



Banking Ombudsman Scheme

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Ministry of Business, Innovation and Employment
faareview@mbie.govt.nz.

Dear Sir/Madam

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

As set out in our previous submission on the Review, we support the Review's aims of reducing unnecessary complexity and increasing consumer understanding and confidence in the regulatory framework. We consider the current dispute resolution regime is working well. We have focused this submission on the questions relating to our experience as an approved scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

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. Our participants have approximately 400 authorised financial advisors working within their organisations.

Multiple schemes – question 22

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?

We consider there are benefits in industry-specific, expert schemes within the financial services sector to ensure tailored dispute resolution and education. BOS has deliberately and strategically focused on a distinct segment of the financial services sector, banking and deposit-taking services. 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. 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.

Consistency between schemes – question 23

23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?

Financial service consumers should have access to high quality and consistent dispute resolution. We endorse the work of the Government Centre for Dispute Resolution in supporting best practice dispute resolution. BOS strives to be accessible, fair, independent, accountable, efficient and effective. Our recent external review concluded that BOS is an effective and professionally run scheme.

While we are not aware of any significant inconsistencies between the schemes' rules and processes, consistency in some aspects of the schemes' jurisdiction may be beneficial. 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. BOS recently undertook a comprehensive rewriting of its terms of reference to modernise the structure and language, and to make the rules easier to understand. Feedback on our new rules has been extremely positive.

We are supportive of the proposals in the Options Paper to improve the transparency and consistency of dispute resolution schemes and promote greater access for consumers.

- *Requiring financial service providers to inform consumers at the time of complaint which dispute resolution scheme they belong to and how to access it, and indicate an expected timeframe for acknowledging and responding to a complaint.*

We agree that the most effective way to ensure consumers are aware of the relevant scheme is through the financial service provider. Consumers should be informed of their right to complain to a dispute resolution scheme when receiving financial services. Under the Code of Banking Practice and the BOS's Participation Agreement, BOS participants are already required to:

- (i) acknowledge receipt of a complaint within five business days of receipt;

- (ii) undertake a review under their own internal complaints procedures;
- (iii) if a consumer is dissatisfied with their decision, inform the customer that he or she may refer the complaint to BOS and provide contact details for BOS.

The Code of Banking Practice provides that brochures relating to BOS will be on display in all bank branches and complaint procedures will be available on bank websites (clause 1.3(d)). Today most people access information online so the information available on a bank's website is particularly important. Our recent survey of bank websites found that most banks provide a high level of information about internal and external complaint resolution on their websites.

- *Greater consistency of scheme rules. For example, while we are not proposing to amend the \$200,000 jurisdictional limit at this stage, there could be greater consistency in how this is applied by different schemes.*

BOS applies the \$200,000 jurisdictional limit to the amount the complainant is claiming, or could reasonably claim, for direct loss (rather than the underlying value of the transaction or the total value of the customer's business with the participant that gave rise to the loss). This means that the value of the transaction may be more than this limit. We consider this is appropriate because the value of the transaction or product (such as a home loan) should not be determinative of whether a consumer can access the scheme.

We note that BOS's Terms of Reference enables an award of up to \$9,000 for inconvenience, which is a higher limit than other approved schemes. While BOS rarely awards compensation for inconvenience at the higher end of this scale, we believe it is important to compensate consumers for any significant inconvenience, such as effects on health, loss of opportunity, disruption of financial planning or damage to reputation.

- *Greater transparency and monitoring of dispute resolution. For example, this could include clearer reporting requirements and standardised reporting and publication of case summaries.*

We are supportive of transparency and appropriate monitoring of dispute resolution. BOS publishes a detailed Annual Report that provides information about complaints handled by BOS, including volumes, issues, timeframes and outcomes. We survey both consumers and participants about our dispute resolution service, and report on these results in our Annual Report. Complaints that raise key themes and issues are written up as Case Studies that are published on BOS's website. These provide transparency as to how we are likely to rule on certain types of disputes.

- *Gathering information from consumers on their experience with dispute resolution after a dispute.*

BOS routinely seeks feedback from consumers on their experience with our dispute resolution service after a dispute. We use this information to identify any areas for improvement to our process or service.

Professional indemnity insurance – question 24

24. *Should professional indemnity insurance apply to all financial service providers?*

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.

Conclusion

In conclusion, BOS is supportive of the goal to improve access to fair and effective redress. We would welcome the opportunity to discuss any specific proposals further. If you would like more information or clarification regarding this submission, please feel free to contact Deputy Banking Ombudsman Sarah Parker at Sarah.Parker@bankomb.org.nz.

Yours sincerely
Redacted


Nicola Stadden
Banking Ombudsman