

17 March 2011

Review of the Banking Ombudsman Scheme

Background

Section 83 (e) of the New Zealand Superannuation and Retirement Income Act 2001 specifies one of the functions of the Retirement Commissioner to be “to monitor the effectiveness of persons (whether referred to as ombudsmen or by any other term) who have been appointed (other than under statutory authority) to consider complaints and disputes about savings and investments, and to consider any issues addressed to the Commissioner by any such person and, if appropriate, to make recommendations to any person.”

This report on the effectiveness of the Banking Ombudsman Scheme (BOS) is being undertaken under the direction of the Retirement Commissioner in accordance with this mandate. The form and frequency of monitoring is at the discretion of the Retirement Commissioner; previous reviews of financial sector ombudsmen under this function were undertaken in 1997, 2003 and, most recently by Mr Mel Smith in 2008.

A comprehensive independent review of the BOS was commissioned by the Banking Ombudsman Commission in 2005 and completed in March 2006 by (then) Judge Anand Satyanand. A number of reforms followed from the recommendations in that report. In addition, an Interim Process Review of the BOS by MinterEllisonRuddWatts, Lawyers, was completed in February 2008.

This monitoring report is less detailed than those Reviews. It is a desk-based assessment of the BOS performance, drawing on publicly available information and is intended to provide a brief stock-take of the Scheme’s effectiveness prior to its expansion and extension of coverage from September 2010 under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The Scheme now has as participants a number of non-bank deposit-taking organizations that provide banking services and are regulated by the Reserve Bank. (“Current Account” February 7 2011).

The current monitoring report can be thought of as setting the scene and foreshadowing some issues that might arise as the range of participants expands and New Zealand faces a new and challenging earthquake recovery and reconstruction environment.

Consumer perspective

For this particular monitoring report, the Retirement Commission has chosen to focus on the effectiveness of the BOS in meeting the legitimate expectations of the consumers of banking and related financial services. Although the overall success of a dispute resolution scheme

requires balancing the interests and perspectives of both the banks and their customers, it is the consumer of financial services whose protection is of particular concern to this Office. The Retirement Commission is committed to raising financial literacy levels by providing New Zealanders with impartial information on saving, budgeting, planning and money management and promoting financial education. Raising financial literacy levels needs to go hand in hand with building strong levels of trust in the integrity of the financial system if consumers are to be able to undertake sensible transactions competently and with confidence. Having a sound disputes resolution scheme is obviously a key component.

From a consumer's perspective it is important that the disputes service is open and accessible, that the processes are straightforward and the system is responsive, both in terms of covering all the relevant matters of concern and reaching a conclusion within a reasonable time. The outcomes need to be seen to be fair, with a clear explanation provided of the reasons for upholding or not upholding a complaint and recognition of the independence of the BOS.

Openness and accessibility

The Banking Ombudsman's winning of the Plain English Supreme Award in 2009 demonstrates the commitment of the organisation and staff to maintaining easy access to complaints procedures through the use of clear and simple language in their literature and other communications.

It is encouraging that the "mystery shopper" surveys of bank branches have shown an improvement in the proportion displaying literature on their own internal complaints handling procedures and the BOS and in the proportion of branch staff willing to help resolve complaints. The January 2010 Survey does, however, suggest that there has been a decline in the percentage of staff who had a comprehensive understanding of their bank's internal complaints procedures.

The Banking Ombudsman is to be congratulated for continuing to conduct these surveys. Not only do they help in the monitoring of banks' compliance with the Code of Banking Practice, but feeding back any adverse results to the bank branches helps to re-emphasise the importance of information provision and responsiveness to complaints. These points might otherwise be overlooked in conditions of heavy workloads and staff turnover.

One particular issue that has been drawn to our attention is that information on complaints procedures with regard to KiwiSaver have not always been explicitly included in the literature supplied by banks who are also KiwiSaver scheme providers. The Banking Ombudsman has already drawn public attention to a rise in KiwiSaver-related complaints and it may be worth encouraging banks to review this. With the gradual maturing of the KiwiSaver scheme and the number of functions that providers are required to fulfill (eg handling transfers, evidence required for permitted withdrawals) there is likely to be considerable increase in the number of complaints regarding aspects of this service. We would expect information on the handling of KiwiSaver complaints to be more transparent.

Responsiveness and fairness

The BOS responded flexibly to the doubling of the number of complaints it received due to ING/ANZ cases. The use of “triage” processes, the establishment and management of a waiting list, a strategically focused leadership team and the appointment of a researcher/analyst and additional resources to handle enquiries all appear to be sensible and effective measures taken at a time of crisis.

The increased use of informal methods of resolution via facilitation and conciliation are also to be welcomed because of their ability to reduce processing times, but it would be prudent to monitor whether the levels of complainant satisfaction with the process are better or worse than for people whose disputes are handled through more formal methods. While one might expect less formal facilitation and conciliation approaches to be welcomed by the participants, it is possible that they may feel unduly pressured to avoid a formal investigation.

The willingness of the BOS to engage with banks to address systemic issues is clearly helpful in improving clients’ opinions of the responsiveness of the banking system when things go wrong.

The Retirement Commission has not sighted any survey information on complainants’ perceptions of the fairness of the dispute resolution process overall. However, the system appears to be very effective and the BOS has come through a difficult time with its reputation intact and indeed enhanced.

Looking ahead - emerging issues

The latest BOS Annual Report noted the high number of new cases received over the past two years and that the number of investigations completed in 2009/10 were more than twice the number of any previous year. This is attributed to the flow-on effects of the economic downturn and, in particular, the ING investment failure. The Banking Ombudsman expected that investigation levels would return to levels similar to those experienced before the global financial crisis.

In the light of new developments, however, this expectation might not be fulfilled. The Banking Ombudsman has herself raised concerns about public misunderstandings over the rules relating to KiwiSaver withdrawals and has started to receive complaints from customers who feel they have been pressured to sign up to KiwiSaver.

The likely increase in new earthquake-related insurance, debt refinancing, relocation, property and small business disputes and the prospect of an extended period of economic recession are all likely to put pressure on the BOS caseload, systems and processes over the next few years.

Other challenges may come as the new legislation beds down and approved dispute resolution schemes sign up new participants.

It is worth noting that under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the rules of an approved dispute resolution scheme must include provision for an independent review of the Scheme to be undertaken at five yearly intervals, with the results being supplied to the responsible Minister. In light of this provision, one might question the need for the Retirement Commissioner to continue to be required to also monitor the effectiveness of financial services dispute resolution schemes. It may be that this emerging overlap in functions was overlooked at the time the new regulatory regime for financial services providers was being designed. If that is the case, then this is a matter that should be revisited when the opportunity next arises.

A handwritten signature in black ink, appearing to read 'Diana Crossan', written in a cursive style.

Diana Crossan
Retirement Commissioner