



**Banking Ombudsman Scheme**

Freepost 218 002, PO Box 25 327, Featherston Street, Wellington 6146

Telephone 04 915 0400 Freephone 0800 805 950

Email [help@bankomb.org.nz](mailto:help@bankomb.org.nz) Website [www.bankomb.org.nz](http://www.bankomb.org.nz)

Facebook [www.facebook.com/bankombnz](http://www.facebook.com/bankombnz)

22 July 2015

Ministry of Business, Innovation and Employment  
[corporate.law@mbie.govt.nz](mailto:corporate.law@mbie.govt.nz)

Dear Sir/Madam

**Re: Submission on *Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008***

Thank you for the opportunity to comment on the Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the Review).

Overall, we support the aims of the Review to reduce unnecessary complexity and increase consumer understanding and confidence in the regulatory framework. We consider the current dispute resolution regime is working well. Our comments focus on the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and we have answered only those questions relevant to our experience.

**BOS jurisdiction**

The Banking Ombudsman Scheme (BOS) was established in July 1992 as an independent dispute resolution scheme. It is an approved dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. BOS participants are registered banks, their subsidiaries and related companies, and certain non-bank deposit takers that meet BOS participation criteria (minimum independent credit rating of BB, supervised by the Reserve Bank, and able to demonstrate effective complaints handling procedures). Our participants have approximately 400 authorised financial advisors working within their organisations.

## Goals for the dispute resolution regime (Questions 66-67)

*66 Do you agree that the dispute resolution regime should seek to achieve the identified goals? If not, why not?*

*67 What goals do you consider should be more or less important in reviewing the dispute resolution regime?*

We agree that the dispute resolution regime should seek to achieve the identified goals, namely that consumers are aware of, can access, and are confident in dispute resolution. These goals are equally important. BOS's strategic framework (**enclosed**) aligns with these goals, and BOS actively works to achieve these goals.

### *Awareness*

BOS is the best known financial services dispute resolution scheme. The Banking Ombudsman regularly appears in the media, raising the public profile of the scheme and the dispute resolution regime. In 2013, Nielsen, engaged to survey customer awareness of BOS, found that approximately 50 percent of respondents knew about the scheme, either prompted or unprompted. As you will know, Colmar Brunton's June 2015 research for MBIE found that consumers "are aware of the Banking Ombudsman". More and more people are visiting BOS's website each year. In 2012/13 there were approximately 21,000 website visitors; in 2013/14 the number exceeded 34,000; and this year it doubled to more than 71,000.

The most effective way to ensure consumers are aware of the dispute resolution mechanisms available when they need them is through the financial service provider. Consumers should be informed of their right to complain to a dispute resolution scheme when receiving financial services. Bank customer accessibility to both internal and external complaints resolution is an obligation under the Code of Banking Practice and the BOS's Participation Agreement. The Code of Banking Practice provides that brochures relating to BOS will be on display in all bank branches (clause 1.3(d)). We also recommend participants have information about BOS on their websites.

BOS has traditionally tested compliance with these obligations by conducting Mystery Shopper exercises in branches. This year, however, we reviewed websites as customers are increasingly choosing to make complaints online. Our report on this review is yet to be released but initial results show that many banks, especially the major trading banks, provide effective links and a high level of information about complaints on their websites. Some banks have information gaps, making it harder for customers to work out how to complain and, in particular, to make a complaint online. We will be providing a checklist for banks to use in evaluating their own sites and suggesting future improvements, including providing links to BOS guidance on key banking issues and complaints.

### *Accessibility*

One of our scheme's core values is accessibility. The public is able to contact BOS by telephone, letter, email or at our offices. We recognise that some people have particular difficulties or challenges in making a complaint, so provide assistance by referring people to the appropriate agency or help them to make a complaint. Since December 2013, BOS has used Language Line's telephone interpreting service for 44 languages. We have also translated our information leaflet into New Zealand Sign Language and the NZ Relay staff

are able to assist callers to BOS with a hearing or speech impairment. Our surveys show that over 80 percent of complainants find our scheme is easy to use.

BOS is in the process of a comprehensive rewriting of its terms of reference to modernise the structure and language, and to make the rules easier to understand. We have also recently made changes to our online complaint form to track the demographics of people who make complaints to our scheme. This will enable us to more effectively work out which groups we are reaching and, by default, not reaching.

### *Confidence*

Dispute resolution schemes give confidence at the individual customer level that, should something go wrong, there is an independent agency that will help put things right. Even if we do not consider the bank has acted unfairly, we can provide an independent view. BOS engenders confidence by being open and transparent: we publish our decisions. We are not bound by previous decisions so we can be flexible and responsive to changing market conditions and our stakeholders. As market participants (consumers and banks alike) experience how we perform our functions, they gain confidence that we know what we are doing, we can be relied upon to do the right thing and we are transparent.

It is important that BOS is, and is seen to be, fair, independent and credible. Our recent external review concluded that BOS has strong and timely processes, skilled senior staff, and steadily improving customer satisfaction rates. The review found that BOS's governance arrangements are sound and promote independent decision making, and interviews with stakeholders suggested that there is public confidence in BOS's independence.

In short, awareness, accessibility and confidence are key features of BOS.

### **Monitoring framework (Question 72)**

*72. Is the current framework for monitoring dispute resolution schemes adequate? What changes, if any, should be considered?*

We consider the current framework is adequate.

### **Financial limit (Question 74)**

*74. Should the \$200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?*

Currently, BOS's Terms of Reference provides that the scheme will not consider a complaint if the amount claimed is more than the scheme's financial limit of \$200,000, or is part of a larger claim that exceeds or could exceed the limit. The one exception to this is that the scheme can look into a complaint involving a sum greater than \$200,000 if the bank gives its consent. BOS has the power to recommend compensation for any direct loss or damage up to the amount of \$200,000. In the last three years, only two complaints brought to BOS were excluded from jurisdiction because the claimed amount exceeded the financial limit.

BOS is currently developing guidance material on its claim limit to make clear it applies to the amount the complainant is claiming, or could reasonably claim, for direct loss (rather than the value of any transaction or product, such as a loan, that gave rise to the loss). This will ensure that customers are not deterred or confused by the current claim limit in cases where the value of the transaction or product is above the claim limit but the loss claimed is not.

BOS recently consulted with stakeholders on whether to increase the scheme's financial limit, as a result of a recommendation by last year's external review of BOS. Submissions received on this issue generally supported keeping the claim and compensation limits the same, on the basis that having different limits may be confusing for complainants. Many submissions were supportive of raising the financial limit to increase access to the scheme.

The scheme's Board decided not to proceed with the recommendation to amend the claim limit at this stage, in light of the differing views about the details of any change and the fact that the Government would be considering financial limits as part of the Review. The Board also noted that increasing the claim limit would put the scheme out of step with New Zealand's other financial dispute resolution schemes. The submissions and the Board's decisions are available here: <https://bankomb.org.nz/about-us/scheme-reviews>.

As noted by the external review, ideally all financial dispute resolution schemes would increase their financial limits at the same time so that it does not become a 'competition' issue. As we noted in our recent consultation document, recognition of the respective roles of dispute resolution schemes and the courts is also an important factor: a limit set too low would deny customers access to the scheme and a source of justice; a limit set too high would lead to the scheme replacing the courts, the proper place for large claims.

### **Insolvency requirements (Question 75)**

*75. Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?*

We have not experienced any difficulties with BOS participants paying recommended compensation sums. However, we appreciate that this is an important aspect for the effectiveness of dispute resolution schemes, and may be an issue for other types of financial service providers.

### **Impact of multiple schemes (Questions 73, 80-81)**

*73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?*

*80. What are the effects of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?*

*81. Are there ways to mitigate the issues identified without losing the benefits of a multiple scheme structure?*

We consider that there are significant benefits in industry-specific, expert schemes to ensure tailored dispute resolution and education, even if this leads to multiple schemes. BOS has deliberately and strategically focused on a distinct segment of the financial services sector, banking and deposit-taking services. Although we have the smallest number of participants, collectively they provide services to most New Zealanders. We have therefore developed specialist expertise in the sector, and focus on providing a quality service and value. While our participants have the ability to switch to another dispute resolution scheme, none has to date, reflecting the benefits of an industry scheme.

Having a defined industry enables BOS to identify learnings from the disputes resolved so that we can help prevent future disputes and lift service standards. We have developed specialist understanding and knowledge of banking services and products, and established commonly understood approaches to issues. We are therefore best placed to resolve these disputes efficiently, fairly and consistently.

BOS also has the advantage of being able to look across the whole of the banking industry. We can provide industry-related information about how participants are performing relative to the rest of the industry, and anticipate issues and forewarn participants and their customers of emerging issues. BOS's electronic newsletter Current Account keeps participants and customers up to date with current issues. We also publish "quick guides" covering a wide range of banking issues and case notes illustrating how we are likely to rule on certain types of disputes. Both these publications inform consumers about how we approach certain issues, and also assist our participants achieve early resolution without the need for our intervention.

Thus, we provide valuable lessons or insights to:

- participants, so they can better resolve their own disputes, avoid future ones and generally improve their ability to lift dispute resolution practice and improve the banking service,
- complainants, so they can better understand why problems have arisen,
- the public, so they can avoid falling into the same traps, and manage their relationships with banks and their own finances more effectively, and
- the government, to help inform and achieve its policy objectives.

Multiple schemes can exist with or without competition between them. As to competition effects (Question 80), there is substance to the internationally accepted principle that competition between dispute resolution schemes is undesirable. However, given BOS's defined participant base and specialist expertise, we have not experienced any negative 'competition' effects to date. In particular, BOS does not experience any restriction in our ability to promote awareness, introduce new rules or work collaboratively with other schemes (which are referenced in the Paper as potential effects). We are not aware of any significant inconsistencies between the schemes in terms of the outcomes for consumers or access to the schemes. BOS's membership in the Australian and New Zealand Ombudsman Association (ANZOA) promotes collaboration and consistency of practice. The quick guides and case notes we publish also promote consistency between schemes as these are publically available and can be accessed by other schemes to aid in decision-making. In addition, we regularly collaborate with other schemes with regard to awareness initiatives, training and sharing of best practice.

Consistency in some aspects of the schemes' jurisdiction may be beneficial, as noted above with regard to the financial limit. However, it is also important that schemes are able to develop specialist industry expertise, and tailor their rules and processes so they are fit for purpose. We consider BOS has achieved this and potential issues, if any, with multiple schemes can be readily mitigated in the ways discussed above.

### **Awareness of dispute resolution options (Question 82)**

*82. Are the current regulatory settings adequate in raising awareness of available dispute resolution options? How could awareness be improved?*

We are keenly aware of the importance of consumers' awareness and knowledge of the scheme. As outlined above (on page 2), BOS undertakes a number of initiatives to improve awareness. Most importantly, our participants are required to provide information to their customers about BOS and we regularly monitor this.

The existence of multiple schemes does not appear to cause undue confusion for consumers who contact BOS. In the past year, only one percent of complainants were referred to BOS from another dispute resolution scheme. Of the cases we received, less than three percent needed to be referred to another dispute resolution scheme.

### **Conclusion**

In conclusion, BOS welcomes the review and supports the stated goals for the dispute resolution regime. If you would like more information or clarification regarding this submission, please feel free to contact Senior Investigator Sarah Parker at [18\(d\)](#)

Yours sincerely



**Deborah Battell**  
Banking Ombudsman

Encl. Strategic framework



Banking Ombudsman Scheme

Trust us to be fair

## Strategic framework

### VALUES

We strive to be: accessible, fair, independent, accountable, efficient, effective

### ASPIRATIONS

We want to:

- Improve the banking experience for customers and banks
- Be leaders in independent and fair dispute resolution



### OBJECTIVES

We aim to:

- Resolve disputes quickly, fairly and cost-effectively
- Learn from complaints and spread awareness of the scheme
- Have the best people and systems to do our job



### STRATEGIES

We work to:

- Listen and seek to understand complaints
- Put things right
- Get to the root causes of complaints and share the insights
- Invest in people and systems
- Collaborate with other agencies
- Influence discussion about legislation and industry standards



### IMPACTS

We expect to:

- Reduce complaints
- Improve banks' service and complaint-handling expertise
- Improve bank/customer relationships
- Increase customers' knowledge of how banking works
- Empower customers to better manage their banking affairs and make complaints, if needed
- Strengthen stakeholders' confidence and trust in what we do