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OMBUDSMAN

BULLETIN

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Introduction

The exchange of ideas and information with industry participants is necessary for organisations to keep up-to-date with national and international developments and trends. And so it is for the Banking and Financial Services Ombudsman service ("BFSO"), an organisation delivering alternative dispute resolution ("ADR") services. BFSO is key participant in a broad group of international ADR schemes in the financial services sector that cover disputes about banking, insurance, financial and investment advice and superannuation. BFSO is also a member of the Australian and New Zealand Ombudsman Association ("ANZOA").

BFSO has benefited from the relationships with international ADR schemes that enabled staff exchanges with the New Zealand Banking Ombudsman and the South African Banking Ombudsman. One of our staff members spent some time with the Financial Ombudsman Service in the United Kingdom and on many occasions BFSO has engaged in discussions with other ADR services about approaches to ADR and approaches to specific types of disputes.

International Alternative Dispute Resolution Conference – "ADR in OZ '06"

Conferences of international ADR schemes in the financial services sector have been taking place since BFSO (then ABIO) held the first conference in 1992. This year Australia was again the host, with the conference being organised jointly by BFSO, the Insurance Ombudsman Service and the Financial Industry Complaints Service.

At this year's conference there were 116 delegates from 17 countries - Australia, Canada, Czech Republic, Denmark, Finland, India, Indonesia, Ireland, Malaysia, New Zealand, Pakistan, Papua New Guinea, Republic of Trinidad & Tobago, South Africa, Switzerland, United Kingdom and United States of America. Delegates heard presentations from speakers from eight countries, in addition to Australia, about topics as diverse as financial literacy, global warming and querulant complainants.

The conference was opened by the Hon Chris Pearce, MP, Parliamentary Secretary to the Treasurer, who gave a background to the financial services regulation regime in Australia and spoke about how ADR schemes embody the ideals of justice and of pursuing and protecting the common good by treating all people fairly.

The Parliamentary Secretary also spoke about his commitment to working with the various ADR schemes in the financial services sector and referred to the possible convergence of the schemes building on the collaborative work that has been done by the schemes to date.

The opening was followed by a presentation by Greg Tanzer, Executive Director, Consumer Protection, ASIC, who spoke about the role of a regulator in a financial crisis and how external dispute resolution mechanisms can help.

The following list of the other presentations over the three days illustrates the scope and focus of the conference.

- Keynote Address: Banking and Financial Services: Delivery into the Future - Mr Brian Hartzer, Group Managing Director, Personal Division, ANZ Banking Group Australia;

- Discussion: Aspects of Financial Literacy - Paul Clitheroe, Financial Literacy Foundation, Australia;

- Discussion: Global Warming - Impact on Financial Services – Bill Peck, General Manager Risk and Compliance, Aon Australia/Pacific;

- The Role of the Chair of a "Stakeholder Board" - a panel discussion chaired by The Hon Sir Ian Barker QC, Chairman, New Zealand Banking Ombudsman Scheme.

- An Ombudsman's Perspective on Working with a Board - Joe Meade, Financial Services Ombudsman Ireland

- Consumer Access to External Dispute Resolution - panel chaired by The Hon Professor Michael Lavarch

- Procedural Fairness in ADR Schemes – Striking the Balance - panel chaired by The Hon Professor Michael Lavarch

- Relationship with Regulators for ADR Schemes - a North American Perspective – panel chaired by Michael Arnold, Financial Industry Complaints Service. Comment from Azhar Hamid, Banking Ombudsman, Pakistan

- Lessons from Reviews - panel discussion chaired by Michael Arnold, Financial Industry Complaints Service

- Crisis Management and Associated Funding Issues for Schemes – Panel chaired by Peter Hardham, Insurance Ombudsman Service

- Fraud and Fraudulent Non-Disclosure and More General Non-Disclosure Issues - panel discussion chaired by Peter Hardham, Insurance Ombudsman Service

- Codes of Practice and Their Benefits to Schemes - Alan Mason, Non-Executive Director, Australia

- Systemic Issues - Diane Carmody, Banking and Financial Services Ombudsman

- Sharing Services Between Schemes - Colin Neave, Banking and Financial Services Ombudsman Australia and Liz Brown, Banking Ombudsman, New Zealand

- Querulant Complainants - Dr Grant Lester, forensic psychiatrist, Victorian Institute of Forensic Mental Health, Australia

- Best Things We Have Done Over the Last 12 Months and Things We Would Like To Do If We Could - Panel discussion - Joint Australia and New Zealand Ombudsman Association and British and Irish Ombudsman Association

- What Can We As Ombudsmen Expect in the Future - presentation and discussion

- Feedback from delegates on 2006 conference and planning for 2007 conference

Conference papers where available can be viewed at www.conferenceworld.com.au.

Australian and New Zealand Ombudsman Association

ANZOA is an association of 16 alternative dispute resolution schemes, including nine Australian industry-based and four parliamentary schemes and three New Zealand schemes. A full list of members is set out below.

The objects of ANZOA are:

- to establish an Australian and New Zealand Ombudsman network for consultation and discussion of areas of interest, concern, or common experiences;

- to promote co-operation and communication between recognised industry, parliamentary and professional Ombudsmen and their offices;

- to promote appropriate use of the title of Ombudsman, enhance the status and visibility of recognised Ombudsmen, formulate and promote standards of best practice and promote excellence in complaint handling; and

- to provide a forum for the exchange of information and opinions, to encourage and facilitate joint initiatives, promote awareness of the services offered by Ombudsmen schemes and make and develop and foster links with overseas Ombudsmen.

Office bearers and committees

The executive committee of the Association is chaired by Fiona McLeod, Energy & Water Ombudsman (Victoria). The secretary is Liz Brown, Banking Ombudsman New Zealand and the Treasurer is Colin Neave, Banking and Financial Services Ombudsman. The executive meets quarterly.

The executive is supported by two sub-committees, the Learning and Development Interest Group and the Public Relations and Communications Interest Group. The sub-committees also meet quarterly.

More information about ANZOA can be found at www.anzoa.com.au.

Members of ANZOA (at February 2006)

Australia - Industry-based Ombudsman Schemes
Banking and Financial Services Ombudsman (BFSO)
Energy Industry Ombudsman SA (EIOSA)
Energy & Water Ombudsman NSW (EWON)
Energy and Water Ombudsman (Victoria) (EWOV)
Energy Ombudsman Tasmania
Financial Industry Complaints Service (FICS)
Insurance Ombudsman Service (IOS)
Public Transport Ombudsman (Victoria) (PTO)
Telecommunications Industry Ombudsman (TIO)

<u>Australia - Parliamentary Ombudsmen</u>
Commonwealth Ombudsman
Ombudsman for the Northern Territory
Ombudsman Victoria
Ombudsman Western Australia

<u>New Zealand</u>
Office of the Banking Ombudsman of New Zealand
Office of the Electricity and Gas Complaints Commissioner New Zealand
New Zealand Insurance & Savings Ombudsman (ISO)

Causes of Systemic Issues

In Bulletin 50 we talked about systemic issues and the approach that would be taken when there is a concurrent BFSO and ASIC investigation.

The following is an extract of the presentation given by Diane Carmody, General Manager BFSO, to the International Alternative Dispute Resolution Conference. This extract describes the history of BFSO's approach to systemic issues and the causes and remedies of systemic issues. It also comments on the benefits of resolving systemic issues for consumers and the industry.

History of BFSO's systemic issues investigations

Whilst early versions of the Terms of Reference restricted the availability of the benefits of the dispute resolution process to the person or entity that lodged the dispute, the Ombudsman has over the years, applied the resolution of a dispute more broadly, either at the request of the financial services provider or by agreement with the financial services provider.

We established guidelines for dealing with systemic issues as early as 1995. On that occasion we considered a dispute from a customer who said that the bank, which had acquired a small building society, failed to apply the interest rate which was specified under the building society loan contract. The bank agreed that it was applying the incorrect interest rate after an initial fixed rate period and all customers who had the loan which originated with the building society would be affected in the same way. We worked with the bank to set the guidelines for identifying not only current customers but those customers who had left the bank when they refinanced or otherwise paid out the loan and we worked with the bank to construct the parameters for the financial compensation due to all customers.

In addition to this case, we have records of 14 systemic issues that were resolved by agreement with the financial services provider between October 1998 and August 2001.

The investigation of systemic issues was formalised in September 2001 when BFSO obtained ASIC approval to provide dispute resolution services in the financial services sector. Then in March 2002 new Terms of Reference were released which included powers to investigate and resolve systemic issues. These powers reflect the obligations under ASIC approval.

Causes of systemic issues

Between September 2001 and June 2006 BFSO has investigated and resolved 70 systemic issues. Some of the causes and remedies of the systemic issues are described below.

<u>Failure to disclose information about the operation of an account or facility</u>

Systemic issues about a failure to disclose accurately how an account or facility operates are usually corrected by amending the terms and conditions of the account or facility in order to fully disclose how the account or facility operates. In addition, any customers who suffer a loss in reliance on the misleading terms and conditions must be reimbursed for their financial loss. Two examples are:

(a) In one case the particular bank's system and policy did not make incoming telegraphic transfer funds immediately available and this was not disclosed to customers;

(b) In another case involving on-line share trading, there was no disclosure that the funds for the anticipated share purchase were "put on hold" for the purpose of settling the trade. The allocated funds did not appear on the account statements and appeared to have disappeared.

<u>Ambiguous and misleading disclosure</u>

Ambiguous and misleading disclosure can be described as " it might have said ……. but we really meant …………." Two examples:

(a) The product information said that if a customer had a balance of $20,000 or more the account would be fee exempt. The bank said however, if the account was a joint account, each account holder had to have a balance of $20,000. The bank refunded fees to customers who said they had been misled and amended its documentation to clearly explain how the fee exemption policy worked.

(b) A bank offered 1% bonus credit if over $4,000 was spent on eligible transactions using the bank's credit card<u>s</u>. The bank said that the bonus was meant to only apply to <u>one</u> card. 1059 customers were affected. Adjustments were made and advertising amended.

<u>Computer programming errors</u>

(a) On a number of accounts a $2 frequent statement fee was charged when no statement was requested by the customer. The problem was confined to a one month period and all affected customers were refunded.

(b) Credit card customers whose anniversary date was in November were charged an annual fee and another fee in December. 16,847 customers were affected. Fees were refunded and the system corrected.

(c) Customers could arrange a direct debit from a transaction account to a credit card account. Due to a system error, the funds were withdrawn but went to an unidentified remittance account. The systemic issue was resolved when the deposits were redirected and late fees and interest on the credit card accounts were refunded.

<u>Human intervention</u>

We received a dispute that a bank had set up insurance policies on credit card accounts and deducted premiums without authority. 12 customers were affected due to the actions of a rogue staff member. Customers were refunded. Employee dismissed.

<u>Complex product packages</u>

It is not uncommon for banks to offer a suite of products and benefits attached to a particular type of loan. Typically there will be a loan, a credit card and transaction accounts. The benefits range from fee waivers, free insurance policies and interest rate benefits.

We have seen two cases of systemic problems with these "package" products. It appears that the complexity of the permutations and combinations of customers, accounts and benefits create computer programming and data input challenges.

In one case customers were being charged an annual fee on a credit card which should have been exempt. The bank paid over $1 million to reimburse affected customers. BFSO has since identified other problems with the package product and is working with the bank to identify and reimburse affected customers.

In another case, both BFSO and ASIC were reviewing disputes that customers were charged the annual package fee on more than one account in the same year. ASIC took over this investigation and according to newspaper reports the bank has refunded over $174 million to affected customers.

Mergers and acquisitions

Systemic problems are quite likely to emerge when products are merged in the course of a merger or acquisition of two financial institutions.

In one case, due to a system error, all payments made to the home loans of the merged entity were treated as "special repayments" and loan statements indicated that the borrowers were ahead in their loan repayments. Some borrowers stopped paying the loan.

The system was corrected. Customers who had fallen behind in their payments were given the option of repaying the amount to bring the loan to its expected balance or to vary the terms of the loan. All customers were offered a 0.15% interest rate reduction for the life of the loan.

Contract and calculation errors – fixed rate loans

The explanation and calculation of the early termination cost on a fixed rate loan has caused problems for some financial institutions.

In one case there was inadequate disclosure of the break cost calculation in the loan contracts and in another case, the calculation of the early termination cost was not in accordance with the description in the loan contract.

The benefits of BFSO's investigation of systemic issues

The effect of BFSO's involvement in systemic issues is that the resolution of the systemic issue is an extension of the resolution of the dispute lodged by one or more customers, in that all customers in the affected group benefit from the compensation that is awarded and an agreed course of action is taken by the financial services provider to correct the root cause of the problem.

The power and obligation to investigate systemic issues and to ensure that all customers in the affected group are compensated, whether or not they had complained to the Ombudsman, is a significant benefit for consumers.

The Ombudsman's involvement in systemic issues has also contributed to raising industry standards.

Prior to BFSO's involvement in systemic issues there was not always the corporate will to correct systemic problems, probably because of the cost and effort involved. In one case where the annual fee on the credit card was being charged when it should not have been, the bank had been responding by simply refunding the customers who complained. Once we became involved, the bank directed appropriate resources to correcting the problem and refunded all affected customers.

Another illustration of the flow-on effect of BFSO investigating systemic issues is that some banks are now using the information obtained from their own customer complaints to identify and correct systemic issues before there is an escalation to BFSO. Two banks have appointed dedicated systemic issues managers internally. This means that there is a more immediate and appropriate response to the systemic issue which will reduce the inconvenience and uncertainty that may be experienced by the banks' customers.

Dispute resolution on a case-by-case basis and the extension to resolving systemic issues should not be confused with regulation. Effective dispute resolution and the investigation and reporting on systemic issues can be achieved with clear guidelines about what types of issues will be considered to be systemic and within the ambit of an ADR scheme.

As is always the case, we welcome feedback on this Bulletin.

Colin Neave

Colin Neave AM
Banking and Financial Services Ombudsman