

6 May 2021

Kei te rangatira,

### **Submission on scheme rules discussion paper**

Thank you for the opportunity to comment on the discussion paper into standardising some of the rules of the four approved financial dispute resolution schemes. We fully support the principles and objectives of the review.

#### **About us**

The Banking Ombudsman Scheme (BOS) was established in 1992 and is an approved financial dispute resolution scheme under the Financial Services Providers (Registration and Dispute Resolution) Act 2008. Our members are registered banks, their subsidiaries and related companies, and certain non-bank deposit takers that meet our membership criteria. We resolve and prevent complaints to improve banking for customers and banks. We provide a service that is accessible, independent, fair and efficient.

#### **Financial cap**

##### *Primary financial cap*

We agree that all schemes' financial limits should be aligned with the District Court cap, which, like ours, is currently \$350,000. We consider this a minimum desirable level. We would like to retain the discretion to increase this limit if, for example, an independent review recommends such a step (as has happened in the past) and the board passes a resolution in favour of it. Any increase could not only improve consumers' access to justice but also result in more cost-effective resolution of disputes. We should point out that we have made a decision to decline to consider only one dispute in the past three years for exceeding our financial limit. Note that our members sometimes agree to consideration of a complaint above our financial limit.

##### *Weekly alternative to the primary financial cap*

We support the proposal that all schemes have a weekly alternative to the primary financial cap for where the product or service is valued not as a lump sum but as a regular payment. To date, we have not had any disputes involving financial products or services valued as a regular payment rather than as a lump sum. That said, some of our members offer insurance, so this is of potential relevance.



## **Inconvenience**

We support the proposal of a consistent and broad approach for making awards for inconvenience. We consider the schemes should be able to order an inconvenience award in a wide range of situations. We also support setting a consistent inconvenience award of \$10,000.

## **Interest**

Our rules do not specifically say that we can award interest, although they permit awards for direct loss, which can include loss of interest. We support all schemes having a specific power to award interest. This should include the power to award interest on the amount claimed from the date the claim arose, which is in line with the courts.

## **Timing of membership and jurisdiction**

We have never encountered a complainant who has been stymied by the fact a scheme member has switched to another scheme. That said, it could potentially happen, so we support the requirement (option one) that all schemes must consider claims about current members, even if a dispute arose before a member joined a scheme.

## **Applicable times for bringing a claim**

We support the proposals relating to times for bringing a claim. We consider they will result in greater and more consistent access to justice and redress for all consumers.

### *Internal complaints (time period one)*

We support the proposed maximum of two months for a scheme member to resolve a complaint before the complainant can take it to the scheme itself. We consider that a shorter timeframe will act as an incentive to resolve complaints faster. We see no risk under this proposal of members having to rush through consideration of complaints. In our experience, if a bank and a customer cannot resolve a complaint within two months, a third month is unlikely to make much difference. Banks resolve the vast majority of complaints internally, helped in some instances by our early resolution service. Our rules give members up to three months to consider a complaint. It is worth noting that some consumers who approach us with a complaint express surprise at having to potentially wait up to three months before we can formally consider their complaint.

### *After internal complaint process and before a scheme's services are no longer available (time period two)*

We support options two and three in the discussion paper – that is, a complainant can bring a complaint to a scheme within three months, but the scheme can also accept a complaint after three months in exceptional circumstances. Note: In the past three years, we have made a decision to decline only two disputes because a complainant took more than three months to approach us.


*Total time a complaint can be within a scheme's jurisdiction (time period three)*

We support the proposal for a six-year deadline, which is in line with statutory limitation periods. We also support a consistent approach to how this period should be defined. Note: In the past three years, we have made a decision to decline just 11 disputes because a complainant was aware of the bank's action or inaction for more than six years before approaching us.

**Further clarification**

I would welcome the opportunity to discuss this further with you if that would be of assistance. In any event, please contact me if you would like further information.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Nicola Sladden', with a long horizontal flourish extending to the right.

**Nicola Sladden**  
Banking Ombudsman