

Systemic Issues Protocol

June 2011

The Banking Ombudsman aims to promote improvements in the provision of banking services and maintain consumer confidence in the banking system by resolving individual complaints and preventing future complaints.

Making enquiries into systemic issues has been a core part of the Ombudsman's role for many years and contributes significantly to the perception of the Office as credible, independent and effective.

Such enquiries also aid participants by drawing their attention to issues that affect a wider range of customers and that therefore have the potential to adversely affect reputations, and come to the attention of regulatory authorities or the media if not addressed, or if not addressed with independent assistance.

Banking Ombudsman Scheme participants have always voluntarily assisted the Banking Ombudsman with enquiries into systemic matters. The Scheme is also now required to refer a series of material complaints to the relevant licensing authority under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

The Banking Ombudsman has developed the following protocol to identify whether the participant is aware of a potential systemic issue, what they are doing to investigate the matters, what they intend to do address the impact of the issues for customers and what initiatives they intend to put in place to prevent any future recurrence. The Banking Ombudsman may also request a report on the outcome of the participant's own investigation to provide assurance that the matters have been satisfactorily addressed.

1. Identification

Systemic issues are defined as concerns about banking services which have the potential to affect more than one individual complainant. They may affect the customers of one participant, a range of participants or they may be industry-wide. Some examples are:

- Poor disclosure or communication
- Administration or technical errors
- Inaccurate interpretation of standard terms and conditions.¹

¹ Refer to the Banking Ombudsman Annual Report 2009/2010 page 15

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Banking Ombudsman staff who deal with complaints are trained to identify possible systemic issues. When doing so, Banking Ombudsman staff will have regard to the Terms of Reference relating to Banking Ombudsman Scheme Ltd, the law, and any relevant industry codes.

2. *Notice*

Banking Ombudsman staff will notify the relevant participant/s of a possible systemic issue and invite the participant/s to respond within 20 working days unless greater urgency suggests a response is required sooner. The Banking Ombudsman may ask for any information that is relevant to the issue.

3. *Assessment*

The Banking Ombudsman will assess the response, determine whether the matter is systemic in nature and consider its materiality.

If the Banking Ombudsman decides that the issue is not systemic in nature, then the matter will be resolved in the same way as other complaints not covered by this protocol.

If the Banking Ombudsman decides that it is a systemic issue, then the Banking Ombudsman will work with the participant to resolve it.

If the Banking Ombudsman considers that there has been a series of material complaints, the matter will be referred to the licensing authority. The Banking Ombudsman may also conclude that it would be more appropriate for the complaint to be dealt with by another body (see para 25.4 of the Terms of Reference). In both cases, participants will be consulted before any referral is made.

4. *Resolution*

When resolving the issue, the participant may be asked to:

- Ensure all affected customers have been identified
- Compensate the affected customers fairly for any financial loss and/or inconvenience
- Review and revise any relevant policies or procedures to prevent the issue from recurring.

The Banking Ombudsman can ask for information about the resolution of the issue.

5. *Reporting*

If the Banking Ombudsman is satisfied that the matter is resolved, then the Ombudsman will conclude the matter. Systemic issues are usually reported in the annual report. Participants are not identified in the report.

If the Banking Ombudsman is not satisfied that the matter is resolved within a reasonable time, the Banking Ombudsman may identify the participant in the annual report.

The Banking Ombudsman will allow 10 working days for the participant to comment on the proposal to report the participant in the annual report and/or to the relevant authority.

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