



The Banking Ombudsman



Annual Report 2002-2003

ABOUT THE SCHEME

The Banking Ombudsman scheme took effect from 1 July 1992.

Its purpose is to provide a completely independent and impartial arbitrator of unresolved disputes about the provision of banking services. The Banking Ombudsman's help is free. Anyone dissatisfied with a banking service in New Zealand from a participating bank, even if not a bank customer, can submit a complaint. Sole traders, partnerships, clubs and companies are covered by the scheme.

The Banking Ombudsman's Terms of Reference give jurisdiction to deal with complaints about all types of banking business normally transacted through bank branches, over the telephone, or by electronic means, including complaints about bank credit cards and products sold by banks such as insurance and savings schemes. However the Banking Ombudsman cannot deal with complaints about general bank policy or about commercial judgement decisions on lending unless there has been maladministration. The Banking Ombudsman has power to award compensation to cover direct losses of up to \$120,000 (or in some cases \$150,000), inconvenience up to \$4,000 and some costs.

The Banking Ombudsman is appointed by, and is responsible to, the Banking Ombudsman Commission which consists of five members, two consumer representatives and two banking representatives and an independent chairman, the Hon Sir Ian Barker QC. The functions of the Commission are to ensure the independence and impartiality of the Banking Ombudsman, to give general guidance and to monitor the Terms of Reference. The Commission is not involved in the Banking Ombudsman's decisions on specific cases.

A list of participating banks to the scheme can be found on the inside back cover of this report.

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FOREWORD BY THE CHAIRMAN

This Report records the eleventh successful year of the Banking Ombudsman scheme. It reveals that the workload of the Banking Ombudsman and her staff continues to remain high, as the scheme becomes better known in the community. The Annual Report and the accompanying case notes provide valuable insights into the operation of the scheme over the whole range of banking activities. The case notes demonstrate the wide diversity of situations referred to the Banking Ombudsman for her consideration.

Complaint numbers have increased, partly because of the widespread use of email, yet the timeliness of processing complaints has improved. Many complaints are complex and take a long time to investigate and determine. The Commission monitors timelines and offers suggested guidelines to the Banking Ombudsman and her staff for the resolution of complaints. These guidelines have been generally achieved over the years in question. The number of aged complaints has decreased.

Several interesting developments have occurred during the year under review and are detailed in the Report. For the first time, the Report publishes a table of complaints related to various banks. The table does not say how many complaints were successful. It merely indicates the spread over the various members of the scheme. As the Banking Ombudsman notes, these figures should be interpreted with caution.

A new Code of Banking Practice came into force in December 2002. The Banking Ombudsman had considerable input into the review which preceded the issue of the Code. She continues her ongoing role in monitoring the Code. The new Code is an improvement

over its predecessor, particularly where it gives recognition to the needs of the elderly and the disabled. The undertaking to commence the next review of the Code within the next three years is likely to improve the Code further for the benefit of bank customers.

An independent review of the Banking Ombudsman's processes was again conducted by Chen, Palmer & Partners. Generally, this review was complimentary to those processes. Specific recommendations for improving them have been adopted by the Banking Ombudsman. The Commission is grateful to Chen, Palmer & Partners for their thorough approach to the review and their constructive suggestions.



Hon Sir Ian Barker QC

In the period under review, the Commission bade farewell to Ms Margy-Jean Malcolm, the appointee of the Minister of Consumer Affairs. Margy-Jean brought to the Commission a wealth of experience in consumer organisations: the Commission acknowledges with thanks her insightful and practical contributions. The Commission is fortunate that the Minister has appointed Ms Helen Walch as Margy-Jean's replacement. Helen has a long background in community service and in the problems of consumers. Sir John Anderson, representing the banks, and Mr David Russell, the Chief Executive of the Consumers' Institute, continue to serve on the Commission, as they have since its inception. Their experience and wisdom ensure a continuity of approach. The newer

bank representative is Mr Sam Knowles, Chief Executive of Kiwibank, with Mr Peter Thodey of the Bank of New Zealand as alternate.

I thank the members of the Commission for their wise stewardship of the scheme. Once again, it is a pleasure to pay tribute to Mrs Liz Brown, the Banking Ombudsman, for the enthusiastic and capable fulfilment of her position. She is recognised internationally as an exemplar for Financial Service Ombudsmen. She has provided advice and assistance to various schemes being developed in different countries. She organised (along with the Insurance and Savings Ombudsman) a highly successful international conference of Financial Sector Ombudsmen in July of this year.

As noted by Mrs Brown, in her Report, some of her staff have been with the Banking Ombudsman scheme since its inception in 1992. The Commission is grateful to these four individuals and indeed to all the dedicated and experienced staff who strive to ensure the successful working of the scheme.



Hon Sir Ian Barker QC
Chairman
Banking Ombudsman Commission



*Banking Ombudsman
Commission.
From left:
Sir John Anderson,
Mrs Liz Brown,
Mr Sam Knowles ,
Ms Helen Walch,
Sir Ian Barker,
Mr David Russell.*

REPORT OF THE BANKING OMBUDSMAN

The year ending 30 June 2003 has been a milestone in several ways. The Banking Ombudsman scheme entered its second decade and the second review of the Code of Banking Practice was completed, as was the second independent audit of our investigation process. The intake of complaints increased yet again, driven partly by complaints about investments, but the number of new investigations decreased, and we reduced our backlog to the point where we had fewer cases under investigation at the end of the year than at any time since 1998.

Also this year for the first time I am publishing a table showing the number of complaints received in respect of each participating bank during the year. I consulted extensively both with the banking industry and with other interested parties over this proposal, and the general consensus was that it would improve transparency and accountability, both for the banks and for the Banking Ombudsman scheme, and would add a useful perspective to the information already available to the public about the performance of their banks.

The information needs to be treated with some caution. It is only to be expected that banks with large numbers of customers will receive more complaints than those with comparatively few customers, and the figures should be read in that context. The number of complaints recorded against any one bank can also be affected by the ease with which its customers have access to information about the complaints process as well as by the actual performance of the bank. Generally speaking, the relationship between numbers of "complaints" and numbers of "disputes" involving a bank can be taken as an indicator of the bank's performance in resolving its customers' problems. Even here, however, a low level of both "complaints" and "disputes"¹ may mean that a bank is generating few complaints and that the ones which reach dispute status are likely to be those with little merit.

During the year we welcomed a new bank to membership of the Banking Ombudsman scheme.

St George Bank New Zealand Ltd, trading as Superbank, became a member in February 2003.

There were changes in the Banking Ombudsman Commission, with the retirement of Margy-Jean Malcolm who has most ably represented the interests of consumers, and the appointment in her place of Helen Walch, who brings with her a wide knowledge of community agencies and the problems faced by their clientele. My special thanks go to Margy-Jean for all the support she has unstintingly given to the Commission and to me personally.

Special thanks also to the Chairman of the Banking Ombudsman Commission, Sir Ian Barker, for his unfailing generosity with time and advice whenever there was a need for it during the year. The Commission has

continued to function as an invaluable guarantor of the independence which I and my staff enjoy, and has continued to have a good balance between long serving members who contribute an enormous amount of wisdom and experience, and more recent appointees who bring fresh ideas and approaches to what can be a demanding role. To all Commission members I would like to express my appreciation for the work they have put in to ensure that the Banking Ombudsman scheme is and remains a sound and independent service to those who use banks.

INVESTMENT COMPLAINTS

The main feature of this year's complaint intake has been the further increase in complaints about investment advice from bank customers who have suffered losses on investments in bank-recommended managed funds, unit trusts or superannuation schemes. 89 complaints of this nature were received, and 48 dispute investigations



Liz Brown

¹ See page 5 for definitions of "complaint" and "dispute."

were commenced. This means that from 1% of complaint intake in 2000/1, investment complaints rose to 4% in 2001/2 and to 7% in 2002/3. At 30 June 2003, we had 36 complaints about investments under investigation, and they made up 17% of the investigation caseload, the same proportion as complaints about mortgage finance and surpassed only by complaints about credit and debit cards (21%).

Although the absolute number of complaints about investment advice is not large, these investigations tend to take longer than average, and the compensation claims made by the complainants are higher than average. There are often evidential difficulties as the advice in question may well have been given some years previously and have been inadequately recorded, if recorded at all. In many cases it is necessary to interview the complainant and/or the adviser. The intake of these complaints is the main reason why we have not been able to reduce the time taken over investigations this year as much as I would like.

I remarked in last year's annual report on some of the issues that were emerging from the complaints about investment advice, and a further year's experience confirms the views expressed in 2002. Complaints of this nature are not evenly spread across banks, and those banks that have a larger share of these complaints are those that are more likely to have had deficiencies in their processes

for providing investment advice and recommending investments.

The most common type of complaint about investment advice is a complaint that the adviser has failed to give an adequate explanation of the risks attached to an investment in a fund with an equities component. In terms of the Fair Trading Act 1986, the customer complains that he or she was misled about the nature of the investment. I am finding in a number of cases that the printed material supplied by the bank, including the investment statement required under the Securities Act 1978, gives an adequate explanation of the nature of the investment, though not always in terms that are going to be easy for the inexperienced investor to understand, but that the customer has not been given time to read and assimilate the information before making the decision to invest and has relied on the explanations given by the investment adviser.

Similarly, the disclosure statement required by the Investment Advisers (Disclosure) Act 1996 is usually well drafted and often offers more information than the minimum required by statute, but in some cases has simply been handed to the customer with other documentation at the end of the interview when it should have been drawn to the customer's attention at an early stage.

It is not unusual to find that a customer who

CASES RECEIVED BY BANK 2002 – 2003	Enquiry	Complaint	Dispute	Total
AMP Bank Limited	0	9	5	14
ANZ Banking Group (New Zealand) Ltd	22	169	64	255
ASB Bank Limited	9	70	61	140
Bank of New Zealand	20	125	61	206
Citibank, N.A.	0	1	0	1
The Hongkong and Shanghai Banking Corporation Limited	1	1	0	2
Kiwibank Ltd	1	14	1	16
The National Bank of New Zealand Limited	16	138	39	193
Rabobank New Zealand Limited	0	1	0	1
St George Bank of New Zealand Limited (Superbank)	0	1	0	1
TSB Bank Limited	1	6	3	10
Westpac Banking Corporation	32	213	144	389
TOTAL	102	748	378	1228

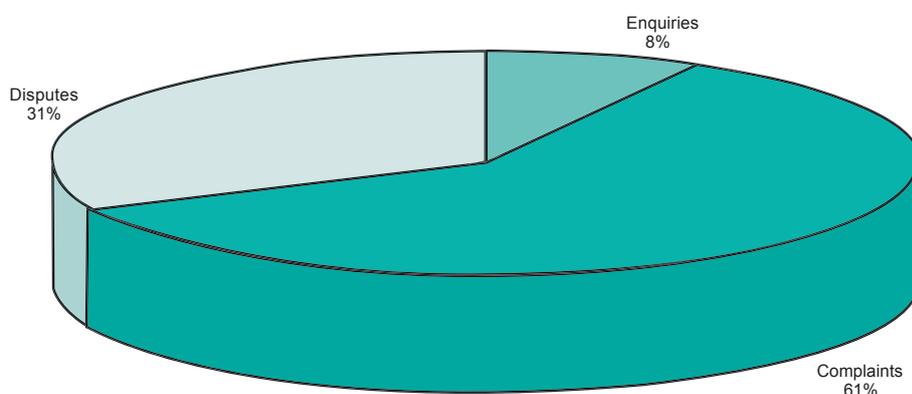
has always previously invested in term deposits has had a single meeting with a bank investment adviser, has been recommended to invest in one of the bank's managed funds and has accepted the recommendation and written out a cheque or authorised a transfer at the end of the meeting.

Understanding an investment in a managed funds product requires the assimilation of several concepts that are likely to be unfamiliar to a bank customer who has only previously had experience of bank deposits. Variable returns, the possibility (and meaning) of negative returns, investment in a range of asset classes, the nature of units in a fund, fluctuations in the value of the investment are all concepts that need to be very carefully explained. It would be unusual for an inexperienced investor to gain a full understanding of the nature of a proposed investment in managed funds from a single short meeting, and there is a real possibility

that the adviser will inadvertently give misleading information, or mislead by omission about important aspects of the investment. I consider it to be poor practice to accept an application to invest in a managed funds product from an inexperienced investor unless he or she has had adequate time to read and assimilate the printed information.

The casenote compendium that accompanies this report includes some examples of complaints about investment advice, and an explanation of the approach taken to the most common types of this category of complaint.

ANALYSIS OF CASES RECEIVED 2002-2003 BY CASE CATEGORY



ENQUIRIES, COMPLAINTS, DISPUTES AND TELEPHONE ENQUIRIES

Enquiries are complaints made in writing that clearly fall outside the Banking Ombudsman's Terms of Reference.

Complaints are complaints made in writing that appear to fall within the Banking Ombudsman's Terms of Reference but have not been through the relevant bank's internal complaints process.

Disputes are complaints that appear to fall within the Banking Ombudsman's Terms of Reference and have been considered by the relevant bank's internal complaints process without being resolved.

Telephone enquiries are complaints made by telephone that would be classified as **enquiries** or **complaints** if they had been made in writing.

COMPLAINT STATISTICS

In looking at the record of complaints received and completed over the year, at first sight it seems we have had a major increase in formal complaints made to this office. While there probably has been an increase, the use of e-mail is largely responsible both for the difference between this year's complaint figures and last year's, and for the drop in telephone enquiries. It is becoming much more common for complainants to contact us by e-mail in circumstances where they would previously have contacted us by telephone. Complaints received by e-mail are usually recorded as formal complaints (see explanatory panel on p5).

We also discovered during the course of the year that some complaints received by e-mail were not recorded as they did not fall into the usual classifications. This was a system problem that has been addressed so that future statistics will include these cases. There is, however, an element of under-recording in this year's figures.

It therefore seems that the complaint intake has remained fairly steady this year.

More cases were completed this year than in any previous year. Sometimes this simply involved writing a letter of explanation or advice to the complainant. In a significant number of cases,

however, even if there was no dispute investigation there was a good deal of work in communicating with the complainant and the bank and helping them to resolve the complaint between themselves.

Despite the rather lower number of completed investigations, we had fewer disputes outstanding at the end of the year than at any time since 1998.

The general feeling among staff of the office for some time has been that cases which reach the Banking Ombudsman are becoming more complex and more difficult to resolve. Fewer complaints are reaching dispute status, but those that do reach dispute status appear to be increasingly complex and difficult. This year, therefore, we have introduced a measure of complexity. We identified about twenty factors that tend to make a case more difficult than the norm. These factors are then taken into account to allocate each case a rating of between one and five for complexity. It is hoped that this will give us a tool both to ensure that work is fairly allocated between investigators and also to measure changes in the nature of the caseload. The system is experimental as yet and will clearly need refining over time.

Fewer disputes were settled this year than in the previous three years, but the total number of

OVERALL STATISTICS

TABLE 1	1992-3	1993-4	1994-5	1995-6	1996-7	1997-8	1998-9	1999-00	2000-01	2001-2	2002-3
Received	241	348	423	539	705	801	1061	1113	1112	1102	1228
Completed	180	313	453	510	663	779	1006	1093	1118	1103	1250
Carried over	61	96	72	101	143	165	220	240	234	233	211

TABLE 1A	Cases Received	2000-01	%	2001-02	%	2002-03	%
Enquiries		133	12	105	10	102	8
Complaints		615	55	588	53	748	61
Disputes		364	33	409	37	378	31
Total		1112	100	1102	100	1228	100

TABLE 1B	Cases Completed	2000-01	%	2001-02	%	2002-03	%
Enquiries		135	12	106	10	105	8
Complaints		623	56	598	54	758	61
Disputes		360	32	399	36	386	31
Total		1118	100	1103	100	1249	100

TABLE 1C	1994-5	1995-6	1996-7	1997-8	1998-9	1999-00	2000-01	2001-02	2002-03
Telephone enquiries	729	1588	1623	2417	2512	3091	3079	2920	2720

cases settled has increased. This would indicate that more complaints are being settled in banks' internal complaints processes. There was a small increase in the number of formal recommendations and as in previous years these were fairly evenly divided between recommendations favouring the complainant (either wholly or in part) and recommendations favouring the bank. It was not necessary to make a formal award of compensation this year.

Complaints about debit and credit cards continue to feature strongly in our caseload, as complaints and particularly as disputes. Well over a quarter of the dispute investigations completed during the year concerned complaints about debit or credit cards. Most of these had a background in card fraud and were complaints that a bank had refused to reimburse a customer after such fraud had occurred. Further comment on these cases will be found in the casenote compendium.

The second largest category of complaint involves those concerning mortgage finance. This category has been fairly steady for some years, and there do not appear to be any systemic issues at present. Many of the complaints involve a bank's handling of the recovery process when a customer has become unable to meet the loan repayments, and in this respect I still have some concerns about the position of joint borrowers after a family or business relationship has broken down. I continue to receive complaints from customers who have not been advised that any agreement they may have made between themselves about responsibility for loan repayments is valid only between themselves and

does not affect their responsibilities to their bank. While it is primarily the function of the parties' legal advisers to make this clear, bank staff should give appropriate advice if there is an opportunity to do so.

ANALYSIS OF COMPLETED CASES BY RESULT

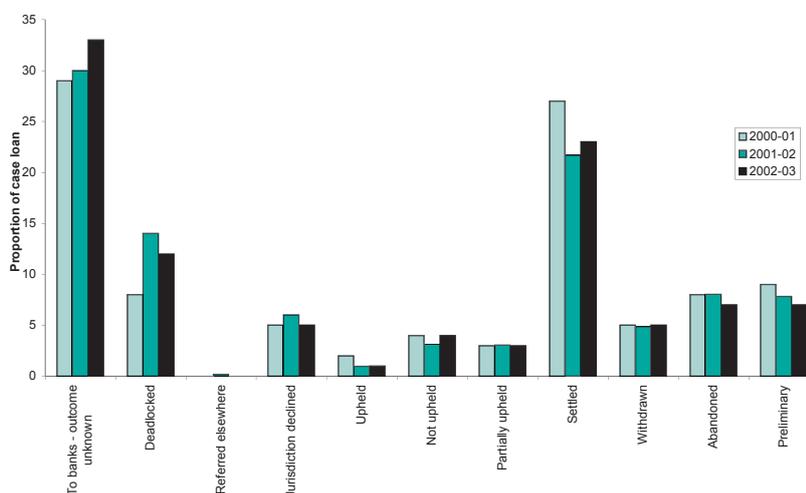
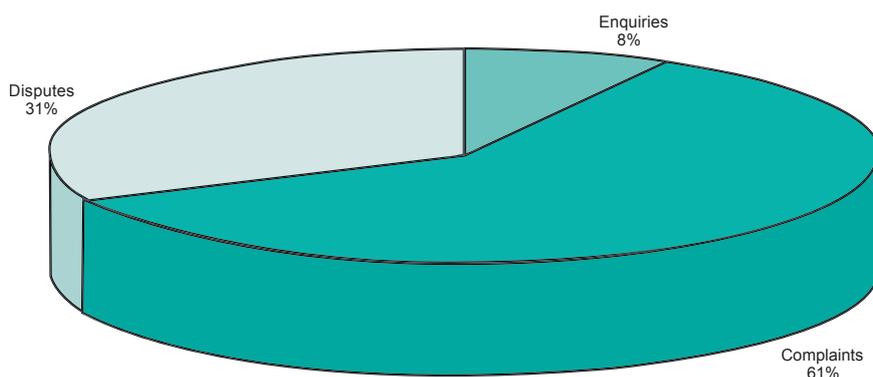


TABLE 2A

All cases by result

	2000-01	%	2001-02	%	2002-03	%
To banks - outcome unknown	328	29	339	30	417	33
Deadlocked	96	8	150	14	156	12
Referred elsewhere	0	0	2	0	1	0
Jurisdiction declined	51	5	62	6	69	5
Upheld	17	2	11	1	10	1
Not upheld	44	4	36	3	52	4
Partially upheld	38	3	34	3	36	3
Settled	310	27	250	22	283	23
Withdrawn	54	5	53	5	65	5
Abandoned	93	8	90	8	84	7
Preliminary	104	9	88	8	82	7
Total	1135	100	1115	100	1255	100

ANALYSIS OF CASES COMPLETED 2002-2003 BY CASE CATEGORY



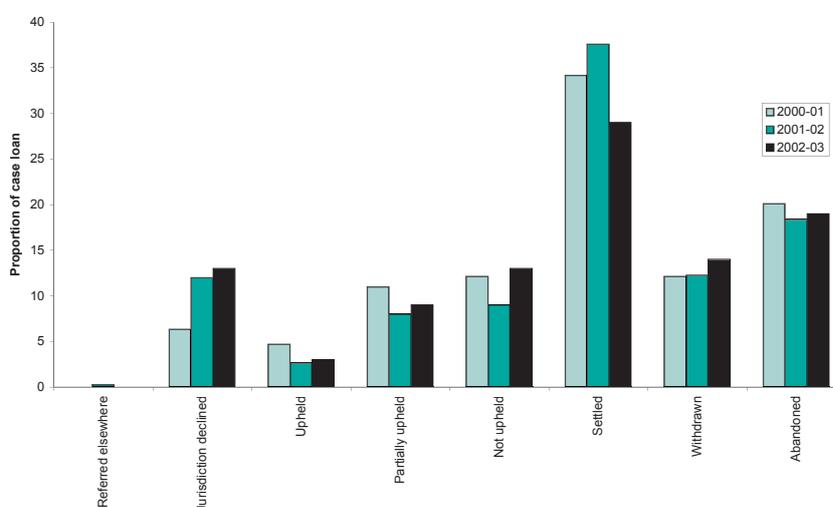
The complaint statistics do not yet fully reflect the impact of the increase in complaints about investment products as comparatively few of the investigations were completed before the end of the year. Even so, 1% of our completed cases in 2000/2001 were of complaints about investments or superannuation and this had risen to 6% by the end of June 2003. There was no great change in the numbers of complaints received about other areas of banks' business.

There has been a marginal improvement in the time taken to complete cases. Virtually all cases that were eventually classified as complaints were completed within a month of receipt, and most of them within two to three days. Dispute cases naturally take a good deal longer. It is now, however, comparatively unusual to find a case taking more than a year to resolve and well over 60% of disputes were either resolved or at least past initial assessment stage by the time they

were six months old. There are still unacceptable delays in this office between the point at which the investigatory work on a complaint is complete and the point at which the initial assessment is sent out to the bank and the complainant. This is the main point at which extra resource is being applied. At present most cases have the initial assessment issued four to eight weeks after completion of the investigation work but some have had to wait as long as twenty weeks. Our first priority is to reduce this to no more than twelve weeks.

The reduction in investigation times probably led to an increase in expressions of satisfaction from complainants who contacted us at the conclusion of the investigation of their complaints. Most complainants do not make contact once the investigation has been completed, but of those who did, 129 expressed satisfaction with the office's performance and only 17 expressed dissatisfaction.

ANALYSIS OF COMPLETED DISPUTES BY RESULT



The total amount of compensation paid by banks to customers who had complained to the Banking Ombudsman was \$758,669.70.

BANKS' INTERNAL COMPLAINTS PROCESSES

It is pleasing to be able to report that all banks' internal complaints processes have been functioning reasonably well in the past year. There have been very few problems with delayed or incomplete responses to my enquiries, and a higher rate of settlement within banks' own processes is evidence of good performance. I still have some concern about the level of resourcing of the complaints process in some banks, as the delays and difficulties that have occurred have almost always been when the complaints handling team is short-staffed.

There remain problems in ensuring that complaints enter a bank's

TABLE 2B Disputes by result

	2000-01	%	2001-02	%	2002-03	%
Referred elsewhere	0	0	1	0	0	0
Jurisdiction declined	23	6	47	12	51	13
Upheld	17	5	11	3	10	3
Partially upheld	38	11	34	8	36	9
Not upheld	44	12	36	9	52	13
Settled	124	34	152	38	113	29
Withdrawn	44	12	47	12	55	14
Abandoned	73	20	73	18	73	19
Total	363	100	401	100	390	100

internal complaints process. A disproportionate number of the disputes that are investigated are cases where the complaint was either originally made or swiftly passed to a specialist area of the bank such as its debt recovery, credit card, investment or fraud department. Difficulties arise when a member of that department gives the complainant what appears to be the bank's final response to the complaint without mentioning any further progress that may be made through the bank's internal complaints process, and often without mentioning the customer's right to complain to the Banking Ombudsman. The problem is aggravated when the response does not cover all aspects of the complaint, or is phrased in a manner that the customer interprets as confrontational or evasive.

While it is important that the department responsible for the cause of the complaint should have input into the complaint consideration process, the management of that process is best done by staff trained in dispute resolution who can be expected to avoid the sort of approach that only serves to heighten the complainant's sense of grievance.

CODE OF BANKING PRACTICE

During 2002 the New Zealand Bankers' Association completed its review of the Code of Banking Practice and the new Code came into effect in December 2002.

The original discussion document was very extensively re-written during the course of the review, and the new Code affirms that it records good banking practices and that banks subscribing to the Code agree to observe these practices as a minimum standard.

It is good to see special recognition of the needs of elderly and disabled customers and the retention of an undertaking to provide all customers with timely information to help them understand how accounts and

products or services operate. Modern banking can be a complex business, and while the complexities create more difficulties for some groups of customers than others, most customers take a great deal on trust when they use banking services. Many of the complaints that are made to the Banking Ombudsman could be avoided if the complainants had a better understanding of the transactions in which they are involved.

It is also good to see an undertaking to commence the next review of the Code within three years. The 2002 Code was finally issued more than six years after the previous edition, and the review task was made difficult by the magnitude of the changes that have occurred in the banking industry during those years. The new Code begins to address the issues raised by new technology, particularly the increased use of telephone and internet banking, and sets some standards in this area, especially as to the reversal of payments made by mistake. It also

ANALYSIS OF COMPLETED CASES BY PROBLEM HEADING

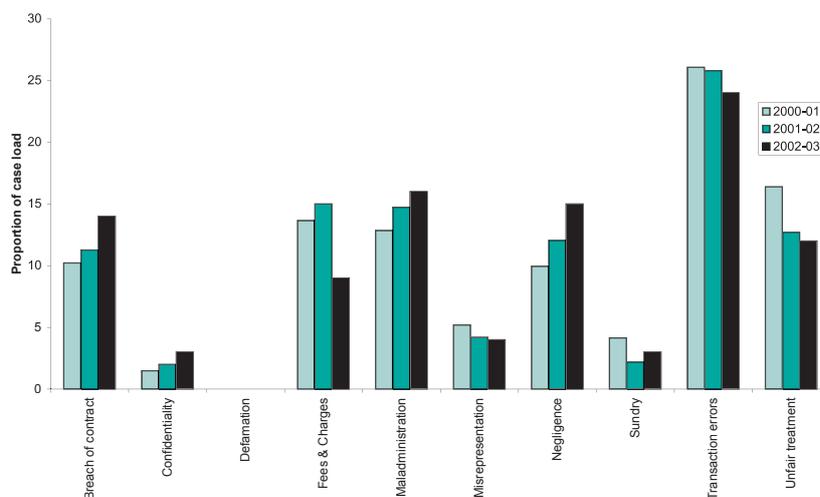


TABLE 3 Cases by problem heading

	2000-01	%	2001-02	%	2002-03	%
Breach of contract	116	10	126	11	179	14
Confidentiality	17	1	24	2	31	3
Defamation	0	0	0	0	0	0
Fees & Charges	155	14	163	15	114	9
Maladministration	146	13	168	15	194	16
Misrepresentation	59	5	48	4	51	4
Negligence	113	10	135	12	193	15
Sundry	47	4	25	2	38	3
Transaction errors	296	26	287	26	300	24
Unfair treatment	186	16	139	13	155	12
Total	1135	100	1115	100	1255	100

makes it clear that electronic deposits need to be cleared and that in permitting early access to funds deposited electronically, banks are providing credit which will have to be repaid if the deposit fails to clear. It will certainly be beneficial to review these issues sooner rather than later.

The new Code incorporates the 1999 "Statement of Principles" which set out the standards to be observed by banks in their relationship with their small, medium-sized and farming business customers. The standards are largely unchanged, but unfortunately considerations of space mean that most of the commentary and explanatory material found in the original have now been omitted. As this material is a useful aid to interpretation of the standards, I propose to continue to refer to it where necessary.

The section of the Code that deals with liability for loss caused by the unauthorised use of cards is probably the one that attracted most attention during the review process. In the end, it was partially re-drafted, but the substance of it remains the same – if customers take reasonable care of their cards and PINs and report their loss or disclosure promptly, then they will be entitled to a refund of all but the first \$50 of any loss. The Code remains silent on the question of where the burden of proof lies when there is a dispute about the events leading to the unauthorised use, and accordingly my approach to these cases is unaltered.

To date few investigations have involved consideration of the new Code provisions. Clause 3.1 (c) and (d), which explains the circumstances in which banks may suspend or close accounts, either with or without notice, has been the one most frequently cited, and has proved helpful in bringing some certainty into this area.

ANALYSIS OF COMPLETED CASES BY AREA OF BUSINESS

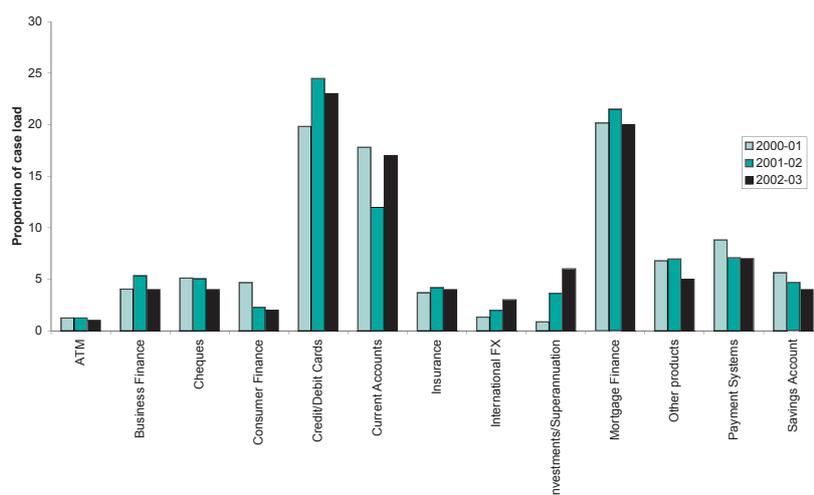


TABLE 4A Cases by area of business

	2000-01	%	2001-02	%	2002-03	%
ATM	14	1	15	1	15	1
Business Finance	46	4	59	5	52	4
Cheques	58	5	56	5	54	4
Consumer Finance	53	5	26	2	21	2
Credit/Debit Cards	225	20	272	24	288	23
Current Accounts	202	18	129	12	216	17
Insurance	42	4	46	4	55	4
International FX	15	1	23	2	32	3
Investments/Superannuation	10	1	40	4	70	6
Mortgage Finance	229	20	239	22	247	20
Other products	77	7	78	7	64	5
Payment Systems	100	9	79	7	84	7
Savings Account	64	6	53	5	57	4
Total	1135	100	1115	100	1255	100

INDEPENDENT PROCESS AUDIT

In 2000 the Banking Ombudsman Commission engaged the public law firm Chen, Palmer and Partners to carry out an independent review of our investigation process, based on an audit of a random selection of investigation files. The results were discussed in my report for 2000/1.

A further review was carried out early in 2003. In addition to randomly selected files. Chen, Palmer and Partners were asked to review the four cases that had been investigated since their previous review where the complainant had expressed some concerns about the investigation process.

In general terms, Chen, Palmer and Partners found that the investigation process was fair and impartial and complied with the Banking

Ombudsman's Terms of Reference. Some concerns were expressed about meeting timeliness standards with the office's then current resources.

Six specific recommendations were made. Almost all of these were directed at reducing the time taken to complete an investigation and included recommendations that at the commencement of an investigation a formal request be made to the parties for all relevant information, that time limits imposed on complainants and banks be more strictly enforced, and that submissions from the parties be limited.

The recommendations were accepted, the alterations to process have been made, and an extra staff member has been appointed to assist in achieving the timeliness standards.

Copies of the review report are available on request.

CONTACT WITH OTHER OMBUDSMAN SCHEMES AND COMMUNITY ORGANISATIONS

In October 2002 I visited Melbourne and attended the annual conference of the Society of Consumer Affairs Professionals (SOCAP). At the same time I visited the offices of the Australian Banking Industry Ombudsman and spent some time with the Chief Executives of the two Australian insurance dispute resolution services.

A proposal for an exchange of staff with the office of the Banking Adjudicator in South Africa proved difficult to implement and has been postponed, but in June 2003 we had pleasure in welcoming Mariet Kaps from that office for a two week visit. It was instructive to see ourselves through the

eyes of someone from a more recently established scheme in a country where neither literacy nor access to banking services is as widespread as in New Zealand.

Contact has been maintained with the Insurance & Savings Ombudsman and with the Electricity Complaints Commissioner. The three offices have a good deal in common, using the investigation process to provide a dispute resolution service to customers of particular industry groups, and during the year we were able to build on our common ground by holding joint forums for community organisations in Auckland, Christchurch and Dunedin.

ANALYSIS OF DISPUTES BY AREA OF BUSINESS

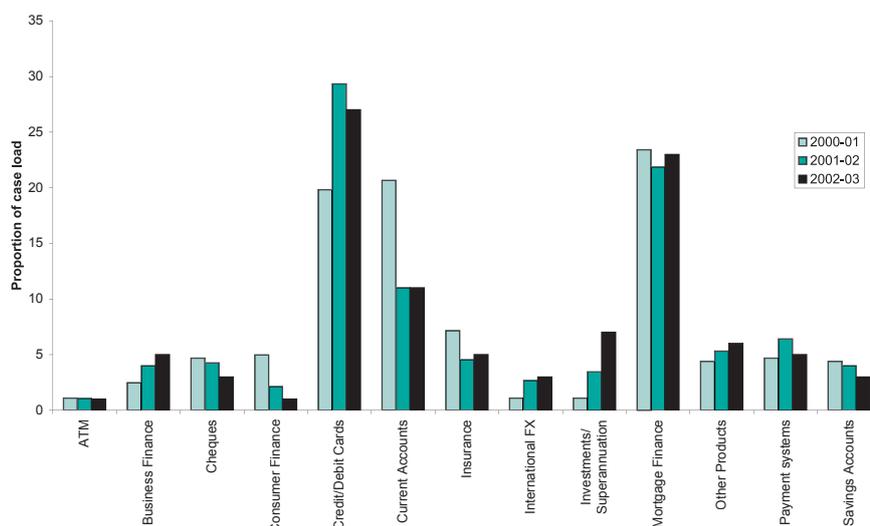


TABLE 4B Disputes by area of business

	2000-01	%	2001-02	%	2002-03	%
ATM	4	1	4	1	2	1
Business Finance	9	2	18	4	20	5
Cheques	17	5	17	4	13	3
Consumer Finance	18	5	10	2	5	1
Credit/Debit Cards	72	20	116	29	107	27
Current Accounts	75	21	43	11	41	11
Insurance	26	7	19	5	19	5
International FX	4	1	11	3	11	3
Investments/ Superannuation	4	1	13	3	28	7
Mortgage Finance	85	23	89	22	88	23
Other Products	16	4	22	5	24	6
Payment systems	17	5	23	6	21	5
Savings Accounts	16	4	16	4	11	3
Total	363	100	401	100	390	100

	2000-01	%	2001-02	%	2002-03	%
Female	408	36	422	38	507	40
Male	512	45	538	48	576	46
Couple or Group	152	13	123	11	123	10
Company	55	5	25	2	36	3
Society	7	1	7	1	10	1
Partnership	1	0	0	0	3	0
Total	1135	100	1115	100	1255	100

	2000-01	2001-02	2002-03
0 to 29 days	739	695	859
30 to 59 days	82	90	75
60 to 89 days	45	65	69
90 days plus	269	265	252

	1999-00	2000-01	2001-02	2002-03
0 to 29 days	16	20	21	22
30 to 59 days	45	46	65	60
60 to 89 days	41	37	50	59
90 to 119 days	35	43	53	46
120 to 149 days	41	45	50	54
150 to 199 days	56	53	53	53
200 days plus	94	119	107	96

The forums were directed at intermediary organisations, such as Citizens Advice Bureaux, Community Law Centres and Family Budgeting Services, who may be expected to be approached by individuals with complaints about their banks or insurance or electricity suppliers. Information was given about the three schemes and about the sort of complaints they consider, while we received valuable feedback about perceptions of our services and about the needs of the organisations' clientele.

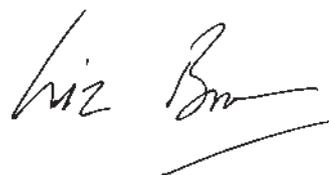
During the year we entertained numbers of visitors with an interest in the ombudsman process, both from within New Zealand and from as far away as Argentina, South Africa and Uganda.

STAFF

We were sorry to say goodbye to Diana Fulton, our senior administrator, in October 2002, but she went with our very best wishes for a long and happy retirement. Katrina McLaughlin (formerly Black) was promoted to the senior position, and Janet Boag joined us to assist in the office administration.

In May 2003 we had a minor reorganisation of investigation staff. Meryn Gates was promoted to investigator status, and Chantelle Nicholson was appointed to assist in the enquiries area and also to act as an assistant investigator.

No report would be complete without recording that during the course of the year Susan Taylor, Chris McIntyre, Ross Miller and Ann Sheehan all completed ten years' service with the office. Their combined experience and expertise is truly awesome and an enormous asset to the Banking Ombudsman scheme. To them, and to all the staff of the office go my heartfelt thanks for their dedication and hard work.



Liz Brown
Banking Ombudsman

TERMS OF REFERENCE

Definitions and Interpretations

In these Terms of Reference: -

- (a) the following expressions have the following meanings: -
- "Participating Bank" means a registered bank for the time being entered into the Register as a participating bank of the Banking Ombudsman Commission, including all:
- (i) wholly owned subsidiary companies of Participating Banks except those notified by the New Zealand Bankers' Association to the Banking Ombudsman Commission as exempt from the scheme; and
 - (ii) companies within the same corporate group as the Participating Bank (other than wholly owned subsidiaries of the Participating Bank) including subsidiaries in which the Participating Bank has a majority interest, notified by the New Zealand Bankers' Association to the Banking Ombudsman Commission as participating in the scheme

As at 1 April 2002 the Participating Banks are:

AMP Bank Limited
ANZ Banking Group (New Zealand) Limited
ASB Bank Limited
Bank of New Zealand
Citibank N.A.
The Hongkong and Shanghai Banking Corporation Limited
Kiwibank Ltd
The National Bank of New Zealand Limited
Rabobank New Zealand Ltd
St George Bank of New Zealand Ltd (Superbank)
TSB Bank Limited
Westpac Banking Corporation

"banking services" means all financial services provided by each of the Participating Banks in New Zealand in the ordinary course of their business to individuals or groups, including the use overseas of credit or debit cards issued by Participating Banks, and advice and services relating to insurance and investments.

A Participating Bank provides a banking service to an individual or group when it has the benefit of a guarantee or charge given or created by the individual or group in favour of the Bank to guarantee or secure any monies owing to it by another individual or group. It also provides a banking service to the payee of a cheque drawn on the Bank, whether or not the payee is a customer of the paying Bank and to the drawer of a cheque collected by the Bank, whether or not the drawer is a customer of the Bank.

"Banking Ombudsman Commission" means the Banking Ombudsman Commission established in accordance with the Rules of the Banking Ombudsman Commission;

"Chairman of the Banking Ombudsman Commission" means the chairman appointed pursuant to the Rules of the Banking Ombudsman Commission;

"complainant" means an individual or a group making a complaint to the Banking Ombudsman;

"Participating Bank named in the complaint", or "Participating Bank concerned" means any Participating Bank against which a complaint is made;

"commercial judgement" means assessments of risk, of financial or commercial criteria, or of character;

"decisions about lending or security" include any decision (or the consequence thereof) concerning any advance or similar facility, guarantee or security;

- (b) references to the provision of banking services include, where the context admits, references to their non-provision;
- (c) references to the singular number (including without limitation references to "individual", "complainant" and "Participating Bank") include, where the context admits, the plural number and vice versa;
- (d) references to paragraphs are to paragraphs of these Terms of Reference;
- (e) references to dollar amounts are to amounts in New Zealand dollars.

PRINCIPAL POWERS AND DUTIES OF THE BANKING OMBUDSMAN

1. The Banking Ombudsman's principal powers and duties are:
- ◆ to consider at no cost to the complainant complaints over claims not exceeding \$120,000 arising out of the provision within New Zealand of banking services, or \$150,000 in the case of banking services relating to insurance, by any

Participating Bank principally to individuals but also to groups of individuals whether incorporated or unincorporated; and

- ◆ subject to paragraphs 18, 19, 20, 21 and 22 to facilitate the satisfaction, settlement or withdrawal of such complaints whether by agreement, by making recommendations or awards or by such other means as seem expedient.
2. The Banking Ombudsman may give advice on the procedure for referring a complaint to him or her. It is not a function of the Banking Ombudsman to provide information about Banks or banking services.

PROCEDURE

3. Subject to the other provisions of these Terms of Reference, the Banking Ombudsman shall, in his or her own discretion, decide the procedure to be adopted by him or her in considering complaints. He or she shall also decide whether or not a complaint falls within the Terms of Reference, and in reaching this decision shall consider representations from the complainant and from the Participating Bank concerned. When requested, he or she shall give the reasons in writing and within a reasonable time for his or her decision on whether or not a complaint falls within the Terms of Reference.
4. The Banking Ombudsman shall promptly produce to the Participating Bank named in the complaint any waivers of that Participating Bank's duty of confidentiality referred to in paragraph 22(g) that have been received by the Banking Ombudsman.
5. The Banking Ombudsman may require a Participating Bank named in a complaint to provide any information which in the view of the Banking Ombudsman relates to that complaint. If the Participating Bank possesses such information, it shall as soon as is reasonably practicable disclose it to the Banking Ombudsman (unless the Participating Bank certifies to the Banking Ombudsman that the disclosure of such information would place the Participating Bank in breach of its duty of confidentiality to a third party whose consent has been refused after the Bank had used its best endeavours to obtain such consent).
6. If any party to a complaint supplies information to the Banking Ombudsman and requests that he or she treat it as confidential, the Banking Ombudsman shall not disclose that information to any other party to the complaint or any other person, except with the consent of the first-mentioned party.
7. Where any party to a complaint requests access to any information on the Banking Ombudsman's file, the Banking Ombudsman shall, subject to paragraph 6, make this information available.
8. Where any party to a complaint supplies information to the Banking Ombudsman under paragraph 6, and the Banking Ombudsman facilitates the satisfaction, settlement or withdrawal of the complaint he shall return any information supplied by the party to that party as soon as is reasonably practicable.
9. The Banking Ombudsman may take account of a Participating Bank's security measures of which he or she has knowledge notwithstanding that no disclosure of those measures has been or will be made to the complainant.
10. Notwithstanding paragraph 16 the Banking Ombudsman shall not be bound by any legal rule of evidence.
- 10A. While a complaint is under consideration by the Banking Ombudsman, a Participating Bank will not commence legal proceedings against the complainant in connection with the subject matter of the complaint unless it has first:
- (a) obtained the consent of its chief executive to the commencement of proceedings; and
 - (b) advised the Banking Ombudsman of its intention to commence proceedings (and where practical, give five working days notice of this intention).

SETTLEMENTS, RECOMMENDATIONS AND AWARDS

11. At any time that a complaint is under consideration by him or her the Banking Ombudsman may seek to promote a settlement or withdrawal of the complaint by agreement between the complainant and the Participating Bank concerned.
12. If there is no such agreement, the Banking Ombudsman, at the request of the complainant or the Participating Bank concerned, may make a recommendation for settlement or withdrawal of the complaint. He or she shall first however give the complainant and the Participating Bank one month's notice of his or her intention to make such recommendation, and during the period of that notice (or such longer period as the Banking Ombudsman may

- agree) the complainant and the Participating Bank may make further representations to the Banking Ombudsman in respect of the complaint.
- A recommendation shall be in writing and shall include a summary of the Banking Ombudsman's reasons for making his or her recommendations.
13. If:
- (a) the Banking Ombudsman is minded to:
 - (i) propose that a complaint be settled or withdrawn on terms which appear to him or her to be acceptable to both the complainant and the Participating Bank named in the complaint, or
 - (ii) make a recommendation for the settlement or withdrawal of a complaint; and
 - (b) that settlement or withdrawal would involve the provision by the Participating Bank of valuable consideration (whether in the form of a money payment or otherwise);
- then the Banking Ombudsman's proposal or recommendation shall, unless the Participating Bank has otherwise requested or agreed, state that it is open for acceptance by the complainant only if he or she accepts it in full and final settlement of the subject matter of the complaint.
14. If the Banking Ombudsman has made a recommendation which, within one month after it is made, has been accepted by the complainant but not by the Participating Bank named in the complaint, the Banking Ombudsman may make an award against the Participating Bank.
- An award shall comprise a money sum not exceeding \$120,000, or in relation to a complaint about the provision of banking services relating to insurance, \$150,000. No award shall be of a greater amount than in the opinion of the Banking Ombudsman is appropriate to compensate the complainant for direct loss or damage suffered by him or her by reason of the acts or omissions of the Participating Bank against which the award is made. The Banking Ombudsman may in addition to the money sum grant to the complainant such additional amount as is in the opinion of the Banking Ombudsman appropriate to reimburse the complainant for incidental expenses reasonably incurred by the complainant in making and pursuing the complaint.
- 14A. Notwithstanding the provisions of Paragraph 14 an award by way of compensation not exceeding \$4000 may be made to compensate the complainant for inconvenience suffered by him or her by reason of the acts or omissions of the Participating Bank against which the award is made.
15. An award shall be in writing and shall state the amount awarded and a summary of the Banking Ombudsman's reasons for making the award. The award shall state that, if within one month after its issue the complainant agrees to accept it in full and final settlement of the subject matter of the complaint, the award shall be binding on the complainant and (in accordance with its undertaking to the Banking Ombudsman Commission) the Participating Bank against which it is made.
- The Banking Ombudsman shall issue a copy of the award to the complainant and the Participating Bank against which it is made and shall issue to the complainant a form (addressed to the Banking Ombudsman and the Participating Bank) to be completed by the complainant whereby he or she may accept the award in full and final settlement of the subject matter of the complaint.
16. In making any recommendation or award under these Terms of Reference the Banking Ombudsman shall do so by reference to what is, in his or her opinion, fair in all the circumstances, and:
- (a) shall observe any applicable rule of law or relevant judicial authority (including but not limited to any such rule or authority concerning the legal effect of the express or implied terms of any contract between the complainant and any Participating Bank named in the complaint); and
 - (b) shall have regard to general principles of good banking practice and any relevant code of practice applicable to the subject matter of the complaint.
- The Banking Ombudsman shall not be bound by any previous decision made by him or her or by any predecessor in his or her office. In determining what are the principles of good banking practice he or she shall consult within the industry.
17. The Banking Ombudsman shall not make a recommendation or award except in accordance with the provisions of paragraphs 12 to 16.
- LIMITS ON THE BANKING OMBUDSMAN'S POWERS**
18. The Banking Ombudsman shall have power to consider a complaint made to him or her except:
- (a) subject to paragraph 19, if at any time it appears to the Banking Ombudsman that:
 - (i) the amount which the complainant has claimed or could claim in respect of the subject matter of the complaint exceeds \$120,000 or in the case of a complaint relating to the provision of banking services in relation to insurance, \$150,000, or
 - (ii) the claim comprised in the complaint is part of a larger claim which the complainant has made or could make, or is related to another claim which the complainant has made or could make, and the aggregate amount of all such claims exceeds \$120,000 or in the case of a complaint relating to the provision of banking services in relation to insurance, \$150,000;
 - (b) to the extent that the complaint relates to a Participating Bank's commercial judgement in decisions about lending or security (as defined herein) or insurance, but this shall not preclude the Banking Ombudsman from considering complaints about administration in lending matters;
 - (c) to the extent that the complaint relates to a Participating Bank's interest rate policies;
 - (d) if at any time it appears to the Banking Ombudsman that it is more appropriate that the complaint be dealt with by a court, under another independent or statutory complaints or conciliation procedure or under an arbitration procedure;
 - (e) if any Participating Bank named in the complaint gives the Banking Ombudsman a notice of the kind described in paragraph 23.
 - (f) if it appears to the Banking Ombudsman that on the basis of the facts presented by the complainant the relevant Participating Bank has made a reasonable offer in settlement of the complaint.
19. The Banking Ombudsman shall have the power to make a recommendation or award in respect of a complaint over a claim in excess of \$120,000 (or in the case of a complaint relating to the provision of banking services in relation to insurance, \$150,000) or in respect of a complaint that would otherwise be outside his or her power to consider by virtue of Paragraph 22 (a), (b), (c), (d), (e) or (h) where the Participating Bank named in the complaint consents to the Banking Ombudsman considering that complaint.
20. The Banking Ombudsman shall have no power to make a recommendation or award in respect of a complaint to the extent that it relates to a practice or policy of a Participating Bank which does not itself give rise to a breach of any obligation or duty owed by the Participating Bank to the complainant.
21. Subject to the other provisions of these Terms of Reference, the Banking Ombudsman may consider a complaint which relates to charges made by a Participating Bank for banking services, but, in doing so, he or she shall have regard to any scale of charges generally applied by that Participating Bank.
22. The Banking Ombudsman shall only consider (or continue to consider) a complaint made to him or her if he or she is satisfied that:
- (a) The complaint is made to him or her by or on behalf of the individual or group of individuals to whom or for whom the Participating Bank's services in question were provided;
 - (b) the complaint has been fully considered by the internal complaint procedures of the Participating Bank named in the complaint (set up as required by the New Zealand Bankers' Association Code of Banking Practice) and the complainant has not accepted any observations made or conditions of settlement or satisfaction offered by that Participating Bank and deadlock has been reached, or the Participating Bank has not advised the complainant that deadlock has been reached within 3 months of the complaint being formally made to it;
 - (c) the complaint is made to him or her not later than two months after the Participating Bank has informed the complainant that deadlock has been reached, and informed him or her also of the existence of the Banking Ombudsman and of the two months limit;
 - (d) the act or omission giving rise to the complaint:
 - (i) first occurred on or after 1 January 1992; or
 - (ii) first occurred not earlier than six months prior to that date, but the complainant did not become aware of it, and could not with reasonable diligence have become aware of it, until on or after that date;
- Provided that the Banking Ombudsman may in his or her discretion decide not to consider (or continue to consider) a complaint if the complainant has had knowledge of the act or omission giving rise to the complaint for more than

12 months before the complaint is made to the Banking Ombudsman.

- (e) except where relevant new evidence is available, the subject matter of the complaint was not comprised in a complaint by the same complainant (or any one or more of them) previously considered by the Banking Ombudsman;
- (f) neither the complaint made to him or her nor any other complaint by the same complainant (or any one or more of them) in respect of the same subject matter is, has been or becomes to the knowledge of the Banking Ombudsman the subject of any proceedings in or before any court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or of any investigation by a Statutory Ombudsman;
- (g) the complainant and any other person to whom any Participating Bank named in the complaint owes a duty of confidence in respect of any information which the Banking Ombudsman may request that Participating Bank to produce to him or her for the purpose of his or her consideration of a complaint have waived in writing that duty of confidence;
- (h) the complaint is being pursued reasonably by the complainant and not in a frivolous or vexatious manner.

“TEST CASES”

- 23. At any time before the Banking Ombudsman has made an award a Participating Bank named in the complaint may give to the Banking Ombudsman a notice in writing containing:
 - (a) a statement, with reasons, that in the opinion of the Participating Bank the complaint involves or may involve:
 - (i) an issue which may have important consequences for the business of the Participating Bank or Banks generally or
 - (ii) an important or novel point of law; and
 - (b) an undertaking that, if within six months after the Banking Ombudsman's receipt of the notice either the complainant or the Participating Bank institutes in any Court in New Zealand proceedings against the other in respect of the complaint, the Participating Bank will:
 - (i) pay the complainant's costs and disbursements (to be taxed, if not agreed, on a solicitor and own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Participating Bank (except by way of respondent's notice, cross-appeal or other similar procedure) and
 - (ii) make interim payments on account of such costs if and to the extent that it appears reasonable to the Participating Bank to do so.
- 24. Providing the Banking Ombudsman concurs with the Participating Bank's statement, he or she shall cease to consider the complaint and he or she shall inform the complainant in writing of the receipt of the notice, the date of its receipt and the effect of the notice upon the complaint.

OTHER POWERS AND DUTIES

- 25. The Banking Ombudsman shall be responsible for the day to day administration and conduct of the business of the Banking Ombudsman. He or she shall have power to incur expenditure on behalf of the Banking Ombudsman Commission in accordance with the current financial budget approved by the Banking Ombudsman Commission.
- 26. The Banking Ombudsman shall not exercise any power which the Rules of the Banking Ombudsman Commission expressly gives to the Banking Ombudsman Commission or any other person.

27. In consultation with the Chairman of the Banking Ombudsman Commission and subject to his or her approval, the Banking Ombudsman shall have power on behalf of the Banking Ombudsman Commission to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement.

28. Except as agreed between the Banking Ombudsman and the Banking Ombudsman Commission the Banking Ombudsman shall attend each meeting of the Banking Ombudsman Commission and shall give the Banking Ombudsman Commission any information and assistance (including general information about any reference) which they reasonably request.

28A. Personal information collected by the Banking Ombudsman in the exercise of the powers described in these Terms of Reference shall be used solely for the purpose of carrying out his or her duties under these Terms of Reference. Such information may be used in public reports and case notes prepared by the Banking Ombudsman only if they do not include any information from which it might be possible to identify the person to whom the information relates. Personal information will not be retained longer than is necessary for the purpose for which it was collected and will in any event be destroyed not later than seven years after the discontinuation of the investigation to which it relates.

29. Except as provided in paragraph 30 or as required by any competent authority or as otherwise required by law or as properly and reasonably required in connection with any legal proceedings instituted by or against the Banking Ombudsman Commission or any of its officers or for the purpose of consultation with the Insurance and Savings Ombudsman when a question arises as to which Ombudsman should consider a complaint, the Banking Ombudsman shall not disclose to any person (including a member of the Banking Ombudsman Commission) any information concerning a complaint considered by him or her from which it would or might be possible to identify the complainant or any Participating Bank named in the complaint or any other information of a confidential nature which he or she has obtained in the course of his or her duties. Provided that the Banking Ombudsman should obtain the consent of the complainant before disclosing potentially identifying information about him or her to the Insurance and Savings Ombudsman.

30. Paragraph 29 shall not prohibit the disclosure of any information to the complainant and any Participating Bank named in the complaint, or to the Chairman of the Banking Ombudsman Commission or any authorised deputy of the Chairman of the Banking Ombudsman Commission, or to any employee, consultant, independent contractor or agent of or with the Banking Ombudsman Commission to the extent that such information is reasonably required by that person for the purpose of performing his or her duties to the Banking Ombudsman. The Banking Ombudsman shall report to the Participating Bank concerned any threat to Participating Bank staff or property of which he or she becomes aware in the course of his or her duties.

31. At least twenty-eight days before the Annual General Meeting of the Banking Ombudsman Commission the Banking Ombudsman shall send to the Banking Ombudsman Commission a report containing, in relation to the preceding financial year of the Banking Ombudsman, a general review of his or her activities during that year and such other information as the Banking Ombudsman Commission may reasonably direct.

32. To inform the community of his or her activities the Banking Ombudsman shall publish an Annual Report.

33. The Banking Ombudsman may make recommendations to the chairman of the Banking Ombudsman Commission from time to time in relation to the Terms of Reference or any relevant Codes of practice which may be introduced and which have a bearing on the discharge of his or her responsibilities

MEMBER BANKS

Participating Banks in the Banking Ombudsman scheme are:

AMP Bank Ltd

ANZ Banking Group (New Zealand) Limited

ASB Bank Limited

Bank of New Zealand

Citibank NA

The Hongkong and Shanghai Banking Corporation Limited

Kiwibank Ltd

The National Bank of New Zealand Limited

Rabobank New Zealand Ltd

St George Bank of New Zealand Ltd (Superbank)

TSB Bank Limited

Westpac Banking Corporation

OFFICE OF THE BANKING OMBUDSMAN

Liz Brown – Banking Ombudsman

Susan Taylor Chief Investigator

Chris McIntyre Investigator

Ross Miller Investigator

Rhonda Singleton Enquiries Officer

Nicola Schaab Investigator

Chantelle Nicholson Enquiries Assistant/
Assistant Investigator

John Olds Investigator

Ann Sheehan Investigator

Meryn Gates Investigator

Alan Westbury

Finance and Administration Manager

Katrina McLaughlin

Senior Administrator

Janet Boag

Administrator

