



Message from the Chief Ombudsman

Influx of disputes to the Financial Ombudsman Service

In recent months the Financial Ombudsman Service has seen a significant increase in the number of new disputes received. We experienced an average 45.4% rise across all divisions in the six months to 31 December 2008, compared with the same period in 2007. This reflected a substantial 85.5% rise in new disputes within Investments, Life Insurance & Superannuation, a 33% rise in General Insurance disputes and 17.8% in Banking & Finance. In order to cope with the rise in disputes, we are continuing to focus on our timelines for dispute resolution and are staffing our divisions appropriately. However, we expect that cases may take longer to deal with due to the volume of disputes we are receiving and the time it takes for new staff to become fully trained.

Such figures are not unexpected in the context of the current global financial circumstances and weather events, with industry also experiencing a similar influx of complaints and disputes. Given that this trend is likely to continue in the short term, I would ask all financial services providers to continue to invest in staff and systems to deal with complaints and to ensure that internal dispute resolution systems respond and so minimise the number of disputes which come to us.

I would expect that consumer representatives are also seeing an upturn in complaints relating to financial services providers and urge all involved to contact the financial institution concerned in the first instance and then to contact us on **1300 78 08 08** if the complaint is not dealt with satisfactorily. Please note that there is an advocates section on our website at www.fos.org.au/advocates which may be helpful to those in the consumer movement for whom the financial services external dispute resolution (EDR) sector is new.

How we can help: training and outreach programmes

The Financial Ombudsman Service is happy to help support the internal dispute resolution areas of member institutions, as well as consumer representatives, in any way it can. We run a range of outreach programmes including training on internal dispute resolution, conciliation and the most effective way of dealing with a dispute through the Financial Ombudsman Service. We can arrange for a Financial Ombudsman Service representative to come to you and deliver in-house

training to your front line staff or legal and compliance team. If you are interested in learning more about our training, please email training@fos.org.au

Two more EDR schemes join the Financial Ombudsman Service

On 1 January 2009, we welcomed two other dispute resolution bodies into the Financial Ombudsman Service – the Credit Union Dispute Resolution Centre (CUDRC) and the Insurance Brokers Disputes Limited (IBD). I am delighted to see that other financial services dispute resolution schemes appreciate the experience, value and scope that the Financial Ombudsman Service can offer and are joining us in developing our EDR scheme for the financial services sector. We encourage all financial services EDR schemes and companies not yet affiliated with the Financial Ombudsman Service to consider how we can build a more effective, simplified and streamlined EDR system for the financial services industry by coming together under the Financial Ombudsman Service umbrella.

We have established two new divisions to ensure that the specialist knowledge underpinning these schemes is preserved. The Mutuals division will deal with disputes about credit unions and other mutual financial services providers under substantially the same Terms of Reference as CUDRC. Philip Field, Ombudsman – Banking & Finance, has been appointed Ombudsman – Mutuals. The Insurance Broking division will consider disputes that were previously considered by IBD under substantially the same Terms of Reference. Belinda Lim, who was appointed Referee for Insurance Brokers Disputes Limited in 2008, has been appointed as the Referee of the Insurance Broking division. You can read more about these new divisions of the Financial Ombudsman Service further on in this newsletter.

I look forward to working closely with many of you in the coming year to ensure that alternative dispute resolution in the Australian financial services sector continues to go from strength to strength, particularly in the rapidly changing and difficult economic circumstances with which we are confronted.

Colin Neave
Chief Ombudsman

National Conference 11-12 June 2009

I would like to invite all of our readers to attend our inaugural National Conference which will take place at the Crown Promenade Hotel in Melbourne on 11-12 June 2009.

The theme of our conference will be *Financial Services - The Changing Landscape* and it will include many highly informative speakers from the Federal Government, regulatory agencies, the industry and the consumer movement.

During the two day event, we will run interactive 'hands-on' workshop sessions for specific industry groups as well as a plenary programme covering major issues of interest to all in the industry.

The conference programme can be found at www.fos.org.au/conference

We look forward to welcoming as many of you as possible to this event.

Terms of Reference Project Update

The Financial Ombudsman Service Terms of Reference Project is progressing well. For more details, please visit www.fos.org.au/torupdate

Latest Developments:

Banking & Finance

By Philip Field

Ombudsman – Banking & Finance



Increase in disputes

The trend of the first six months of 2008 of increasing disputes continued into the second half of 2008. Between 1 July and 31 December 2008, 5,085 new disputes were received by the Banking & Finance division, with 1,041 disputes being received in December 2008. This is more than double the number of disputes that were received in December 2007 and is perhaps a reflection of the present economic environment.

As a result of the substantial increase in the number of disputes coming to Banking & Finance, there is presently a delay in processing disputes. If a customer is of the view that court proceedings will be started by the financial services provider within the next four to six weeks, then the customer should bring this to our attention when lodging the dispute with our office – for example, by writing “Urgent – legal proceedings imminent” at the top of their dispute. We will then assess whether the dispute should be processed in priority to other disputes received by us. We are also exploring implementing some technical changes which will enable us to inform financial services providers of the receipt of a dispute at an early stage and before the file has been assessed.

Early repayment costs

In response to the recent industry-wide reduction in variable interest rates, we have been receiving a large number of complaints by disputants who have incurred a fee to break their fixed rate loan contract. This type of dispute has increased sharply during the last six months of 2008 with 99% of these types of disputes being received between 1 September and 31 December 2008. As a result of this significant increase, we have established a project team within Banking & Finance to deal with these disputes.

In December 2008, we released Bulletin 60 which sets out (among other things - see panel below) our approach to investigating complaints in relation to the calculation of early repayment costs. Please also see our factsheet Breaking a Fixed Rate Loan about early repayment costs. Both this Bulletin factsheet are available from www.fos.org.au. The case study included later in this newsletter provides an insight into the possible outcomes of the investigations of these types of disputes. Disputes about early repayment costs may not only refer to the miscalculation of the early repayment cost but may also include other issues such as failure to disclose, misleading conduct and delay.

As early repayment costs may vary significantly on a daily basis we recommend to customers that, in a falling interest rate climate, they obtain regular quotes from their lender as to the early termination cost payable and seek independent financial advice, if they are considering early repayment of a fixed rate loan.

If a customer decides to repay the loan, he/she would not be prevented from subsequently pursuing a dispute. If it was found that the fee or any portion of the fee has been charged incorrectly, we would require the financial services provider to refund the customer the amount incorrectly charged.

Direct debits on transaction accounts

Bulletin 60 also sets out a reminder of our approach to the cancellation of direct debits on transaction accounts. Our view is that a customer can cancel a direct debit on their transaction account by providing an instruction to their financial services provider, without first going direct to the debit user. This means that a direct debit authority may be cancelled by the customer either by notice to the third party and/or by notice to their financial institution. I would ask that financial services providers remind their front line staff of the customer's right to cancel a direct debit by giving notice to the financial services provider.

Failure by the financial institution to accept or act on written or other acceptable notice of cancellation may cause compensable loss to the customer. For example, the financial institution may be required to refund the overdrawing fees and/or re-credit the funds debited, unless the financial institution can show that the payment was made for the benefit of its customer in any event.

It is important to note that in order to cancel a direct debit on a credit card account (as opposed to a transaction account), the cardholder should advise the merchant, in writing, in the first instance. If debits continue, the cardholder should contact their financial services provider and ask that the transaction be reversed as unauthorised.



Philip Field
Ombudsman – Banking & Finance

Avoiding, Managing & Resolving Complaints Workshops

Our next one-day Avoiding, Managing & Resolving Complaints workshops will be held in Sydney on 12 March, Melbourne on 28 May and Perth on 1 October.

These workshops are specifically designed to provide Financial Ombudsman Service members with skills and information on how to avoid, manage and resolve complaints using their own internal dispute resolution process, thus avoiding the need (and cost) of referral to the Financial Ombudsman Service.

For more information or to access the workshop flyer and registration form, visit www.fos.org.au

Quarterly Bulletins

Banking & Finance publishes Quarterly Bulletins on relevant issues, setting out the Ombudsman's approach to particular types of disputes.

Bulletin 60 released in December 2008 looks at issues arising from recent disputes affected by the economic downturn including:

- breaking a fixed rate loan – our approach to break costs
- direct debits on transaction accounts
- maladministration and secured lending
- dealing with customers in financial difficulty

You can access the full archive at www.fos.org.au/publications

If you would like to be emailed when new Bulletins are available, complete and return the Subscriber card on the back page of this newsletter.

Latest Developments:

General Insurance

By **Sam Parrino**

Ombudsman – General Insurance



Natural disasters

You may not be aware but the General Insurance division forms part of the General Insurance "Industry Catastrophe Co-Ordination Plan" (ICCP). Once an event has been classified as a disaster the Financial Ombudsman Service General Insurance Response Plan is implemented. The recent tragic bushfires in Victoria obviously fall into this category.

Our role is to assist by activating an emergency call centre staffed by General Insurance consumer consultants who initially provide information and handle enquiries from consumers. This facility can include after hours assistance if deemed necessary. As Ombudsman – General Insurance, I will also assess a need for an on-the-ground consultancy role and /or the attendance at community meetings. The role is in support of the insurance industry's proven effective disaster response measures.

Code of Practice review

In December 2008, we released our overview of industry compliance with the General Insurance Code of Practice and aggregate industry data for the 2007-2008 financial year.

Despite the total number of claims across both personal and commercial categories growing 9% to 3,675,105, our analysis showed that the industry paid 98% of all claims received during this period.

Significant increases in claims occurred in relation to home insurance, clearly in response to numerous severe weather related events during the year, which contributed to the overall rise in claims rejections of 17.6%.

37% of Internal Dispute Resolution decisions in favour of customers

There was an 11% increase in disputes reviewed by the industry's internal dispute resolution units with 18,978 disputes received, compared with 17,066 in the previous year. Companies resolved 37% of disputes in favour of customers, compared with 34% in the previous year, while 11,929 claim denials were confirmed in favour of companies. The overturning of 37% of claim denials in favour of the consumer is an encouraging and continuing trend showing that the industry does indeed take the process of internal dispute resolution very seriously.

General Insurance disputes

We are seeing a significant rise in disputes across the board, with the latest figures for the six months to 31 December 2008 showing a 33% increase in the number of General Insurance disputes. The most significant increases were in home buildings insurance and travel insurance, with home contents and motor vehicle insurance following closely behind.



Sam Parrino

Ombudsman – General Insurance

General Insurance Open Forum

The next General Insurance Open Forum will take place on Monday 4 May at 9.30am in the Executive Room at the Westin Hotel, 205 Collins Street, Melbourne.

The purpose of these Open Forums is to generate discussion among stakeholders and to allow participants to raise issues which might require clarification in connection with Determinations.

If you would like to attend please contact Graham Warner on gwarner@fos.org.au

Disaster Hotline – 1800 337 444

The Financial Ombudsman Service has established a dedicated hotline for all bushfire and flood victims seeking help and information on insurance or other financial issues experienced as a result of the disasters.

Please call **1800 337 444** and your call will be put directly through to our disaster helpline team. Alternatively, you can email the team at GIDisaster@fos.org.au

Latest Developments:

Investments, Life Insurance & Superannuation

By Alison Maynard

Ombudsman – Investments, Life Insurance & Superannuation



Sharp rise in disputes

The last six months of 2008 were a very busy time for the Investments, Life Insurance & Superannuation division, with the global financial situation having an impact across the different industries we cover.

From 1 July to 31 December 2008 we received nearly 1,000 new written disputes, close to double the new disputes received for the same period in 2007.

Comparing the 2008 figures with the same period from 2007, financial planning and managed investment disputes have again risen sharply as market volatility increased. Within financial planning and managed investments, the main areas for disputes were:

- inappropriate advice
- standard of service
- misrepresentation
- redemption delay

Where market conditions are volatile and there have been significant falls in the value of investments, incidents of inappropriate advice and service and administration issues are often revealed.

Storm Financial Pty Ltd

Investments, Life Insurance & Superannuation has received enquiries and complaints about Storm Financial Pty Ltd which went into administration in January 2009. For more information please refer to our Storm Financial Information Sheet available from our website at www.fos.org.au.

Alison Maynard

Ombudsman – Investments,
Life Insurance & Superannuation

Dispute by industry	New disputes		
	1 July 2007 – 31 December 2007	1 July 2008 – 31 December 2008	Increase (%)
Financial planning	173	370	197 (114%)
Life insurance	201	263	62 (31%)
Managed investments	70	188	118 (168%)
Stockbroking	57	116	59 (103%)
Out of jurisdiction	59	90	31 (52%)
Other*	11	32	21 (191%)
Total	571	1,059	

*Denotes cases that don't fit into the main four categories (e.g. futures traders who are not ASX participants)

Award-winning Panel representative #1

Bill Mitchell, a principal solicitor of Townsville Community Legal Centre and a consumer representative on the Investments, Life Insurance & Superannuation Panel, was recently awarded the Australian Human Rights Commission Law Award.

The award is in recognition for his work in the promotion and advancement of human rights through the practice of law. Bill has been a community lawyer in Queensland since 1992, working with low income and disadvantaged people to enforce their legal rights. He has worked predominantly in the areas of administrative law, social security law, human rights and anti-discrimination, refugee and immigration law, consumer protection and non-profit governance.



Award-winning Panel representative #2

Peter Roan, a regional NSW-based financial planner and an industry representative on the Investments, Life Insurance & Superannuation Panel, has been named *Money Management's* 2008 Financial Planner of the Year.

The judges were particularly impressed by Peter's dedication to delivering quality advice to his clients, his passion for the financial planning industry (particularly through continuing education), his involvement in initiatives that strive for best practice advice and increased standards of professionalism, as well as his voluntary service in his local community.



New Divisions and Community News/Events

New Divisions

By Phillip Field, Ombudsman – Mutuals

Welcome to Mutuals

The new Mutuals division of the Financial Ombudsman Service replaces the Credit Union Dispute Resolution Centre (CUDRC). CUDRC was a dispute resolution scheme with a membership of around 100 credit unions. Most of these members have now become members of the Financial Ombudsman Service and transfers of membership are continuing. The CUDRC Board will become an advisory committee to the Financial Ombudsman Service Board, ensuring that issues especially relevant to mutual organisations are appreciated by the Financial Ombudsman Service Board.

In recent years, the Banking & Financial Services Ombudsman was appointed to carry out the dispute resolution functions and day to day management of CUDRC. The Banking & Financial Services Ombudsman employed dedicated staff to perform this role and these staff are now employed by the Financial Ombudsman Service.

CUDRC operated as a separate entity with its own Terms of Reference, procedures and policies. During 2009, the Mutuals division will operate under Terms of Reference that are substantially similar to the CUDRC Terms of Reference and with similar procedures. It is envisaged that the Terms of Reference currently being developed for the Financial Ombudsman Service will in future govern the operations of the Mutuals division.

Credit unions, consumers and other stakeholders are expected to benefit from the changes. As part of a larger organisation, the Mutuals division will have scope to streamline dispute resolution processes and procedures and provide better feedback on disputes. Public awareness and accessibility of the service should also increase.

Any questions about this new division should be directed to Mutuals Case Manager Thanh Lu at tlu@fos.org.au or by calling **1300 78 08 08**.

Welcome to Insurance Broking

The new Insurance Broking division of the Financial Ombudsman Service replaces the activities of the Insurance Brokers Disputes Limited (IBD).

IBD had around 800 members, primarily insurance brokers, underwriting agents and other insurance intermediaries (other than insurance companies). Most of those members have already made the transition across to the Financial Ombudsman Service.

During 2009, the Financial Ombudsman Service will maintain the IBD processes and procedures and operate under substantially the same Terms of Reference that presently apply to IBD members, including the jurisdictional limit of \$100,000.

An Advisory Committee to the Financial Ombudsman Service Board will be established so that issues especially relevant to insurance broking will be appreciated by the Board. The Committee is presently constituted by the former IBD Board but new appointees will be called for in the near future. The Terms of Reference currently being developed for the Financial Ombudsman Service will also govern the operations of the Insurance Broking division in the future.

Belinda Lim will continue as the primary decision maker for Insurance Broking disputes. Any questions about this new division should be directed to Compliance Manager Daniela Kirchlinde at dkirchlinde@fos.org.au or by calling **1300 78 08 08**.

Community News/Events

Resolving disputes gives the Financial Ombudsman Service a unique perspective on the nature of disputes that arise in the financial services sector. We are committed to using this knowledge to help increase the financial literacy of consumers and raise industry standards. We do this by giving talks, hosting workshops and making submissions on issues concerning financial services to consumers, community agencies, scheme participants and government.

Below we highlight some of our recent activities and look ahead to some upcoming events and initiatives.

Financial Planning Association National Conference

In November 2008, Alison Maynard, Ombudsman – Investments, Life Insurance & Superannuation hosted a Financial Ombudsman Service stand at the Financial Planning Association's National Conference. Attended by over 1,400 financial planners and fund managers, the conference is the Association's key event each year.

Housing Stress/Debt Relief Information Nights

Philip Field, Ombudsman – Banking & Finance, has in recent months participated in a series of Housing Stress Information Nights organised by Federal Members of Parliament for the benefit of consumers in their constituencies. Following on from those events last year – in Bankstown NSW, North Lakes QLD and Roxburgh Park VIC – the Ombudsman joined representatives from Uniting Care, Centrelink, Legal Aid and St Vincent de Paul at a Debt Relief Information Forum in Noarlunga SA in February.

Association of Independent Retirees Bi-Annual Conference

The Financial Ombudsman Service gave a presentation on dispute resolution at the Association of Independent Retirees Bi-Annual Conference in October 2008. The Association represents retired and partly retired people who are not in full time employment and works for the benefit and welfare of all self-funded retirees. This conference attracts representatives from their many branches across Australia.

2009 Student Orientation Week

In February 2009, the Financial Ombudsman Service once again partnered with members of the Australian & New Zealand Ombudsman Association for a campaign to promote awareness of ombudsman services to young consumers. Participating agencies co-hosted stalls at universities in Queensland, New South Wales, the ACT, Victoria and Tasmania, talking to students about their rights and distributing information on how to resolve disputes.

Sort It! - Law Week 2009 Student Workshop

Coming up in May 2009, the Financial Ombudsman Service and Telecommunications Industry Ombudsman will jointly present a fun and interactive workshop for VCE Legal Studies students based on *Sort It!* our popular publication and education resource for Year 9-12 students. This event takes place at the State Library of Victoria in Melbourne. Law Week is organised by the Victoria Law Foundation.

Other major consumer events for 2009 where members of the public can learn more about the Financial Ombudsman Service and meet staff include Agfest in Tasmania in May and the Home Buyer Show in Brisbane in June (also coming to Melbourne and Sydney later in the year). More details on these and all other upcoming events in which the Financial Ombudsman Service is participating can be found by browsing our Events Calendar at www.fos.org.au

Case Studies

Here are three new case studies that have recently been added to our case study archive on our website. Case studies may be based on recent Determinations or prepared specially for recurring cases or cases of particular interest.

We have provided a brief introduction to each case study. To read the full case study, please visit our website at www.fos.org.au/casestudies



Banking & Finance Case Study

Early repayment costs

Mr and Mrs N decided to sell their home but when they contacted the bank to obtain a loan payout figure, they were quoted a figure which included an early repayment cost of approximately \$20,000. They lodged a dispute with the Financial Ombudsman Service, claiming the bank misled them by not telling them how the fee would be applied if they were to sell their home and repay the loan before the expiry of the fixed rate period.



General Insurance Case Study

Accident insurance

In this case, a 17 year old boy makes a claim on his school's accident insurance policy after allegedly suffering a severe asthmatic attack as a result of exposure to chemicals during a school musical production. Because the boy had previously been diagnosed as an asthmatic, the issue arose as to whether he sustained an injury as covered by the policy. The disputed claim was referred to the Financial Ombudsman Service.



Investments, Life Insurance & Superannuation Case Study

Stockbroking

A retired husband and wife have brought a dispute to the Financial Ombudsman Service alleging that a stock broking firm inappropriately advised them to invest a disproportionately large amount of their assets in options trades without disclosing to them the risk associated with such trades, resulting in losses. The Panel investigated their claim.

Did you know...

Over 160 new financial services providers became members of the Financial Ombudsman Service between 1 July and 31 December 2008.

This doesn't include the more than 3,000 members who transferred their original membership from the Banking & Financial Services Ombudsman, the Financial Industry Complaints Service and the Insurance Ombudsman Service when the schemes merged last year.

For more information you can go to the Members section of www.fos.org.au

Annual Report Launch

In December 2008 the Financial Ombudsman Service Annual Report 2007-2008 was launched.

You can access the Annual Report at www.fos.org.au/publications



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