A

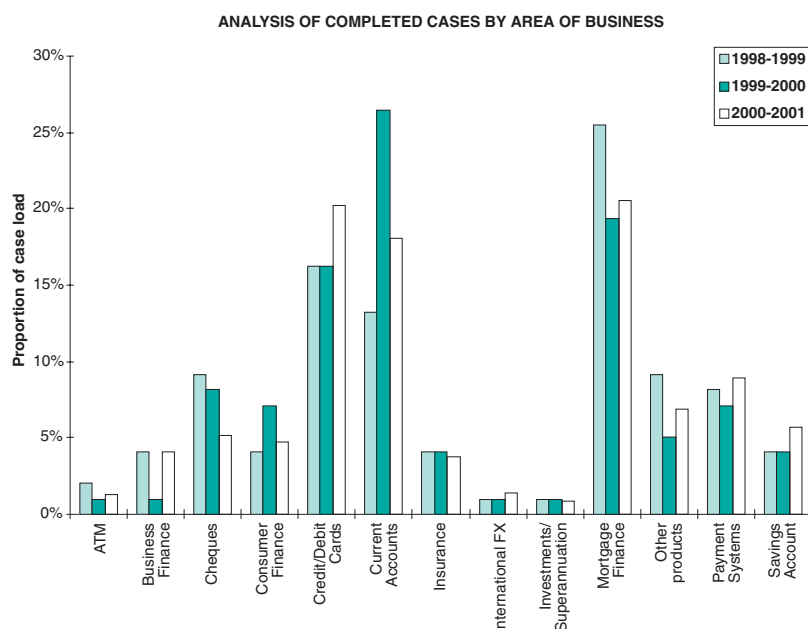


TABLE 4A Cases by area of business

	1998-99	%	1999-00	%	2000-01	%
ATM	18	2	14	1	14	1
Business Finance	37	4	15	1	46	4
Cheques	88	9	84	8	58	5
Consumer Finance	40	4	78	7	53	5
Credit/Debit Cards	165	16	172	16	225	19
Current Accounts	134	13	285	26	202	18
Insurance	43	4	41	4	42	4
International FX	16	1	15	1	15	1
Investments/Superannuation	8	1	12	1	10	1
Mortgage Finance	251	25	202	19	229	20
Other products	89	9	59	5	77	7
Payment Systems	79	8	73	7	100	9
Savings Account	41	4	43	4	64	6
Total	1009	100	1093	100	1135	100

and 6B, but I would expect them to be apparent next year. Certainly for the last six months there has been a steady reduction in the number of cases that take more than six months to resolve.

More importantly, it has been possible to make a very substantial impact on the main cause of delay in concluding investigations. As investigators' caseloads decreased, so it became possible to reduce the waiting period between the point at which all investigatory work had been concluded and the issue of an initial assessment. At the end of June 2001, the maximum waiting period had been reduced to a little over three months, considerably less in most cases.

While an agreed resolution is reached in the majority of complaint investigations, there has been an increase in the proportion of cases where it was necessary to issue a formal recommendation at the conclusion of an investigation - 27 percent of dispute cases fell into this category. To some extent the increase may be explained by a greater persistence on the part of complainants in pursuing their case beyond the point at which an unfavourable initial assessment is issued. There has been a marked drop in the number of complaints withdrawn during the course of investigation and this probably accounts to some extent for the increase in recommendations that a complaint be not upheld or partially upheld.

A recommendation that a complaint be partially upheld often signifies that a bank has been prepared to accept that it has erred and has caused the complainant loss or inconvenience but does not accept that it is obliged to pay the total amount of compensation claimed, and that its stance is found to

be justified. There is no obvious reason for the increase in recommendations that the complaint be upheld.

I am of the view that there has been an increase in a number of cases involving difficult and complex issues, and it may be that the increase in cases proceeding to a recommendation reflects this increase.

The types of problems brought to the Banking Ombudsman have not changed significantly in the

## ANALYSIS OF COMPLETED DISPUTES BY AREA OF BUSINESS

Figure 4B

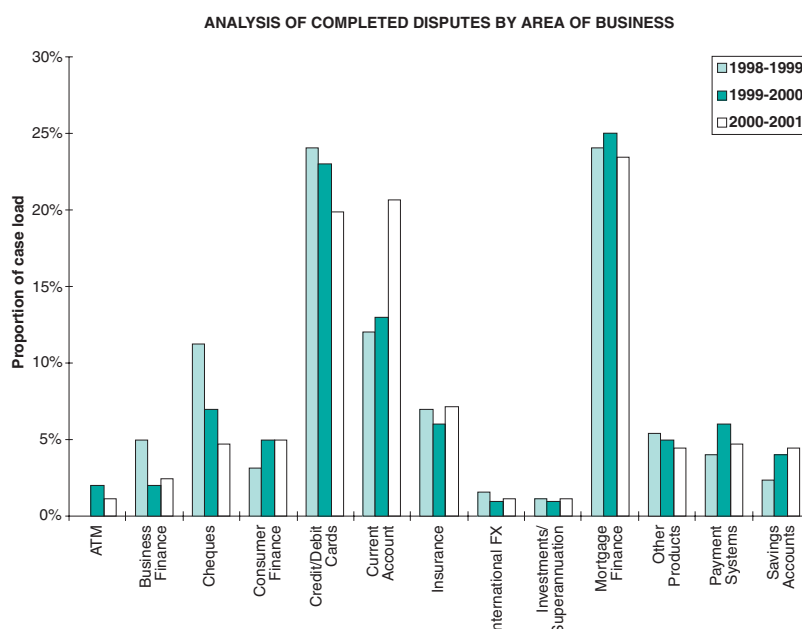


TABLE 4B Disputes by area of business

	1998-99	%	1999-00	%	2000-01	%
ATM	1	0	5	2	4	1
Business Finance	16	5	7	2	9	2
Cheques	33	11	23	7	17	5
Consumer Finance	8	3	17	5	18	5
Credit/Debit Cards	70	24	76	23	72	20
Current Accounts	34	12	44	13	75	21
Insurance	19	7	21	6	26	7
International FX	5	2	4	1	4	1
Investments/ Superannuation	3	1	3	1	4	1
Mortgage Finance	70	24	81	25	85	23
Other Products	15	5	16	5	16	4
Payment systems	12	4	19	6	17	5
Savings Accounts	6	2	12	4	16	4
Total	292	100	328	100	363	100

## Analysis Of Completed Cases By Complainant

**TABLE 5** Cases by complainant

	1998-99	%	1999-00	%	2000-01	%
Female	346	34	385	35	408	36
Male	401	40	451	41	512	45
Couple or Group	186	19	170	16	152	13
Company	64	6	73	7	55	5
Society	4	0	10	1	7	1
Partnership	5	1	2	0	1	0
Total	1006	100	1091	100	1135	100

past year, except for the very substantial increase in complaints about transaction errors. Again, it is difficult to isolate a single cause for the increase unless it is that the fee structures of banks mean that a transaction error that causes an unexpected overdraft is increasingly costly to the customer.

The decline in complaints to do with cheques is almost completely offset by the increase in complaints about debit and credit cards, and probably reflects the shift away from cheques, particularly by personal customers. The move towards electronic banking is also reflected in increasing complaints about payment systems, though it is noted that there has been no increase in dispute investigations in either area. The indications are that most complaints in this area are minor and/or are easily resolved by banks through their internal complaints process.

## TIME TAKEN TO COMPLETE CASES

**TABLE 6A** Time taken – cases

	1998-99	1999-00	2000-01
0 to 29 days	686	724	739
30 to 59 days	62	84	82
60 - 89 days	63	52	45
90 days plus	195	233	269

**TABLE 6B** Time taken – disputes

	1998-99	1999-00	2000-01
0 to 29 days	11	16	20
30 to 59 days	40	45	46
60 - 89 days	51	41	37
90-119	40	35	43
120-149	30	41	45
150-199	62	56	53
200 days plus	55	94	119

In general, the analysis of complaints received during the year supports the view that it has been a period of stability. Most of the differences from the previous year's figures are small and may well represent random fluctuations.

Eleven complaints were received where the complainant's claim exceeded \$100,000. In nine cases the relevant bank agreed to waive the jurisdictional limit and an investigation took place. In two cases the bank refused to waive the jurisdictional limit.

The total amount paid by banks as a result of the settlement of complaints made to my office was \$890,596. This figure is substantially higher than the previous year's, largely because it includes the settlement of two disputes where the bank had waived the jurisdictional limit and agreed to my considering a claim in excess of \$100,000. Both these cases involved insurance claims, and the settlements were for \$130,000 and \$150,000.

## KEEPING INFORMED

In October 2000, Susan Taylor, Chief Investigator, and I attended a meeting of financial sector ombudsmen held in Canberra in conjunction with the Society of Consumer Affairs Professionals conference for Australia. Representatives attended from Australia, Canada, Mexico and South Africa, and we had a useful and instructive day considering the issues that we had in common and comparing the different jurisdictions.

Also in October, we were visited by Adv Neville Melville, the South African Banking Adjudicator, who heads a scheme that is very similar to the Banking Ombudsman scheme in New Zealand. At various times during the year, I met and discussed banking complaints resolution with visitors from Singapore, Indonesia and Korea.

In April 2001 I attended the International Consumer Law Association's conference in Auckland. This was a particularly valuable experience as it enabled me to catch up with worldwide developments in consumer dispute resolution.

## **EXPERIENCED PEOPLE**

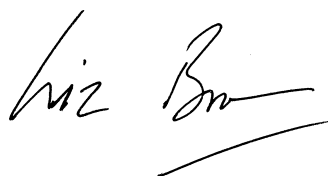
The support of the staff of the office for the Banking Ombudsman scheme remains outstanding. The three investigators who were appointed when the scheme was first set up are still here, and the three investigators appointed since then also remain on the staff. Together with the enquiries and support staff, they not only bring a wealth of experience to bear on complaint resolution, but have also managed to keep an enthusiasm for the work that remains undiminished. It is pleasing to see some respite from the very high caseloads they have all carried, and equally pleasing to see that the respite has been well used in reducing the time taken to complete investigations.

In June 2001 we welcomed Darren Hexter from the Australian Banking Industry Ombudsman's office. Darren has exchanged positions with Ann Sheehan of this office for a six month period. The two Banking Ombudsman schemes have always maintained a friendly relationship and it is to be hoped that the exchange will lead to a better understanding and closer co-operation in dealing with the inevitable cross-border issues that occur between our two jurisdictions.

The only other staff change during the year occurred when Maureen Hickey, who had been our part time enquiries assistant, left to pursue a career option

elsewhere. Rhonda Singleton joined us in September 2000 to help deal with initial enquiries and the increasing numbers of complainants whose first contact with the office is by telephone.

Finally, my thanks also to the Chairman and members of the Banking Ombudsman Commission. Sir Ian has been a ready source of assistance and advice, especially with some of our more persistent dissatisfied complainants. Commission members have brought their own diverse skills and experience to the Banking Ombudsman scheme and to their role in supporting the independence and integrity of the Banking Ombudsman process. The findings of the various reviews and process checks we have completed during the year are a tribute to their success in establishing an environment in which the scheme can continue to provide an excellent and independent service to banks and bank customers.



**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. As at 1 July 1999 the Participating Banks are:

AMP Bank (New Zealand Branch)

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

The National Bank of New Zealand Limited

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

1. The Banking Ombudsman's principal powers and duties are:

- ◆ to consider at no cost to the complainant complaints over claims not exceeding \$100,000 arising out of the provision within New Zealand of banking services 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.

## 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 \$100,000. 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 \$2000 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 \$100,000, 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 \$100,000;
  - (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 \$100,000 or in respect of a complaint that would otherwise be outside his or her power to consider by virtue of Paragraph 22 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.