

Banking Ombudsman Scheme

2014 Independent Review

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I. INTRODUCTION

As an approved scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the Act), the Banking Ombudsman Scheme (BOS) is required to commission an independent review and provide a report to the Minister of Consumer Affairs. Cameron Ralph Pty Ltd, an Australian consulting firm that has undertaken independent reviews of financial services external disputes schemes in Australia, New Zealand and Canada, has been engaged to conduct the review.

2. EXECUTIVE SUMMARY

The Review found that BOS is effective and is a professionally run scheme that continues to meet the legislative requirements for an approved scheme and that complies with its Terms of Reference.

2.1. Overview

BOS, like most financial sector EDR schemes around the world, has been through a period of considerable challenge – with complaint volumes growing significantly in the aftermath of the Global Financial Crisis and significant change in regulation – also driven in part by the experience of that crisis.

Added to this are the unique New Zealand impacts of earthquakes in both Canterbury and Wellington affecting New Zealand consumers generally and BOS itself with the organisation being forced to new premises.

Against that backdrop, we found a scheme that has been continuously improving, that has strong and timely processes, with skilled senior staff, with steadily improving customer satisfaction rates and with a high attention to management and operational supports for the core complaints-handling business.

We also found a number of detail areas where we think the scheme could achieve some improvement in its effectiveness and service to the New Zealand community.

2.2. Areas for improvement

There were no significant areas of concern that we found in BOS effectiveness. Rather we found a number of detail areas where some incremental improvement could be made. These included:

- Some enhancements to stakeholder interaction including a more structured consumer interface
- Some additional efficiency measures including the ability to close some matters more quickly in some circumstances
- Some expansion to BOS's jurisdiction including some greater flexibility in relation to monetary limit – permitting consumers to waive a proportion of their claim in certain circumstances – and more formal recognition of BOS's role in relation to systemic issues
- Some minor changes to the BOS Terms of Reference to clarify and modernise the document including to enable delegations of parts of the decision making process. Also change to BOS's Constitution to better facilitate Terms of Reference change
- Some additional accountability measures including in relation to customer abandonment trends
- Some internal management matters including commentary about office structure and staff development

A list of the recommendations grouped under these themes is set out at Section 15.

3. PROJECT APPROACH

3.1. Review scope

Our review scope asked us to focus on:

- the effectiveness of the dispute resolution process;
- the extent to which the current Terms of Reference enables or constrains BOS in its aim to be a world-class modern Ombudsman scheme; and
- whether the current organisation design and decision-making procedure also supports this aim, in particular whether it supports the values of effectiveness and efficiency.

A higher level review was undertaken against the other principles listed in section 52(2) of the Act: accessibility, independence, fairness and accountability.

3.2. Matters outside scope

As always happens during a review of this type, there were some issues raised with us that were outside our review scope, for example, a concern was raised with us about current banking practice where a refund is sought for a direct debit. This is more properly a matter for the next review of the Code of Banking Practice.

3.3. Methodology

Our work program included:

- review of BOS's website and other materials;
- review of BOS's procedural guidance for its staff and meetings with BOS staff to obtain a detailed understanding of BOS processes and workings;
- review of about twenty dispute files;
- review of two complaints made about BOS's performance;
- consideration of two formal submissions and a number of emails from stakeholders providing us with some comments;
- interviews of sixteen stakeholders including industry, regulator and community representatives;
- review of BOS stakeholder surveys conducted in 2013; and
- meetings with BOS Management to clarify issues and discuss our findings.

3.4. Terminology

In our report, we often use the term “customer” as a generic term to refer to someone who has contact with BOS – whether this is an enquiry, a lodged complaint that is referred to the Participant's internal complaints process or a complaint that is being investigated by BOS.

When we refer to a “complainant”, we are using BOS's terminology – ie. a customer whose complaint has been referred to the Participant's internal complaints process.

When we refer to a “disputant”, we are using BOS's terminology ie a customer whose complaint proceeds to a BOS investigator for facilitation and/ or investigation.

The abbreviation 'EDR' is used for external dispute resolution ie resolution of a complaint via an ombudsman scheme.

3.5. Acknowledgements

Our thanks go to BOS staff for their assistance and openness and to Scheme Participants and those who generously consented to meet with us to share their views.

4. NEW ZEALAND CONTEXT

The Banking Ombudsman Service has faced a period of significant challenge in the time leading up to this independent review. These included a new CEO with a transformation mission, the global financial crisis, law reform affecting financial services and bringing competing EDR schemes to the financial sector, multiple responsible Ministers, an expansion of scope of jurisdiction, external impacts from the Canterbury and then the Wellington earthquakes and a shift of BOS premises only just completed.

New Zealand is not alone in this, although it may be argued that it has weathered this period with less significant upheaval than experienced in many other countries.

In Australia, merging five financial industry schemes into a single Financial Ombudsman Service radically changed the landscape for this aspect of consumer protection. That organisation has confronted great challenges coping with a tumultuous environment while undergoing significant internal change.

The UK FOS continued to expand to cope with an explosion in complaint numbers arising from the GFC and a few unique local financial product scandals – in particular the miss-selling of payment protection insurance. It has reached a scale that no other part of the world approaches. For the 12 months to March 31, 2014, the UK FOS employed some 3,500 staff who handled over 2.3 million enquiries and dealt with over half a million disputes.

North America also experienced huge increases in complaint numbers, although the news was less happy for some disputes resolution services, with the Comptroller of the Currency in the US being

stripped of some complaint-handling jurisdiction over perceived shortcomings and the Ombudsman for Banking Services and Investments (OBSI) in Canada under concerted attack from parts of the investments and banking sectors, losing coverage of some firms to alternative disputes resolution services provided by legal practices.

In Europe, there has been a continuing expansion of the provision of external disputes resolution – especially in former eastern bloc countries that are striving to meet new EU standards for financial consumer protection. A similar dynamic is driving adoption of external disputes resolution in third world and emerging economies – often as a condition of development funding from the likes of the World Bank and/or the IMF.

Cognisant of this continued rapid evolution of external disputes resolution, the Board of BOS has committed the organisation to maintaining high standards – and has commissioned an independent review with the express question of whether BOS meets world-class practice in EDR.

5. ACCESSIBILITY

BOS must make itself readily available to customers by promoting knowledge of its existence and by being easy to use.

5.1. Awareness of BOS

BOS is the best known of the New Zealand financial services external dispute resolution schemes.

In March 2013, the Nielsen Online Survey found 24% of surveyed New Zealanders had an unprompted awareness of BOS (stating without prompting that they were likely to contact BOS if they wanted to make a non-service related complaint about their banking provider) and a further 26% of surveyed New Zealanders had a prompted awareness of BOS (after prompting saying that they had heard of BOS). The challenge for BOS is that levels of awareness of BOS are inversely proportionate to age and personal income levels – with New Zealanders who are less than 24 years old and New Zealanders earning less than \$20,000 having quite poor levels of awareness. In our experience, the ability to reach under-represented or vulnerable/disadvantaged sectors of the community is a problem that external dispute resolution schemes generally struggle with.

To further build awareness, BOS has an active outreach program, working with Participants, industry, government agencies, community groups and the media to lift the profile of the scheme. In 2013/14, BOS's efforts have included:

- Participation in Money Week in September 2013;

- Regular media presence via media releases including to publicise the release of BOS consumer publications and media interviews (media releases are also sent to community organisations including Federation of Family Budgeting Services, Citizens Advice Bureau, Community Law Centres, Grey Power, Salvation Army, local authority migrant services and specialist organisations where appropriate); and
- Use of social media via posts to BOS's Facebook page.

We discuss below BOS's efforts to ensure that Participants play their part in making customers aware of BOS's existence and also BOS's website consumer materials.

5.1.1. Findings

We applaud BOS's efforts to publicise its existence in the interests of enhancing accessibility. In particular, we think that BOS is right to work with community groups to improve its reach to vulnerable and disadvantaged groups.

To further this and to meet international best practice, we think that there would be merit in BOS forming a Community Representatives Liaison Group, comprised of up to 12 leading practitioners in this field, to meet regularly with BOS to help BOS develop a comprehensive community engagement strategy that includes both consultation and the development of educative resources for community representatives. To facilitate attendance at Liaison Group meetings, BOS would need to be able to assist with travel costs for Liaison Group members.

(We understand that there are some competitive tensions, however for both cost and coordination reasons, it would be ideal if efforts in

this space were combined with the other three financial sector external dispute resolution schemes.)

Recommendation 1.

BOS should form a Community Representatives Liaison Group to help BOS develop a comprehensive community engagement strategy that includes both consultation and development of educative resources for community representatives. If any of the other financial sector external dispute resolution schemes are willing to participate, this could be a joint initiative with those other schemes.

Finally we note that during our interviews a couple of banks expressed a willingness to work more closely with BOS in its awareness building, for example, to make BOS aware of community contact opportunities and to provide advice to BOS about how best to get its messages across to the target audience. We would encourage BOS to follow up on these offers.

5.2. Obligation to provide information about BOS

Each Participant is obliged by its Participation Agreement to comply with the Code of Banking Practice. Obligations include informing customers of the details of BOS and providing dissatisfied customers with information about BOS in the complaint final response. In addition, brochures relating to the bank's complaints procedure and BOS must be on display in all branches and the bank's website.

BOS conducts an annual survey of Participants to assess how well they are helping their customers deal with complaints. The survey results are made public via BOS's website.

The 2013 survey involved 31 students visiting 332 Participant branches where they presented themselves as dissatisfied customers. For 81% of Participants (weighted average), a leaflet with information about BOS was on display. BOS's survey also measures Participant staff knowledge about internal complaints procedures, their proactivity in providing information about BOS and willingness to help with a complaint. Given the increasing importance of online banking, the next survey is going to include review of the ease of access to Participants' website information about BOS.

5.2.1. Findings

We think that this surveying is an excellent initiative. It helps to maintain a Participant focus on fulfilling their Code of Banking Practice responsibilities in relation to complaints handling.

5.3. Customer materials

BOS has information on its website about how to make a complaint. This includes the booklet "Having trouble sorting out problems with your bank?" 'Quick Guides' provide useful information on topical issues in an accessible way.

Website pages can be read in English, Maori, Gagana Samoa, simplified Chinese and Korean. Since December 2013, BOS has used Language Line's telephone interpreting service for 44 languages. The NZ Relay staff are able to assist callers to BOS with a hearing or speech

impairment. BOS now also has a video about its service that utilises sign language and can be viewed through YouTube.

5.3.1. Findings

We commend BOS's efforts in developing customer materials and its ongoing commitment to adding resources as new needs are identified.

5.4. Enquiries

BOS receives enquiries primarily by telephone – it has an 0800 number advertised on its website - but also via email and other channels.

Fig 1: Source of enquiries in 2013/14

Channel	Number	Percentage
Telephone	1614	77%
Email	324	15%
Online complaints form	112	5%
Letter	40	2%
In Person	4	0%
Fax	1	0%
Total	2095	100%

BOS's Enquiries Service provides general information to customers about the complaints process and general banking practice. It

facilitates the accessing of Participants' internal dispute resolution processes before the lodging of complaints with BOS and also refers customers to other organisations where appropriate.

Fig 2: Referrals by BOS Enquiry Service in 2013/14

Referral to:	Number	Percentage
Bank ICP	804	75%
Other	123	12%
Overseas Ombudsman	44	4%
Financial Services Complaints Ltd	42	4%
Insurance and Savings Ombudsman NZ	35	3%
Privacy Commissioner	19	2%
NZBA	3	0%
Fairway Resolution	3	0%
Parliamentary Ombudsman	1	0%
Financial Services Federation	1	0%
Total	962	100%

5.4.1. Findings

The Enquiries Service experienced a 30% volume increase in the 2012/13 year as compared with the previous year. Despite this increase in volume, BOS's surveying continues to demonstrate a high level of satisfaction by customers.

Fig 3: Complainant surveying in 2013/14

Issue	Agree / Strongly Agree
Enquiries Team gave you confidence in the accuracy of the provided information	85%
Enquiries Team listened to your concerns	93%
Enquiries Team spoke in terms you could understand	97%

5.5. Ease of complaints process

Complaints are typically lodged with BOS by completing the online complaints form or providing the details by email or letter. Where there are vulnerable customers who need extra assistance, BOS will take the complaint details over the telephone. There is no charge for lodging a complaint.

Fig 4: Complaints channel in 2013/14

Channel	Number	Percentage
Online complaints form	519	73%
Email	108	15%
Letter	47	7%
Telephone	34	5%
In Person	2	0%
Total	710	100%

5.5.1. Findings

A customer who lodges a complaint receives a preliminary letter with information about the complaints process. Thereafter much of the contact between BOS and the customer is by phone – typically a customer is not required to provide significant written comment. This makes the process relatively easy for customers – as confirmed by BOS's surveying.

Fig 5: Disputant surveying in 2013/14 (n = 97)

Issue	Agree / Strongly Agree
Banking Ombudsman Service was easy to use	78%

6. JURISDICTION AND POWERS

BOS's Terms of Reference set out the scheme's jurisdiction and powers. We have considered the extent to which these enable or constrain BOS in its aim to be a world-class modern Ombudsman scheme.

6.1. Decision making criteria

Paragraph 23 of the Terms of Reference specifies the decision making criteria. The Banking Ombudsman must:

- be fair in all the circumstances;
- observe the law including any relevant judicial authority, and
- take into account the general principles of good banking practice and any relevant code of practice that applies to the subject matter of the complaint.

6.1.1. Findings

BOS's Terms of Reference do not make fairness an overarching consideration. To that extent, BOS's Terms of Reference are different from those applicable to Financial Ombudsman Service UK, the Financial Ombudsman Service Australia, the Ombudsman for Banking Services and Investments Canada and the Insurance and Savings Ombudsman New Zealand.

We think that it would be consistent with BOS's aspirations to be a world-class scheme to clarify its Terms of Reference to give primacy to

the fairness requirement. We do not, however, think that this would change scheme outcomes much, if at all. This is because we think that, in practice, BOS already has an appropriate focus on fairness (see paragraph 8.3). Accordingly, in our view, the proposed change to the Terms of Reference would be by way of validation of the scheme's current approach rather than suggesting any dramatic change.

Recommendation 2.

BOS should clarify its Terms of Reference decision making criteria to give primacy to the fairness obligation, whilst requiring it to also have regard to the law and general principles of good banking practice and any relevant code of practice.

6.2. Financial limit

Paragraph 20 of BOS's Terms of Reference enables an award for financial loss to be up to \$200,000. This limit was last increased in 2007.

A complainant claiming more than \$200,000 for financial loss is not able to access BOS by waiving the amount in excess of this financial limit. This is because paragraph 25 of the Terms of Reference provides that the Banking Ombudsman will not consider a complaint if the amount claimed is more than the scheme's financial limit of \$200,000 or if the claim is part of or related to a larger claim that the customer has made or could reasonably make and the total amount exceeds the financial limit.

6.2.1. Stakeholder views

A submission received from Federated Farmers of New Zealand argues that the current financial limit of \$200,000 is increasingly out of touch for farm lending. This is because the average farming debt has increased since 2006 from \$408,000 to \$868,000 and so a farmer who is unjustly sold out by their bank is likely to lose far more than \$200,000. The submission recommends that BOS's financial limit should be increased to at least \$500,000.

On the other hand, Participants told us that BOS's financial limit very rarely creates a barrier for complainants – that even where the complaint relates to a large transaction, for example a \$1 million loan, it is most unusual for the amount in dispute to be above \$200,000. Accordingly they saw no necessity for increasing this limit or allowing customers to waive part of their claim to bring their complaint within BOS's financial jurisdiction.

6.2.2. Findings

As shown in the following table, the quantum that BOS (like other New Zealand schemes) is able to award for financial loss is less than the amount able to be awarded by EDR schemes in comparable jurisdictions.

Fig 6: Financial loss limits for other EDR schemes

Scheme	Financial Loss Limit	Ability to waive part of Claim in excess of Financial Limit?
Financial Ombudsman Service UK	UK£150,000	Yes
Financial Ombudsman Service Australia	A\$280,000	Yes if claim less than A\$500,000
Ombudsman for Banking and SI Canada	CAN\$350,000	Yes
Insurance and Savings Ombudsman NZ	NZ\$200,000	Yes
Financial Services Complaints Ltd NZ	NZ\$200,000	No

Where a complaint is above the financial limit, we understand that BOS's practice is to ask the Participant to agree to BOS accepting the complaint. We were told by one (smaller scale) lender that they would more often than not, voluntarily agree to BOS dealing with matters that exceeded the monetary limit, but another Participant told us that they would not agree to this. BOS has told us that in the last two years, only two complaints brought to BOS were excluded from jurisdiction because the claimed amount exceeded the financial limit.

Of course, the difficulty for consumers is that they are likely to assume that the financial limit is fixed and to be dissuaded from any contact with BOS where their claim is for a larger amount. This problem is compounded because of consumers' generally poor understanding of what a realistic estimate of the monetary value of their complaint would be. Quite typically a consumer with a dispute over some aspect of a \$400,000 mortgage will assume that they are over the limit – although the actual possible compensation may only be a few thousand dollars. Other consumers may simply have an inflated idea of what compensation they may be entitled to – eg. a write-off of an entire debt as opposed to some adjustment of interest or penalties.

Notwithstanding this, we are not inclined to recommend at this stage that BOS increase its financial loss award limit. The current limit is not so much lower than schemes in comparable jurisdictions as to be manifestly inadequate. We also think that there is an appropriate symmetry for New Zealand schemes to have the same financial loss limit – in particular to ensure that the financial limit does not become a 'competition' issue. Ideally, if an increase were to occur, all EDR schemes would move in synchronisation.

We do, however, recommend that BOS change its Terms of Reference to give customers the option of waiving part of their claim in order to bring the pursued claim amount below BOS's financial loss limit. As a general principle, we think that customers should not be too enthusiastically encouraged to waive their rights to significant sums of money and so we propose that some cap on the total claim size should apply. We suggest an upper claim amount of \$300,000 – ie. limiting any waiving of rights to \$100,000 at most.

We think that this change would be consistent with BOS's aspiration to be world-class. Whilst it is unlikely that this change would bring into BOS's jurisdiction any more than a handful of complaints that are

currently excluded, it would go part of the way to addressing the concerns raised of farmers for whom recourse to BOS is the only alternative to expensive litigation. We also think that BOS should collate data as to enquiries and complaints that pertain to claims in excess of \$200,000 so that it can understand the extent to which its current financial loss limit operates as a barrier to access.

Recommendation 3.

- a) **BOS should amend its Terms of Reference to allow BOS to consider a complaint where the customer's claim is for an amount that is up to \$300,000, provided that the customer agrees to waive their right to pursue any amount in excess of compensation obtained through BOS ie. in the event that the complaint is resolved by settlement or a BOS Recommendation.**
- b) **BOS should develop, and publish on its website, information for consumers as to how BOS's jurisdictional limit operates eg a Quick Guide on this topic. This should also make it clear to those consumers with large amounts in dispute that they should check with BOS to ensure that they are reasonably estimating the amount they might claim.**
- c) **BOS should collect data as to how often customers approach BOS with an enquiry or complaint about a claim for financial loss of more than \$200,000 and, if so, by how much. The aim in collecting this data is to ascertain whether the current financial limit poses an undue barrier to access to BOS.**

6.3. Award for inconvenience

Paragraph 21 of BOS's Terms of Reference enables an award of up to \$9,000 for inconvenience. This limit was last increased in 2010, at which time the Terms of Reference were also amended to require BOS to review this limit on 1 October 2013 and every 3 years thereafter. Consistent with this, the Board considered last year whether to increase the limit and decided to use our review to examine the issue.

6.3.1. Findings

We understand from BOS that awards for inconvenience are usually quite modest and it is only in rare situations that an amount close to the limit is awarded. No examples were drawn to our attention where the limit posed an unfair barrier. Our review of comparable other schemes suggests that BOS is able to compensate for inconvenience in a way that is equivalent or greater than in other jurisdictions and that this did not present a case for an increase.

At this stage, it seems to us that the \$9,000 limit for an award for inconvenience is appropriate. This issue can, however, be reviewed in light of the impact of inflation in 2016.

6.4. Non-monetary awards

BOS's Terms of Reference do not currently permit it to make non-monetary awards, for example, that a Participant not repossess a secured asset. Whether it should have this capability was something raised with us by Ministry of Business, Innovation & Employment representatives in the course of our consultations with them.

6.4.1. Findings

We think that BOS should be able to make non-monetary awards. Comparable financial services EDR schemes – Financial Ombudsman Service UK, Financial Ombudsman Service Australia, the Ombudsman for Banking Services and Investments Canada, the Insurance and Savings Ombudsman NZ and Financial Services Complaints Limited NZ – have this capability. In our experience, this capability gives an EDR scheme the flexibility to shape resolutions to fit issues. A change to BOS's Terms of Reference to give it this power would add to the consumer protection framework and would be consistent with its aspiration to be world class.

Recommendation 4.

BOS should amend its Terms of Reference to give BOS the power to make non-monetary awards, that is to require the Participant to undertake a course of action to resolve the complaint including the forgiveness or variation of a debt, the release of security for debt and the reinstatement, rectification or variation of a contract. This should be subject to the proviso that, for each complaint, the aggregate value of the non-monetary award and any financial award must not exceed the financial limit.

6.5. Timeframe for bringing a dispute to BOS

Paragraph 27.4 of BOS's Terms of Reference prevents a customer from bringing a matter to BOS if the complaint relates to events that occurred more than six years before the customer first became aware

of those events or should reasonably have become so aware. In addition, paragraph 27.3 limits a customer's ability to complain to BOS to the period of two months from:

- when the Participant advises that deadlock has been reached or that the customer has a right to take the complaint to BOS; or
- the expiry of 90 days after the complaint was formally made – if the Participant has not advised the customer within that period that deadlock has been reached.

The timeframe constraints are a major reason for complaints being ruled outside jurisdiction with 8 complaints excluded on this basis in 2012/13 (17% of all jurisdictional exclusions) and 6 complaints in 2013/14 (14% of all jurisdictional exclusions).

6.5.1. Findings

There is no consistent international standard as to timeframes for accessing an EDR schemes as seen from the next table. That said, as compared with New Zealand EDR schemes, the United Kingdom, Australian and Canadian EDR schemes all allow complainants a longer period of time after internal dispute resolution (IDR) to make their complaint to the external scheme.

Fig 7: Timeframes to access other EDR schemes

Scheme	Period of time financial services provider must conclude IDR	Period of time after IDR final response to initiate EDR	Extension of time possible in some circumstances?
Financial Ombudsman Service UK	8 weeks	6 months	Yes
Financial Ombudsman Service Australia	45 days (generally)	2 years (generally)	Yes
Ombudsman for Banking Services and Investments Canada	90 days	180 days	Yes
Insurance and Savings Ombudsman NZ	After 2 months if ISO considers deadlock has been reached	2 months	Yes
Financial Services Complaints Ltd NZ	40 working days	2 months	No

We discussed BOS complaint lodging timeframes with several Participants. Not surprisingly, they are keen to maintain the current timeframes in the interests of prompt resolution of complaints while

information is still fresh. We acknowledge the importance of this, but think that this needs to be balanced with consideration of whether these timeframes are operating as an unfair barrier to the making of a complaint to BOS.

We note earlier the numbers of complaints where timeframe requirements operate to exclude the complaints. Of course, this data does not tell the full story: there are also complaints where the customer becomes aware that the deadline has been missed and so never approaches BOS. Our experience of reading many hundreds of complaint files is that for consumers, many complaints arise as part of, or connected with significant life events or decisions – eg. an overseas trip, a major purchase, taking out a mortgage, obtaining credit to meet a pressing financial need, becoming unemployed, an accident, ill-health, selling a home, changing jobs. In these cases the underlying life event or decision is likely to dominate the consumer's attention and often to the exclusion or delay of considering the matter of the complaint.

BOS has told us that where a complaint is made shortly after the expiry of the two month timeframe, their practice is to ask the Participant to agree to BOS accepting the complaint and that generally consent will be given by the Participant. BOS cannot, however, compel this result.

Given BOS's aspirations to be a world class EDR scheme, we think that BOS should explore the timeframe issue further and collect comprehensive data as to enquiries and complaints made to it that fall outside the two month timeframe, how far outside the timeframes these complaints are and the numbers of these where the Participant agrees to BOS considering the matter. This data would then provide a base for discussions by BOS with stakeholders about increasing the period from two months to (say) six months, consistent with United Kingdom and Canadian practice.

In the meantime, we think that BOS should at least seek to change its Terms of Reference to allow BOS the discretion in exceptional circumstances to accept a complaint after the expiry of the two month period (ie. follow the Insurance and Savings Ombudsman's lead as to this). This would formalise and extend slightly the current practice, allowing flexibility to accommodate someone who delays because of factors such as ill-health, natural disaster, absence on a prolonged holiday etc.

Finally, one Participant raised with us a language concern about this aspect of the Terms of Reference – their view was that the term “deadlock”, although frequently used in the industry, is contrary to the openness and customer centricity with which they endeavour to carry out their complaints resolution. Their preferred position is that the Terms of Reference instead refer to the Participant's “final position”. We think that there is merit in this and suggest that BOS also consult about making this change to its Terms of Reference.

Recommendation 5.

BOS should strengthen its ability to accept complaints beyond the current two month limit after the Participant has provided the customer with its final position in relation to the complaint.

- a) **BOS should take steps to change its Terms of Reference to allow the scheme an ‘exceptional circumstances’ discretion to accept a complaint more than two months after the final position has been communicated.**
- b) **Over time, BOS should collect comprehensive data as to how often customers approach BOS about a**

complaint outside this two months period and what happens in relation to these enquiries and complaints. This data should be used to consider whether to discuss with Participants lengthening the two month timeframe to six months to achieve parity with the UK and Canadian timeframe.

6.6. Complaints lacking reasonable prospect of success

The Terms of Reference provide two bases on which complaints may be closed at an early stage because they are lacking in merit. First, paragraph 25.6 of the Terms of Reference enables the Banking Ombudsman to refuse to consider a complaint where, on the basis of the facts presented by the customer, the Banking Ombudsman concludes that the Participant has made a reasonable offer to settle the complaint. Secondly, paragraph 27.8 restricts the Banking Ombudsman to considering a complaint where the customer is pursuing the complaint in a reasonable way and not in a frivolous or vexatious way.

A concern we heard during our review is that these paragraphs of the Terms of Reference do not enable BOS to efficiently deal with complaints where it is apparent at an early stage that there is no remedy, a remedy is not appropriate or the Participant has made a fair offer. This is because:

- Paragraph 25.6 does not permit BOS to take into account Participant provided information when forming the view as to whether a Participant offer is fair.

- The concept of “frivolous or vexatious” as interpreted by the Courts is very narrow.

6.6.1. Findings

Our experience with other financial services EDR schemes is that up to 5% of complaints are legitimately excluded at an early stage on the basis that the financial services provider offer is fair, the scheme is not in a position to provide a remedy or the complaint has little substance. In our view, this is efficient and in the best interests of all concerned including the complainant – an early refusal of remedy is much better than the same answer after a prolonged process.

We agree that BOS’s Terms of Reference do not currently provide BOS with sufficient scope to close unmeritorious complaints quickly. By way of comparison, the Financial Services Ombudsman UK Rules enable a complaint to be dismissed without investigation of the merits where an Ombudsman is satisfied that:

- the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience;
- the complaint is frivolous or vexatious;
- the complaint does not have any reasonable prospect of success; or
- the firm has already made an offer which is fair and reasonable in relation to the circumstances alleged by the complainant and that is still open for acceptance.

We think that BOS's Terms of Reference should be amended to provide the Banking Ombudsman with similar discretions to these. Our expectation would be that the Banking Ombudsman, like other EDR schemes with these powers, would exercise this discretion judiciously and only exclude a complaint in quite clear cut cases. Paragraph 6 of the Terms of Reference would, of course, require the Banking Ombudsman to consider what both parties have to say in deciding whether to exclude a complaint and to give brief written reasons where a complaint is excluded.

Recommendation 6.

BOS should amend its Terms of Reference to give it a discretion to refuse to consider (or continue to consider) a complaint where it is satisfied that:

- **the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience;**
- **the complaint is frivolous or vexatious;**
- **the complaint does not have any reasonable prospect of success; or**
- **the firm has already made an offer which is fair and reasonable in relation to the circumstances alleged by the complainant and that is still open for acceptance.**

6.7. Commercial exclusions

The Terms of Reference exclude from BOS's jurisdiction complaints about some Participant decisions that are seen as commercial.

Paragraph 25.2 of the Terms of Reference excludes complaints that relate to a Participant's assessments of risk, financial or commercial criteria or character when making lending or security decisions (but not administration in lending and insurance matters). Paragraph 25.3 excludes complaints that relate to a Participant's interest rate policies.

6.7.1. Stakeholder views

A submission received from Federated Farmers of New Zealand argues that because of these exclusions BOS cannot consider complaints that arise where a Participant suddenly changes its lending policies and tightens the availability of credit or increases debt servicing costs above changes in base lending rates. The submission recommends that the Terms of Reference should be changed to allow BOS to consider complaints relating to a Participant's commercial judgment and interest rate policies.

6.7.2. Findings

Whilst we understand that abrupt changes in a Participant's readiness to lend or to interest rates can surprise its customers and create debt servicing problems, we think that Participants, like other business enterprises, have to be able to set their terms of commercial engagement. Accordingly BOS should not be able to review a Participant's decision as to whether a loan will be provided and if so on what commercial terms. This is the approach taken in other jurisdictions: these exclusions from BOS's jurisdiction are, for example, very similar to exclusions in the Terms of Reference of the Financial Ombudsman Service in Australia.

6.8. Scheme Participant policy and practice

Paragraph 28 of the Terms of Reference prevents BOS from making a recommendation or award on a complaint involving a practice or policy of a Participant that does not breach any obligation or duty the Participant owes the customer.

The difficulty with this is that a Participant may adopt a practice or policy that does not breach “an obligation or duty” but which nevertheless does not meet “general principles of good banking practice” – and which paragraph 23 of the Terms of Reference would suggest is intended to be within BOS’s jurisdiction. We are aware that there have been BOS cases where Participants have been unclear about the interaction of these two paragraphs of the Terms of Reference.

6.8.1. Findings

We think that the Terms of Reference should be clarified to make it clear that paragraph 28 does not allow a Participant to avoid BOS’s jurisdiction by adopting a practice or policy that fails to meet general principles of good banking practice for the customer. The clarification would not, of course, limit paragraph 25.2 which provides an exclusion for lending, security or insurance decisions that involve commercial judgement (and implicitly practices and policies that guide those decisions). Nor is this clarification intended to encourage or enable scrutiny of what is properly the internal management of a Participant. Rather the clarification is intended to support BOS’s current approach to the interplay between paragraphs 23 and 28.

Recommendation 7.

BOS should clarify paragraph 28 of the Terms of Reference so that it is clear that its jurisdiction is not avoided by a Participant adopting a practice or policy that fails to meet general principles of good banking practice.

6.9. Enforcement proceedings

The Terms of Reference do not restrict a Participant’s ability to pursue debt collection or enforcement proceedings whilst a complaint is being considered by BOS. A Participant is also able to institute legal proceedings in relation to a complaint before BOS by following the process set out in paragraph 14 of the Terms of Reference – the Participant must obtain its Chief Executive’s consent to begin the legal proceedings and must advise the Banking Ombudsman of its intention to litigate (where practical 5 working days’ notice is to be given). If legal proceedings are commenced, paragraph 27.6 has the result that BOS ceases to have jurisdiction.

We understand from BOS that in practice, Participants rarely, if ever, commence legal proceedings in relation to a complaint before BOS. Debt collection activity is, however, more common. BOS will sometimes ask a Participant to suspend debt recovery, but it cannot require the Participant to accede to a request of this kind – see BOS Quick Guide *Suspending a bank’s debt recovery process*. Our interviews with Participants confirmed that they place high importance on their ability to do this and are concerned that to delay could adversely impact their debt recovery.

6.9.1. Findings

Comparable financial services EDR schemes differ as to the extent to which a scheme participant is restricted in its ability to take enforcement action in relation to a complaint being considered by the scheme, as shown in the next table.

Fig 8: Participant restrictions under other EDR schemes

Scheme	Restriction on commencement of legal proceedings?	Restriction on debt recovery?
Financial Ombudsman Service UK	No – although instituting proceedings does not defeat FOS's jurisdiction	No
Financial Ombudsman Service Australia	Yes	Yes
Ombudsman for Banking Services and Investments Canada	No – although instituting proceedings does not defeat OBSI's jurisdiction	No
Insurance and Savings Ombudsman NZ	Yes	Yes
Financial Services Complaints Ltd NZ	Yes	Yes

It is important to recognise that there is no 'correct' answer in this dimension of a financial EDR scheme's operation. From our experience of reviewing hundreds of debt-related case files from many schemes, neither a blanket right for the Participant to pursue debt recovery nor a blanket prohibition while it is with EDR will be 'right'.

Many of these matters are ‘grey’ and require some judgement to be applied in the circumstances. It can be argued that the Participant does just this under the BOS framework, however it is of little comfort for the consumer if the EDR scheme does not provide that independent view of what would be fair.

We think that BOS would enhance the consumer protection framework and be closer to world-class, if it were to follow the practice of the Insurance and Savings Ombudsman and Financial Services Complaints Ltd and place some restrictions around Participants’ ability to pursue legal and enforcement proceedings while a complaint is being considered by BOS. Given that BOS’s resolution timeframes are good – see later in this report – we think that this change would not unfairly prejudice Participants. This would particularly be the case if BOS has broader powers to achieve early closure of unmeritorious complaints – see paragraph 6.3. It would of course be important to consult with stakeholders about the scope of the restrictions to ensure that practical considerations are taken into account.

Recommendation 8.

BOS should consult with stakeholders with a view to including in its Terms of Reference some restrictions on the ability of Participants to institute legal and enforcement proceedings while a complaint is under consideration by BOS.

6.10. Procedure to change Terms of Reference

BOS’s Constitution specifies that the Terms of Reference may only be changed if the Board agrees by unanimous resolution. This means that a single Board member has the power to prevent change from occurring. The concern is that this may prevent the Terms of Reference from evolving and keeping up with best practice.

6.10.1. Findings

As shown in the following table, financial services EDR schemes typically require some level of support from both industry and consumer Board representatives in order for a change to be made to Terms of Reference.

Fig 9: Process requirements for change to Terms of Reference

Scheme	Process requirements
Financial Ombudsman Service UK	Board resolution must approve change (simple majority required to pass resolution). FSA must approve changes.
Financial Ombudsman Service Australia	Board resolution must approve change – no special majority required although, as for all Board resolutions, there must be an equal number of industry and consumer directors voting at the meeting.
Ombudsman for Banking Services and Investments Canada	Board resolution must approve change by simple majority, however a majority of the community Directors must be present at the meeting.
Insurance and Savings Ombudsman NZ	Commission resolution that must be supported by the independent chairperson and at least 2 of the 3 industry members and 2 of the 3 Consumer members.
Financial Services Complaints Ltd NZ	Unanimous resolution of full Board required

As modern Board practice is to aspire to and generally achieve a consensus model, and there have been no obvious cases of problems with governance of BOS, it could be fairly argued that this is not a currently ‘burning’ issue.

However, if the Terms of Reference are being updated, then this is the opportunity to set practices to be world class. In our view, in any governance system where stakeholders are likely to have some

competing interests, there is a sound argument that there should be a very clear majority in voting for major change to the organisation’s constituent documents (the Terms of Reference or Constitution) – ie. a substantial hurdle. However, any such ‘representative’ Board should not grant an effective right of veto to any one Director.

A 75% vote requirement for such an important change would be consistent with common practice in governance in many domains – and consistent with practice in other EDR schemes. With the numbers on the BOS Board, the 75% hurdle would require two rather than one Director to vote against a change to block it. A more complex formulation for equal representation of both industry and community representatives might provide some further assurance of independence, however we are inclined to think this is not essential and tends to reinforce the idea that Directors are representing their own interests rather than acting in the interests of BOS.

Recommendation 9.

BOS should consult with stakeholders with a view to enabling its Terms of Reference to be changed where 75% of Directors vote in favour of this.

6.11. General

The Terms of Reference confer powers on the Banking Ombudsman personally – to provide general advice to customers on how to make a complaint and on existing industry processes and practices, to assist customers in making their complaints, to consider complaints, to request information, to make recommendations and to make awards.

The Terms of Reference do not specify explicitly what powers are able to be delegated. In practice, BOS staff carry out the front end functions. Recommendations and awards are made either by the Banking Ombudsman or the Deputy Ombudsman (the Participation Agreement entered into by a Participant with BOS acknowledges that a reference to the Banking Ombudsman includes the Deputy Ombudsman) – and not by other staff.

6.11.1. Findings

Given that there are a number of detail changes required for the Terms of Reference, some long-standing and some as a result of this Review, we think that a rewrite should be undertaken in order to modernise and clarify the document.

It would be more consistent with the realities of modern organisations if the Terms of Reference were to confer powers on the incorporated entity – Banking Ombudsman Scheme Ltd – and delegate these powers to the Banking Ombudsman and Deputy Ombudsman with the ability to further delegate where appropriate. This would also mean that the incorporated entity would have legal responsibility for the exercise of these powers – rather than the Banking Ombudsman having personal responsibility – thereby delivering on the benefits of incorporation.

In addition, it would be appropriate to address drafting weaknesses that have been identified over time. To give some examples of these:

1. The definition of “Financial Services” incorporates reference to a section of the Financial Services Providers (Registration and Dispute Resolution) Act 2008 – this is done in a way that suggests to some customers that any complaint about a bank is within the

Terms of Reference even where no financial service is provided by the bank. The definition should be clarified.

2. There are repetitions in the Terms of Reference that have the potential to create confusion eg paragraph 4 and 25.4 traverse the same ground.
3. There are sub-headings in the Terms of Reference that suggest a narrower scope to provisions that follow than would otherwise apply on the face of the language in the provision eg paragraph 6. This introduces uncertainty as to how the document should be interpreted.
4. There is capacity to express some provisions in the Terms of Reference using positive, rather than negative, language eg paragraph 27.4 refers to something that the Participant did (or did not do) “not more than six years before”. This would make the document more accessible.

Recommendation 10.

BOS should rewrite its Terms of Reference to modernise and clarify them. In particular, powers should be conferred on the corporate entity with delegation to the Banking Ombudsman and the Deputy Ombudsman and a power to further sub-delegate where appropriate.

7. INDEPENDENCE

BOS must deliver independent decision making. The organisational structure must promote public confidence that BOS is truly independent.

7.1. Structural arrangements to achieve impartiality

BOS's Constitution provides for a Board comprised of an independent Chairperson, two representatives of Participants appointed by the Council of New Zealand Bankers' Association, one person appointed by the Crown through the Minister of Consumer Affairs and one person who ordinarily is the Executive Director of the Consumers Institute of New Zealand or other representative of customers as the Chairperson considers appropriate after consultation with the Board.

The Board appoints the Banking Ombudsman and Deputy Ombudsman. The Banking Ombudsman appoints employees. The Board is responsible for oversight of the scheme. The Terms of Reference do not give the Board any role in relation to the resolution of specific complaints.

7.1.1. Findings

We think that the governance arrangements are sound and promote independent decision making. Our interviews with stakeholders suggest that there is public confidence in BOS's independence.

8. DISPUTE RESOLUTION PROCESSES AND OUTCOMES

BOS must resolve disputes fairly and efficiently. Both fairness of process and fairness of outcome are important.

BOS's dispute resolution process begins once it is satisfied that the complaint has reached deadlock – ie. the Participant has fully considered the complaint.

BOS first checks whether the complaint is within its jurisdiction under the Terms of Reference. If so, BOS seeks to facilitate a settlement between the parties where this is practical.

If the complaint is not successfully facilitated, the complaint is investigated by collecting and analysing relevant information. A written preliminary view is generally provided to the parties by the investigator. This may cause the parties to re-think their positions and lead to the settlement or withdrawal of the complaint.

Otherwise the complaint proceeds to a written Ombudsman Initial Assessment. The parties can accept this or they can provide further information or argument. The Ombudsman then makes a written decision called a Recommendation. Very occasionally this is accepted by the customer but not the Participant, in which case the final stage is an Ombudsman Award, which is binding on the Participant.

Fig 10: Method of resolution of disputes in 2013/14

Resolution Method	Number of disputes	Percentage of disputes
Jurisdiction Declined	42	18%
Jurisdiction Declined - Complex	2	1%
Abandoned	22	9%
Withdrawn	60	25%
Settlements	24	10%
Initial Assessment	33	14%
Recommendation	54	23%
Total	237	100%

8.1. Early resolution

Over the last few years, BOS has increasingly looked for opportunities to resolve disputes at an early stage. As seen in Figure 10, 44% of disputes now resolve through BOS's facilitation process.

8.1.1. Findings

We support the emphasis on early resolution, an emphasis that we are also seeing at other financial services EDR schemes. It is much better for both parties to have a timely outcome. Early resolution is also

consistent with an EDR scheme's obligation to actively pursue efficiency.

Of course, it is important that early resolution does not constitute the abandonment by the customer of a valid complaint. Neither our review of files (admittedly a small sample size) nor information from stakeholders suggested that this was the case.

1. We have commented earlier in our report about the ease of the BOS process – so we do not think that process difficulties are driving customers to abandon their complaints.
2. BOS Management have told us that, for 55 of the 82 complaints categorised as abandoned or withdrawn by a customer, this occurred during the facilitation stage. For these 55 complaints, the customer generally received a preliminary view letter and/or an Initial Assessment that was supportive of the Participant's position. In particular, there was no written review of the merits of the dispute in only 6 of the 10 complaints classified as abandoned at the facilitation stage.
3. Our review of facilitation processes suggested that BOS staff provide appropriate guidance and support to the customer. Emphasis is placed on telephone contact with the customer: this builds rapport and understanding of the issues. We support the preliminary view letter process: our review of a sample of these letters suggested that they provide appropriate guidance – whilst making it clear that this is the investigator's view based on the information then held, rather than an Ombudsman view.

Nevertheless, our experience with other schemes suggested to us that a 34% abandonment/ withdrawal rate is high. Accordingly we think that BOS should watch abandonment/ withdrawal trends and

undertake some targeted customer research with a view to testing whether some further action is needed by BOS.

Recommendation 11.

BOS should track and publicly report about abandonment/ withdrawal trends and undertake periodic customer research to identify the reasons for abandonments/ withdrawals and whether any action is needed by BOS to reduce the risk of customers abandoning valid complaints.

8.2. Investigation approach

As for all EDR schemes, BOS is required to comply with the rules of natural justice. The Terms of Reference state that this includes giving adequate notice of important steps and decisions, providing opportunity to both parties to express their views, considering these views before the decision is made and informing both parties of the reasons for the decision within a reasonable time. The Terms of Reference also entitle a party to a complaint to be provided, upon request, with any information on BOS's file unless the information has been provided by the other party with a request for confidentiality.

8.2.1. Information collection and sharing

BOS's early information collection is quite specific. Key documents are sought initially by BOS from the parties and, if necessary, additional documents are sought later in the investigation.

BOS tries to avoid repeatedly going back and forth between the parties; so rather than providing every document obtained from one party to the other, BOS will usually provide the key documents to the party at the stage that BOS seeks their comments about the issues. For example, where a Participant has provided a written report in response to the complaint, BOS provides this to the customer and seeks their comments in response.

In its initial letter to the customer, BOS tells the customer that they have a right to access any information on BOS's file. Where a customer makes this request, BOS copies all documents on its files – including internally generated documents and telephone recordings.

8.2.2. Findings

We are satisfied that BOS's collection of information and questioning of the parties provide a strong factual basis for its complaints resolution. Moreover its information sharing practices are fair and parties are given a proper opportunity to provide their views.

BOS's approach of providing key documents to the parties is efficient and assists the parties to focus on the key points. We also support the parties' having the right to request all information provided to BOS by the other party – and to be aware that they have this right.

It is, however, unusual for an EDR scheme to make available to the parties to the complaint the scheme's own internally generated documents (draft decisions, internal emails etc). We also question how much value telephone call recordings provide, given that pertinent oral information will be set out in BOS's written analyses of the complaint.

Other EDR schemes with which we have worked do not record calls and so are not able to provide this level of transparency to the parties. We recommend that BOS amend the Terms of Reference to limit the parties' right of access to the written information provided by the other party to the complaint.

Recommendation 12.

BOS should amend paragraph 9 of its Terms of Reference to limit the information access rights of a party to the written information provided by the other party. The effect of this would be that BOS would not have to provide its own internally generated documents. Nor would it have to transcribe recorded telephone calls where that is not necessary.

8.2.3. Discussion with the parties

The Investigators' Manual requires investigators to maintain regular telephone contact with the parties to the complaint. Our discussions with BOS staff and review of a sample of complaints confirmed that this occurs.

We strongly support this. Telephone contact is often much more effective than written communications. Particularly for customers, it provides an opportunity to ask questions, to enhance understanding of the issues and to promote a sense of being properly heard. It can also be very efficient for the EDR scheme.

To maintain an accurate record without the need for typing of lengthy file notes, BOS investigators often tape telephone conversations. We listened to a sample of these and were impressed by the empathetic listening style and helpful guidance provided to the parties.

We did note, however, that telephone calls can be very prolonged. Whilst we are not advocating rushed calls and we are very aware that a relatively small amount of extra telephone time can greatly enhance the parties' experience and assist in achieving facilitation, we think that in the interests of efficiency, some further training about how to take control of telephone calls would be worthwhile.

Recommendation 13.

As part of its ongoing training program for staff, BOS should consider training for its investigators to help them to take control of calls and bring them more quickly to conclusion.

8.2.4. Notice of important steps and decisions and opportunity to express views

Paragraph 17 of the Terms of Reference requires at least one month's notice to be given to the parties before the Banking Ombudsman may decide a complaint via a Recommendation. After a Recommendation is made, the Terms of Reference give the parties one month to decide whether they accept the Recommendation.

To meet the paragraph 17 notice requirement and to give the parties opportunity to express their views:

- The investigator tells the parties that the complaint is ready for an Ombudsman's Initial Assessment and the timeframe for its preparation.
- The Initial Assessment is a fully reasoned, written analysis of the complaint with a conclusion as to how the complaint should be resolved including whether or not compensation should be provided.
- Both parties are provided with an opportunity to submit further information or provide comment.
- If both parties accept the Initial Assessment, the complaint is closed on that basis. Otherwise the parties' input is considered and a written Recommendation is made, again with reasons provided.

We strongly support the principle, embedded in the Terms of Reference, that the parties should have some forewarning of the view being taken of the complaint before an Ombudsman decision is made, so that they have a final opportunity to provide any information or argument that they have thus far omitted to provide.

In practice, however, we think that the process has evolved to become overly extended with the provision of an investigator's preliminary view letter described in paragraph 8.1 and an Ombudsman Initial Assessment before an Ombudsman Recommendation is made. We think that generally one preliminary analysis should be required, not two.

We have discussed this with BOS and they have explained that the investigator's preliminary view letter is not treated as the vehicle for addressing the Terms of Reference paragraph 17 notice requirement because the Terms of Reference currently require an Ombudsman view – and there is no framework for delegation of that responsibility.

We have earlier recommended that the Terms of Reference should be rewritten to confer powers on the incorporated entity - Banking Ombudsman Scheme Limited – rather than the Banking Ombudsman, with a delegation framework to enable those powers to be exercised by individuals (see Recommendation 9). The delegation framework should be cast in a way that enables one pre-Recommendation written analysis rather than the current two.

Recommendation 14.

BOS should establish a delegation framework that enables investigators to prepare and provide to the parties the notice that is required by the Terms of Reference to be given before a Recommendation is made (ie a written analysis of the complaint with an explanation of the facts, view as to how the complaint should be resolved and reasons for this view).

8.3. Decisions

Paragraph 17 of the Terms of Reference requires a Banking Ombudsman Recommendation to be in writing, to state any remedy that is considered appropriate and to give a summary of the reasons for the recommendation. As previously mentioned, an Ombudsman Initial Assessment is also a written, fully reasoned decision.

Fig 11: Outcomes of disputes in 2013/14

Outcomes of disputes resolved via facilitation (whether or not after an Ombudsman Assessment) or Recommendation	Number of disputes	Percentage of disputes
Favouring bank	122	63%
Favouring both parties	54	28%
Favouring customer	17	9%
Total	193	100%

8.3.1. Findings

Our review of a small sample of Ombudsman Initial Assessments and Recommendations found them to be balanced, neither favouring the Participant nor the customer, with the law taken into account, but in a way that does not overlook fairness considerations. This conclusion is consistent with the findings of a process review undertaken for BOS by legal firm Chapman Tripp in 2012 and a file review by barrister Royden Hindle in 2014.

We also found our sample of decisions to be clear and accessible. Generally they achieve an appropriate balance between detail and brevity. We would, however, caution that there needs to be constant vigilance to ensure that scheme decisions do not become overly lengthy and inaccessible. We did receive some feedback that decisions could use some simplification. To assist in guarding against this, we would recommend that BOS work with a professional writer

to explore ways of drafting decisions so that they are as clear, concise and accessible as possible.

Recommendation 15.

BOS should work with a professional writer to explore ways of drafting Ombudsman Initial Assessments and Recommendations so that they are as clear, concise and accessible as possible.

We were initially a little surprised at the percentage of matters where a customer did not achieve an outcome – which seems low by comparison with other similar schemes we are familiar with. Participant banks with operations in both Australia and New Zealand have made the observation to us that ‘BOS tends to get the very hard cases’ compared with the much higher volumes in Australia and that in New Zealand the banks are more likely to have resolved the ‘reasonable’ matters. We also observe that BOS has comparatively quite extensive telephone contact with customers, which may explain a higher number of customers who are satisfied that there is no point in pursuing a matter further.

Given that our own investigation did not show any decisions/outcomes amongst the files that would indicate any kind of bias, we are satisfied that the difference is not a function of anything amiss with the BOS processes, however we do think that it is something that BOS should keep an eye on over time.

8.4. BOS surveying of parties

BOS undertakes surveying of Participants (CEOs, Relationship Managers and Complaint Resolution Managers). This suggests a high level of confidence in BOS’s fairness.

Fig 12: Participant surveying 2014 (n = 14)

Issue	Very dissatisfied/ dissatisfied	Neutral	Satisfied/ Very satisfied
Their decisions are fair.	7%	7%	86%
They listened to our point of view.	7%	0%	93%

BOS also undertakes surveying of customers whose complaint proceeds through the BOS process. This suggests the majority have confidence in the fairness and impartiality of BOS’s dispute process. However, there is a substantial minority that lack this confidence and even more who are not satisfied with BOS dispute resolution process taken as a whole (see Figure 13).

Fig 13: Disputant surveying in 2013/14 (n = 97)

Issue	Very dissatisfied/ dissatisfied	Neutral	Satisfied/ Very satisfied
Dispute process was fair and impartial	33%	11%	56%

Overall satisfaction with the process as a whole	38%	10%	52%
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8.4.1. Findings

We are aware that it is hard to compare EDR schemes' customer survey results in response to these types of questions. This is because results depend upon factors that include the demographics of the survey population, the precise wording of the question, how surveying is undertaken (online or by phone) and how proximate the surveying is with the resolution of the customer's complaint.

Nevertheless our experience with Australian EDR schemes does suggest a lesser level of customer confidence in BOS than we would expect to see, particularly given the quality of the process and the time spent by investigators in talking to customers by phone.

We note that this is something that BOS management have been working on over the last 2 years with concerted action on a range of fronts (reviews of communications, staff training and enhancing surveying) following disappointing customer survey results in 2011/12.

We are content that this is an issue squarely on the BOS 'radar' and one where improvement has been achieved and is continuing to be pursued. BOS should continue to give this some priority and seek out any opportunity for greater insight that may arise.

9. TIMELINESS

To achieve timely resolution of a complaint, BOS must steer the dispute resolution process in a purposeful manner and set and monitor appropriate timeframes for the parties. BOS must also ensure that its staff do not cause undue delays and, for example, promptly consider information provided by the parties and prepare timely reasons for its decisions.

9.1. Timeframes for parties

The Terms of Reference specify some key timeframes for the parties to a complaint. They must be given one month's notice before an Ombudsman Recommendation is made. They also have one month to consider whether to accept an Ombudsman Recommendation.

9.1.1. Stakeholder views

A submission received from Federated Farmers of New Zealand argues that these Terms of Reference timeframes delay resolution of complaints and, in an electronic age, are longer than they need to be. A Participant also argued that these timeframes could be reduced to two weeks.

9.1.2. Findings

Whilst we understand the trend today is to faster turnaround times and we applaud the time saving that email communication brings, we would be uncomfortable with any reduction in the Terms of Reference timeframes for parties to respond to an Ombudsman Initial

Assessment or Recommendation. This is because it is important that the parties have enough time to consider these very important documents and obtain advice about these should they so want. Moreover the one month timeframe provides some leeway should the person be away or unwell. On balance, we think that the potential disadvantages of reducing these timeframes exceed the advantages of what would be, at most, a couple of weeks' reduction in the aggregate time taken to resolve the complaint.

9.2. Scheme Timeframes

As already mentioned in this report, both Participants and customers place high priority on speedy resolution.

BOS has been consistently challenging itself to reduce the time it takes to resolve complaints. Its efficiency targets in 2013/14 – see Fig 14 – aimed for an improvement over actual timeframes in the previous financial year. The results are shown in Fig 15.

Fig 14: Key efficiency measures for disputes in 2013/14

Efficiency measure	Result
90% of simple disputes within 40 working days	87%
90% of standard disputes within 120 working days	96%
90% of complex disputes within 200 working days	85%
Disputes completed in average of 70 working days	65 working days

Fig 15: Time taken to resolve disputes

Time taken	2012/13	2013/14
1-29 days	30%	26%
30-59 days	20%	26%
60-89 days	15%	23%
90-119 days	14%	12%
120-149 days	10%	6%
150-179 days	6%	3%
180 days+	5%	4%
Total	100%	100%

9.2.1. Findings

We applaud BOS's focus on timeliness and the improvement in timeframes that has occurred over the last 3 years, a trend that was sustained notwithstanding the interruption to work posed by the July 2013 Wellington earthquake. BOS's timeframes are comparable with other New Zealand schemes and considerably better than schemes in other parts of the world – see Figure 16.

Fig 16: Average days to resolve disputes: 2012/13

Scheme	No. of days
BOS	74 working days
Insurance and Savings Ombudsman NZ	95 days from receiving financial service provider's file
Financial Services Complaints Ltd NZ	57 days

Nb. This data is included for illustrative purposes only given that differences in calculation method do not make the comparison precise.

That said, we think that BOS needs to take steps to reduce delays at the Initial Assessments and Recommendation stage of the process. The potential for delays at this stage was the subject of comment from some Participants and something we observed in some reviewed files. Our earlier recommendation that BOS institute a delegations framework that enables investigators to sign the Initial Assessment should assist with speeding up this part of the process.

10. SYSTEMIC ISSUES

BOS is required to carry out its complaint handling in an effective manner. An aspect of this is the ability of BOS to deal in an aggregated way with Participant issues that affect multiple customers. Further, sound world class EDR practice means that BOS needs to play its part in ensuring that Participants rectify the root cause of issues and thereby avoid future complaints.

10.1. Adequacy of systemic issues framework

The Financial Service Providers (Registration and Dispute Resolution) Act 2008 obliges BOS to tell the relevant licensing authority if there is a “series of material complaints about a particular licensed provider or class of licensed provider”.

BOS's Terms of Reference do not, however, give BOS explicit powers to investigate and require Participants to remediate systemic issues. Despite this, for each complaint, BOS's practice is to consider whether multiple customers are potentially affected and whether broader remedial action is necessary. If so, BOS raises these issues with the Participant.

BOS's Quick Guide, *Systemic Issues Protocol*, states that Participants have always voluntarily assisted BOS with enquiries into systemic matters. Often they are already aware of and addressing a systemic issue by the time BOS raises it with them. Sometimes Participants proactively notify BOS of systemic issues. In either case, BOS asks the Participant how many customers are affected and what is being done to rectify the issue.

We saw a couple of examples of BOS's systemic enquiries. One was an industry wide systemic issue – inconsistent interpretation of superannuation legislation. Another was an intra-bank systemic issue that pertained to the charging of fees.

To promote awareness of the types of systemic issues that can arise and how BOS deals with these matters, BOS includes some systemic issue case studies in its Annual Reports.

10.1.1. Findings

Several comparable financial services EDR schemes have explicit powers to investigate and pursue the rectification of systemic issues, as shown in the next table.

Fig 17: EDR scheme systemic issues powers

Scheme	Terms of Reference/ Rules provisions re: systemic issues
Financial Ombudsman Service UK	Firms' complaint handling must identify and remedy any recurring or systemic problems.
Financial Ombudsman Service Australia	The Scheme must identify systemic issues (issues that will have an effect on persons beyond the complaint parties) and refer these to the financial services provider for remedial action and continue to monitor the matter until a resolution is achieved that is acceptable to the Scheme. Systemic issues and serious misconduct must be reported to the regulator.
Ombudsman for Banking Services and Investments Canada	Terms of Reference do not address systemic issues.
Insurance and Savings Ombudsman NZ	Where the Scheme identifies a breach by the Participant in the course of a Scheme investigation or a complaint, the Scheme may advise the Participant, notify the Minister, Financial Markets Authority or other regulator and take such other action it considers appropriate including to determine whether a broader issue exists that warrants remedial action.
Financial Services Complaints Ltd NZ	Scheme must have procedures to deal with systemic issues – ie. issue that will affect other persons beyond the parties to the complaint. Systemic issue must be referred to Participant for remedial action. Report must be obtained by Scheme as to remedial action undertaken and Scheme must monitor matter until resolution achieved that is acceptable to Scheme. Systemic issues must be reported to relevant licensing authority.

We discussed with some Participants whether BOS's Terms of Reference should provide BOS with a clear mandate in relation to

systemic issues, as is the case for the Insurance and Savings Ombudsman and Financial Services Complaints Ltd. The response tended to be that the current regulatory regime, and industry compliance arrangements to meet regulator expectations, already ensures that systemic issues are appropriately rectified and that there is no need for BOS to be further involved.

We agree that where a Participant is already addressing a systemic issue in a responsible manner, there is no need for BOS to become deeply involved. But where this is not the case, we think that BOS should be able to rely on explicit powers rather than just persuasion – that this would be far more effective.

It would also strengthen consumer confidence in BOS. We have found that this issue is frequently raised by consumers in our interviews – in New Zealand and in other countries. There is a strong expectation that the Ombudsman will take steps to ensure that a problem that affected an individual consumer will be addressed for other consumers in the same or similar positions.

Finally, this provision would be entirely consistent with BOS's aspiration to be a world class ombudsman scheme.

Recommendation 16.

BOS should consult with stakeholders with a view to amending its Terms of Reference to give it explicit powers to investigate systemic issues and work with Participants to ensure that these are appropriately addressed.

II. ORGANISATIONAL SUPPORTS

II.1. Telephony system

BOS has an excellent telephony system for its size, which allows ready recording of calls and provides for easy supervision and quality control as a result.

II.2. Case management system

BOS has the distinct advantage of some in-house IT skills (its Business Analyst), which has meant that development of the case management system and web-based tools have been able to be completed more rapidly and cost-effectively than a scheme of this size would normally be able.

Inevitably, the case management system does not do everything that everyone wants it to – but it is of a suitable standard for the organisation and certainly comparable to others we have seen.

II.3. Procedures

BOS has put considerable work into documenting procedures eg. its Investigators' Manual – which provides excellent guidance. It is evident from our case file reviews and staff interviews that it is a well-used resource and is encouraging quality and consistency.

II.4. Staff skills and training

BOS has good induction processes for new staff, providing them with previous complaint files to read, in-depth briefings about procedures and the case management system, and buddying/ shadowing opportunities as their case load is gradually built. All investigators undertake LEADR mediation training.

Continuing training utilises external opportunities such as New Zealand Law Society seminars and in-office training sessions which typically have focused on skills development, for example, writing, listening, dealing with difficult complainants and investigative skills. External presenters have also updated staff about banking practice issues.

The Participants we spoke to were generally supportive about BOS staff skill levels, although there was reference to the gap created by the recent departure of a senior investigator – a gap that we understand has now been filled. Emphasis was given to the importance of BOS staff maintaining their legal knowledge in the face of legislative change, for example, by attending training provided by law firms. Several Participants expressed their willingness to provide training presentations about banking products and practice to BOS staff. Of course, BOS needs to ensure that its training provides staff with a balance of perspectives – and we are satisfied that this is the case.

II.5. Supervision/ Quality Assurance practices

The QA/supervision process in the investigation team includes a number of strands of activity.

BOS maintains the practice of weekly current case discussions and monthly case debriefs as well as the opportunity for ad-hoc peer and senior review of case files.

As is possible in a smaller office, there are quite tight review and sign-off procedures for individual case files with a senior decision-maker (either the Deputy Ombudsman or Banking Ombudsman) signing off on all closed disputes.

All complainants are surveyed the month after their case is closed. All feedback is provided to the investigator and manager for review as well as being aggregated and provided to the Board. Any substantive (or negative) feedback is discussed with the investigator concerned, and general learnings are disseminated to the team. We saw examples of minor improvements to standard letters as a result of received feedback.

To monitor compliance with the Terms of Reference and in particular the principles of natural justice and effective dispute resolution, BOS has utilised law firms to undertake regular (three-yearly) process reviews of a sample of cases. These review reports are published on the Scheme's website. As an additional quality assurance measure, BOS engaged barrister Royden Hindle to undertake a file review this year. As part of our own review of case files, we examined a sampling of files that had been reviewed by Mr Hindle and found strong consistency with our general findings. We understand that BOS plans to repeat this exercise in a year or two. We think that this would afford opportunity to follow up on our own review by delving into specific aspects of case management for a more focused case file review.

11.6. Management reporting

The key aspects of an EDR scheme's management reporting should be focused on workload management and in particular, timeliness – watching for matters that may be slowing down through delays in responses, an overloaded staff member, confusion in analysis of the key facts, tricky drafting issues, etc. Early awareness and intervention by a supervisor can be critical to keeping work flowing.

This is less critical in a smaller organisation because the manager/supervisor's 'line of sight' is of course much more direct (see Supervision/QA above).

We reviewed the regular BOS reporting information and found that it met the standards we would expect in any EDR scheme of comparable size. It provides managers and staff with both across office and individual investigator reports. We also note that BOS is better placed than most because of its comparatively stronger resourcing/skills in both IT and data analysis.

11.7. Planning processes

BOS uses a professional planning cycle of a very good standard, with an annually reviewed three-year strategic plan that informs an annual business plan and budget cycle. The organisation maintains a detailed annual workplan and reports on progress against the plans to the Board.

11.8. Office structure

We were specifically asked to examine the office structure at BOS and provide our view as to the most effective office structure going forward.

In discussing this issue, we preface with a few general observations based on our experience with a number of EDR schemes, large and small like BOS.

Like any small (under 25 staff) organisation, structure must be flexible, with much multi-skilling and looking for the best match to available skills – rather than looking for elegant design. In other words, pragmatism over theory!

EDR schemes are primarily technical organisations with their main focus on delivering dispute resolution service to the satisfaction of stakeholders. While efficiency is clearly critical, they have a much lesser focus on generic business effectiveness issues such as marketing, growth, revenue, costs, etc.

As for any small technical organisation, most EDR scheme CEOs are first an Ombudsman and second a CEO. Their personal responsibilities are a mix between internal technical leadership, external-facing stakeholder liaison and organisational effectiveness – and this varies according to the challenges faced – and of course, their own skills mix and the available senior skills within the organisation.

Inevitably, structure will adapt over time to reflect these realities. There are many ways to configure an organisation and provided the appropriate supporting processes are in place, most can be made to work. We see this as appropriately the call of the CEO with the support of the Board.

11.8.1. BOS history

Over the tenure of the current CEO, BOS has faced multiple challenges – beginning with the inevitable initial challenge of succeeding a very long-standing former Ombudsman, establishing a new culture and dealing with the progressive loss of key senior staff.

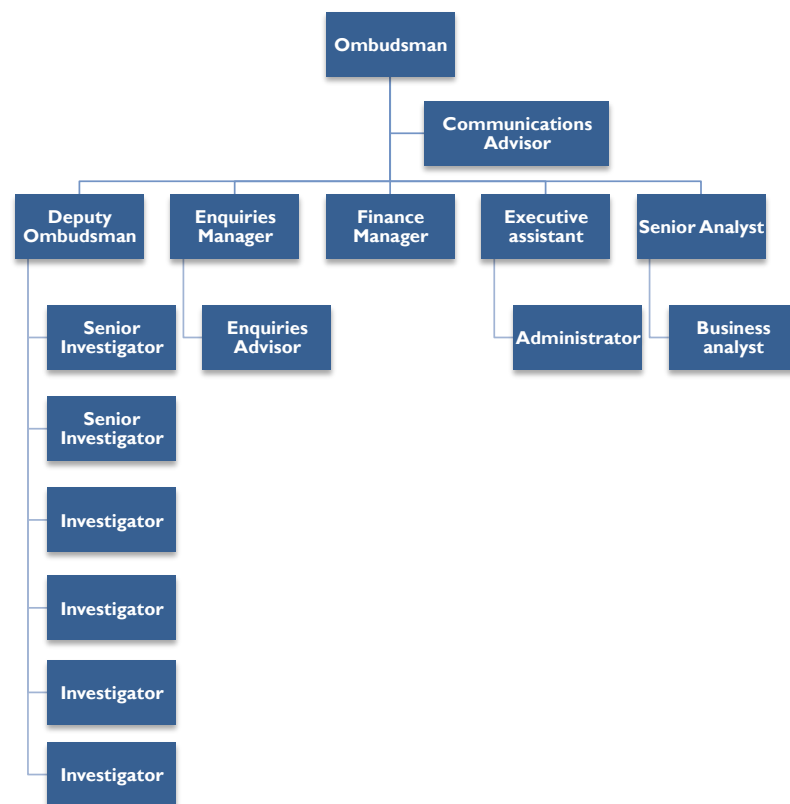
The environment did not stand still for this adjustment, with the GFC, regulatory reform, the introduction of ‘competition’ in the financial sector EDR space and the Canterbury and Wellington earthquakes amongst the many challenges.

The evolution of the internal structures during this time is, we think, a function of some unusual circumstances and from time to time, the available skills. As a result, BOS now finds itself with an organisational structure that with the passage of time should probably be revisited.

We think that the successful move of BOS into new post-earthquake premises provides something of a symbolic mark to the end of this particular extended period of challenge and may be the right time to adopt a more conventional structure – that will make more intuitive sense to staff and provide the incoming Ombudsman with an easier to manage initial configuration.

We understand that following feedback from staff to management, the thinking on this is already underway and we discuss an option below.

Current configuration



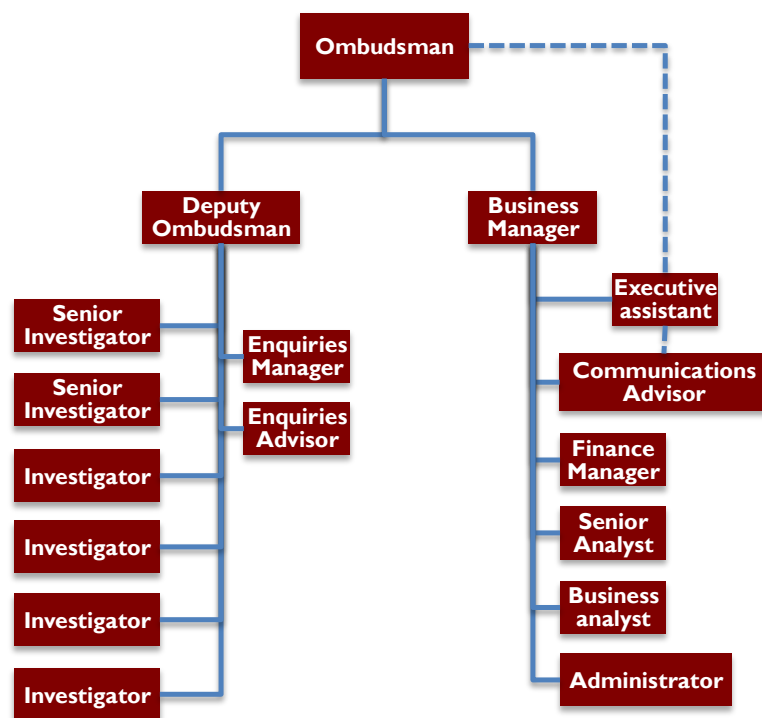
As mentioned, the current structure is not especially unusual and has reasons based in the recent history of BOS. It is however a pretty flat arrangement of reports to the Ombudsman and has necessitated a coordination group (known as the Senior Leadership Team) made up of the Banking Ombudsman and the four other staff who manage at

least one staff member. During some of the periods when the office has been under stress, this has been quite useful, however as the office returns to a more normal environment, it is no longer ideal.

11.8.2. Characteristics of simpler configuration

We agree with the Ombudsman's current thinking that a simpler configuration would now work better. We also think that alternative ways can be found to deliver the development opportunities and cross-office communication that might be lost as a consequence.

The diagram below illustrates one way to configure the office – using a new position of Business Manager to be responsible for the various support functions – and placing all the 'core' functions under the Deputy Ombudsman. Of course, the appointment of a Business Manager would necessarily require a review – and perhaps some consolidation - of the other support positions.



It would also be possible to omit the Business Manager role and have all of the support functions report to the Ombudsman. Equally, in an environment where a future Ombudsman had a greater focus on the technical, a more management-oriented Deputy Ombudsman could take on the leadership of the support functions.

We understand that a key benefit of the current arrangements is to offer development opportunities for staff (both through participation in the leadership group and through the limited supervisory layers).

We admire the intent, however this is an area that all small organisations will struggle to very effectively provide and the more so for a narrow specialisation such as EDR. While every internal opportunity should of course be taken, we think that BOS should look to formal training and to alliances with other organisations to provide development and career opportunities for BOS staff.

We are aware that BOS has taken some steps in this direction with a commitment to join in the ‘Disputes Investigation Group’ to enable brief 2 day exchanges for staff at a range of New Zealand based complaint-handling organisations.

We also think that longer term low-cost staff exchanges with other EDR schemes in New Zealand – or even with Australia - would help to broaden the range of opportunities open to staff.

11.8.3. Timing

The choice for any change is of course, for the CEO/Ombudsman in consultation with the Board. We do not see this as an especially urgent issue and it may be that as a matter of transition, it would be better for the current structure to be left in place until the next Ombudsman can put their own stamp on the way the office operates.

Recommendation 17.

As the environment normalises, the BOS office structure should adopt a simpler, more intuitive structure with two main groupings of staff – the core investigations/enquiries functions reporting to the Deputy Ombudsman and the support and external functions to a new Business Manager position.

Recommendation 18.

BOS should explore options for staff exchanges with other EDR schemes as a way to provide broader development opportunities for staff.

12. ACCOUNTABILITY

BOS is required to be publicly accountable for its operations.

12.1. Annual Report and Case Studies

BOS publishes a detailed Annual Report that provides information about complaints handled by BOS – volumes, issues, outcomes, timeframes etc. The Annual Report also provides information about systemic issues and Participants' complaint records.

Complaints that raise key themes and issues are written up as Case Studies that are published on BOS's website. These help to provide transparency as to BOS's approach to complaints. We heard favourable comment about these but a couple of calls for more Case Studies. One Participant stated that these could better align with the key issues identified by BOS. For example, where credit cards are identified a key area of complaint, a credit card Case Study would assist.

12.1.1. Findings

We think that BOS's Annual Reports are clear and informative and thus provide good accountability. We understand that BOS chooses Case Studies for publication in the Annual Report with the aim of reflecting the key issues.

BOS is aware of and responsive to the calls for additional Case Studies. Accordingly we see no need to make a specific recommendation regarding these.

12.2. Complaints about BOS's performance

BOS's website includes information about how to provide feedback about its service. This states that someone with a complaint about BOS's service should raise the matter within 3 months of the event giving rise to the complaint. Complaints can either be addressed to a staff member or to the Banking Ombudsman. A complaint is not, however, considered if it is simply an expression of dissatisfaction with an Ombudsman decision.

BOS's Investigator's Manual provides internal guidance in relation to complaints about BOS's service. This states that under the Terms of Reference BOS can re-open a complaint if relevant new evidence is submitted and this will be done if satisfactory reason is given for the previous non-disclosure of the evidence to BOS. A complaint will also be re-opened if a process review identifies that a significant procedural error occurred. Reviews are usually undertaken by the Deputy Ombudsman.

A quarterly report is provided to the Board about complaints about BOS's service. The Banking Ombudsman's November 2013 report stated that there had been 3 formal complaints during the quarter, none of which were upheld.

12.2.1. Findings

We are satisfied that BOS deals appropriately with complaints about its performance and considers whether these suggest the need for improvement in how it goes about its work. BOS does not, however, maintain a formal register of complaints. We think that this would assist in the identification of trends and enhance the Board's ability to oversight complaints about BOS's performance.

Recommendation 19.

BOS should maintain a formal register of complaints about its performance, including brief details of the issues raised, BOS's response to the complaint and the date of the complaint and the response.

13. ENGAGEMENT WITH SCHEME PARTICIPANTS

To be effective, BOS needs to engage productively with Participants and promote good complaint handling practices.

13.1. Promotion of good complaint-handling practices

BOS supports Participants in their internal complaints-handling by being transparent about the way in which BOS views commonly occurring complaints. This includes the publication of Quick Guides and case studies.

Participants told us that BOS is very approachable. They are encouraged by BOS to contact BOS and discuss a complaint that is at the internal dispute resolution stage if the Participant is unsure about what remediation, if any, should be made. In these circumstances, BOS provides guidance as to the type of resolution BOS would probably consider appropriate if the matter were to escalate to BOS. Participants told us that they find BOS's guidance of great value.

13.1.1. Findings

We think these initiatives are best practice and encourage good complaint handling practices by Participants. Complainant dissatisfaction is likely to be reduced, minimising the number of complaints that are escalated to BOS.

13.2. Reporting to Scheme Participants

BOS provides each Participant with a monthly report listing all of their open matters and providing a status report. A six monthly report is also provided that provides the Participant with information about its complaint trends and compares the Participant's complaints performance with other Participants (numbers of complaints, concerns raised by customers, manner of resolution, compensation paid etc). BOS is proposing to begin shortly providing a report of this type on a quarterly rather than six monthly basis.

13.2.1. Findings

We think that BOS's reporting to Participants is at a best practice standard and positions Participants to develop and maintain good complaint handling practices. Participants told us that they particularly value the industry comparative information. They welcome BOS's proposal to provide these reports quarterly rather than six monthly.

13.3. Forums

BOS has held regular forums for Participants and has experimented with different approaches. In the last financial year, BOS held two forums for Participants' staff – an all staff forum and a forum for managers of complaints handling staff.

13.3.1. Findings

We understand from Participants that the Managers' Forum was particularly valued – that it was interactive and pitched at an appropriate level. One Participant suggested that this forum could

usefully be held 6 monthly rather than yearly. In comparison, the larger Participants found the all staff forum to be of less value.

We note that EDR schemes face a challenge in structuring industry forums given that Participants do not have uniform expectations and needs. There is also a tendency for structured forums to lose their utility over time and to need refreshing in format and focus. Accordingly we commend BOS for continuing to evolve Participant forums and for seeking Participants' ideas as to these. We do not make any specific recommendations – other than to refer the feedback to BOS.

13.4. Other issues

It was evident from our discussions with a sample of Participants that they are keen to engage with BOS and participate in BOS to the extent available to them. Auckland based Participants do feel the tyranny of geographical distance from BOS: one Participant mentioned that they would like BOS annual general meetings to sometimes be held in Auckland and a couple of Participants said that they would like to see the Ombudsmen visit their offices and meet their complaints handling staff from time to time. As already mentioned, there were also offers of assistance, for example, with outreach and training.

13.4.1. Findings

We think that Participants' eagerness to engage with BOS is a great positive. This dynamic is, we think, one of the benefits of the small number of Participants. That said, it is of course important that BOS maintains enough distance from Participants to preserve its

independence – and satisfy complainants and community stakeholders of this. A fine line needs to be trod, as we are confident BOS appreciates. Again we see no need for specific recommendations.

14. RESOURCING

BOS must be adequately resourced to enable it to carry out its dispute resolution responsibilities in a way that meets the benchmarks in the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Its funds must be used efficiently to maximise what it is able to achieve with them.

14.1. Adequacy of funding

BOS's funding must be sufficient to enable it to resolve complaints fairly and in a timely manner. It also needs sufficient funding to carry out all of the other functions expected of a modern EDR scheme including outreach to the community and industry, development of extensive website materials, analysis of complaints and reporting to industry and the public.

A difficulty for all EDR schemes is that complaint volumes fluctuate. Where complaint numbers surge, BOS does not get increased funding until the end of the financial year when the next round of levies are paid. Also there are inevitably recruitment delays where a scheme upscales to manage increased volumes. Because of these issues, we generally suggest that schemes resource slightly above the bare minimum and use times when volumes are low to commit extra resources to other functions.

We think it is important that there is a clear and evident re-direction of resources when workload drops. Not just because Participants have an interest in how scheme resources are applied but also because it can be very easy for internal work habits to expand to consume the available time.

One obvious candidate for overtly re-directing resources is to apply staff time to development and improvement projects, such as templates, Quick Guides, IT development, office efficiency initiatives, training, etc.

We also suggest that schemes look to the possibility of exchanges with staff at other EDR schemes – preferably ones that are not on the same economic/complaints cycle (eg. telecommunications or water/energy). This can enable some greater flexibility to cope with variations in workload.

14.1.1. Findings

We did not become aware of anything that suggested BOS's current funding is inadequate. To the contrary, we are aware that the Board has been responsive to BOS's needs and, for example, approved a 2013/14 budget that was 10% higher than the previous year to allow for anticipated one-off costs during that year.

14.2. Efficiency of BOS's use of its resources

It is important that BOS uses its resources efficiently – and that Participants have confidence that this is the case.

14.2.1. Stakeholder views

We heard from some Participants that BOS investigations sometimes delve into issues that are not necessary for resolution of the complaint and that this can reduce efficiency. There was also a desire for more transparency as to how BOS uses its 'surplus' resources in times of low complaint volumes.

14.2.2. Findings

We saw that BOS is focused on efficient use of its resources. Examples of this include BOS's preference for email and telephone as efficient methods of communication, Telephone calls are recorded to save staff time in typing up file notes. BOS has designed its approach to information collection with an eye to efficiency for itself and the parties – whilst ensuring fair resolution. Supervision practices aim to minimise re-work. The efficiency advantages of early resolution are recognised.

It seems to us that the next stage of BOS's focus on efficiency should be in relation to the longer running complaints that are decided by an Initial Assessment or Recommendation. We have earlier recommended a slightly more directive approach in telephone discussions with the parties and that BOS work with a professional writer in relation to its decisions. We think that other fine tuning should be possible., for example, to ensure the investigation does not stray into issues that are not determinative. But we stress that we think that major efficiency improvements are unlikely.

Recommendation 20.

BOS should review its approach to the longer running complaints that are decided by an Initial Assessment or Recommendation to see if there are efficiency opportunities, for example, to ensure that the investigation does not stray into issues that are not determinative.

Finally we do think that it is important that BOS communicate more clearly to its stakeholders, particularly Participants, how it uses times of lower complaint volumes to progress other work.

Recommendation 21.

BOS should ensure that it communicates to its stakeholders, particularly Participants, how it uses times of lower complaint volumes to progress other work, for example, the development of additional Quick Guides, additional outreach work and so on.

15. LIST OF RECOMMENDATIONS

This section provides a list of all Recommendations made throughout the Report. In this section, they are loosely grouped with thematically similar Recommendations. For ease of reference to the supporting text, they retain the number given to them in the body of the Report – which in some cases will not be in number order.

15.1. Stakeholder interaction

Recommendation 1.

BOS should form a Community Representatives Liaison Group to help BOS develop a comprehensive community engagement strategy that includes both consultation and development of educative resources for community representatives. If any of the other financial sector external dispute resolution schemes are willing to participate, this could be a joint initiative with those other schemes.

Recommendation 21.

BOS should ensure that it communicates to its stakeholders, particularly Participants, how it uses times of lower complaint volumes to progress other work, for example, the development of additional Quick Guides, additional outreach

work and so on.

15.2. Efficiency measures

Recommendation 6.

BOS should amend its Terms of Reference to give it a discretion to refuse to consider (or continue to consider) a complaint where it is satisfied that:

- the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience;
- the complaint is frivolous or vexatious;
- the complaint does not have any reasonable prospect of success; or
- the firm has already made an offer which is fair and reasonable in relation to the circumstances alleged by the complainant and that is still open for acceptance.

Recommendation 13.

As part of its ongoing training program for staff, BOS should consider training for its investigators to help them to take control of calls and bring them more quickly to conclusion.

Recommendation 20.

BOS should review its approach to the longer running complaints that are decided by an Initial Assessment or Recommendation to see if there are efficiency opportunities, for example, to ensure that the investigation does not stray into issues that are not determinative.

15.3. Expansion to jurisdiction

Recommendation 3.

- a) **BOS** should amend its Terms of Reference to allow **BOS** to consider a complaint where the customer's claim is for an amount that is up to \$300,000, provided that the customer agrees to waive their right to pursue any amount in excess of compensation obtained through **BOS** ie. in the event that the complaint is resolved by settlement or a **BOS** Recommendation.
- b) **BOS** should develop, and publish on its website, information for consumers as to how **BOS**'s jurisdictional limit operates eg a Quick Guide on this topic. This should also make it clear to those consumers with large amounts in dispute that they should check with **BOS** to ensure that they are reasonably estimating the amount they might claim.
- c) **BOS** should collect data as to how often customers approach **BOS** with an enquiry or complaint about a claim for financial loss of more than \$200,000 and, if so, by how much. The aim in collecting this data is to ascertain whether the current financial limit poses an undue barrier to access to **BOS**.

Recommendation 4.

BOS should amend its Terms of Reference to give **BOS** the power to make non-monetary awards, that is to require the Participant to undertake a course of action to resolve the complaint including the forgiveness or variation of a debt, the release of security for debt and the reinstatement, rectification or variation of a contract. This should be subject to the proviso that, for each complaint, the aggregate value of the non-monetary award and any financial award must not exceed the financial limit.

- b) Over time, **BOS** should collect comprehensive data as to how often customers approach **BOS** about a complaint outside this two months period and what happens in relation to these enquiries and complaints. This data should be used to consider whether to discuss with Participants lengthening the two month timeframe to six months to achieve parity with the UK and Canadian timeframe.

Recommendation 5.

BOS should strengthen its ability to accept complaints beyond the current two month limit after the Participant has provided the customer with its final position in relation to the complaint.

- a) **BOS** should take steps to change its Terms of Reference to allow the scheme an 'exceptional circumstances' discretion to accept a complaint more than two months after the final position has been communicated.

Recommendation 8.

BOS should consult with stakeholders with a view to including in its Terms of Reference some restrictions on the ability of Participants to institute legal and enforcement proceedings while a complaint is under consideration by **BOS**.

Recommendation 16.

BOS should consult with stakeholders with a view to amending its Terms of Reference to give it explicit powers to investigate systemic issues and work with Participants to ensure that these are appropriately addressed.

15.4. Other Terms of Reference and Constitution issues

Recommendation 2.

BOS should clarify its Terms of Reference decision making criteria to give primacy to the fairness obligation, whilst requiring it to also have regard to the law and general principles of good banking practice and any relevant code of practice.

Recommendation 10.

BOS should rewrite its Terms of Reference to modernise and clarify them. In particular, powers should be conferred on the corporate entity with delegation to the Banking Ombudsman and the Deputy Ombudsman and a power to further sub-delegate where appropriate.

Recommendation 14.

BOS should establish a delegation framework that enables investigators to prepare and provide to the parties the notice that is required by the Terms of Reference to be given before a Recommendation is made (ie a written analysis of the complaint with an explanation of the facts, view as to how the complaint should be resolved and reasons for this view).

Recommendation 12.

BOS should amend paragraph 9 of its Terms of Reference to limit the information access rights of a party to the written information provided by the other party. The effect of this would be that **BOS** would not have to provide its own internally generated documents. Nor would it have to transcribe recorded telephone calls where that is not necessary.

Recommendation 7.

BOS should clarify paragraph 28 of the Terms of Reference so that it is clear that its jurisdiction is not avoided by a Participant implementing a practice or policy that fails to meet general principles of good banking practice.

Recommendation 9.

BOS should consult with stakeholders with a view to enabling its Terms of Reference to be changed where 75% of Directors vote in favour of this.

15.5. Accountability measures

Recommendation 11.

BOS should track and publicly report about abandonment/withdrawal trends and undertake periodic customer research to identify the reasons for abandonments/withdrawals and whether any action is needed by BOS to reduce the risk of customers abandoning valid complaints.

Recommendation 19.

BOS should maintain a formal register of complaints about its performance, including brief details of the issues raised, BOS's response to the complaint and the date of the complaint and the response.

15.6. Internal management matters

Recommendation 17.

As the environment normalises, the BOS office structure should adopt a simpler, more intuitive structure with two main groupings of staff – the core investigations/enquiries functions reporting to the Deputy Ombudsman and the support and external functions to a new Business Manager position.

Recommendation 15.

BOS should work with a professional writer to explore ways of drafting Ombudsman Initial Assessments and Recommendations so that they are as clear, concise and accessible as possible.

Recommendation 18.

BOS should explore options for staff exchanges with other EDR schemes as a way to provide broader development opportunities for staff.