

Banking and Financial Services Ombudsman
Annual Report 2004 – 05

Celebrating 15 years of the Scheme





Our Purpose

Our primary function is dispute resolution.

We contribute to:

- Raising industry standards
- Increasing financial literacy of consumers
- Better informed policy outcomes for government, industry and the community

Workplace Values

- Excellence in decision making
- A cooperative working environment
- Respect for all users of the Scheme
- Staff development
 - knowledge, skills, initiative

Accessible – Fair - Independent

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Highlights

- This year marks the fifteenth anniversary of the commencement of the Scheme.
- Whilst the two previous reporting periods saw a decline in the number of new disputes lodged with the Scheme, this year there was an increase of 4.2 per cent to 6,104. The trend of a higher proportion of complex cases continued this year.
- For the third consecutive year there was an improvement in the number of cases closed within 60 days. Of the cases referred to members during the year, 53.4 per cent were closed within 60 days, compared to 47.2 per cent last year.
- The number of disputes resolved prior to a BFSO investigation rose from 90.1 per cent last year to 91.6 per cent this year. This illustrates the success of members' efforts to resolve disputes as early as possible after referral from BFSO.
- BFSO continued its important role in identifying and resolving systemic issues. Of the 27 potential systemic issues investigated this year, 11 were determined to be systemic and were resolved, 2 were determined not to be systemic and 14 investigations are on-going.
- The independent review of the operations and procedures of BFSO was completed in November 2004. The principal finding of the Review Report is that the BFSO Scheme operates in a successful manner and is highly regarded by its stakeholders. The Report contains a series of recommendations which aim for incremental improvement in the Scheme's operation by suggesting minor refinements or shifts in emphasis to process and policy. The majority of recommendations made by the reviewer have now been implemented.
- BFSO has again focussed on external consultation and community and member education. The number of presentations made by BFSO rose from 54 last year to 70 this year. Briefing sessions for members continued and a Continuous Improvement Forum was held with consumer advocates in June 2005.
- The membership base has continued to grow. As at 30 June 2005, the Scheme had 64 members. Members now include banks, mortgage brokers, financial planners, debt collection agencies, foreign exchange providers, non cash payment facilitators and fund managers.

Chairman's Message

In its fifteenth year of operation, the Banking and Financial Services Ombudsman Scheme ("BFSO") has consolidated its position as a premier dispute resolution scheme in the financial services sector.

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The Independent Review of the Scheme's operations was completed in November 2004. The principal finding of the Review was that BFSO operates in a successful manner and is highly regarded by its stakeholders. This assessment is obviously welcomed by the Board and is a strong endorsement of the Ombudsman, his staff and the members and stakeholders.

I am pleased to report that the majority of recommendations made by the reviewer have already been implemented and should further enhance the Scheme's already impressive operations.

The Scheme's Terms of Reference were amended during the year to increase the amount of compensation that can be awarded from \$150,000 to \$250,000. Whilst the increase only applies to events that occurred on or after 1 December 2004, members will be asked to consent to BFSO considering cases where the loss is between \$150,000 and \$250,000 in appropriate circumstances where the event occurred before 1 December 2004.

The monetary limit had not changed since 1996, and in the last nine years, there has been considerable development in both the market for financial services and the types of disputes coming to BFSO. The increase to \$250,000 ensures that a greater number of disputes relating to housing finance and small business finance will fall within the Scheme's jurisdiction, and provides more realistic coverage for disputes about insurance and investment products offered by the increasingly varied membership base.

I take this opportunity to congratulate Colin Neave, on behalf of the Board of the Scheme, for his inclusion in this year's Queen's Birthday Honours List, awarded Member in the Order of Australia. The award was for service to public administration and to the banking and finance industry, particularly through dispute resolution. Both consumer and industry groups would agree that this award is well deserved and recognises the outstanding leadership Colin has provided in the field of dispute resolution between financial service providers and consumers.

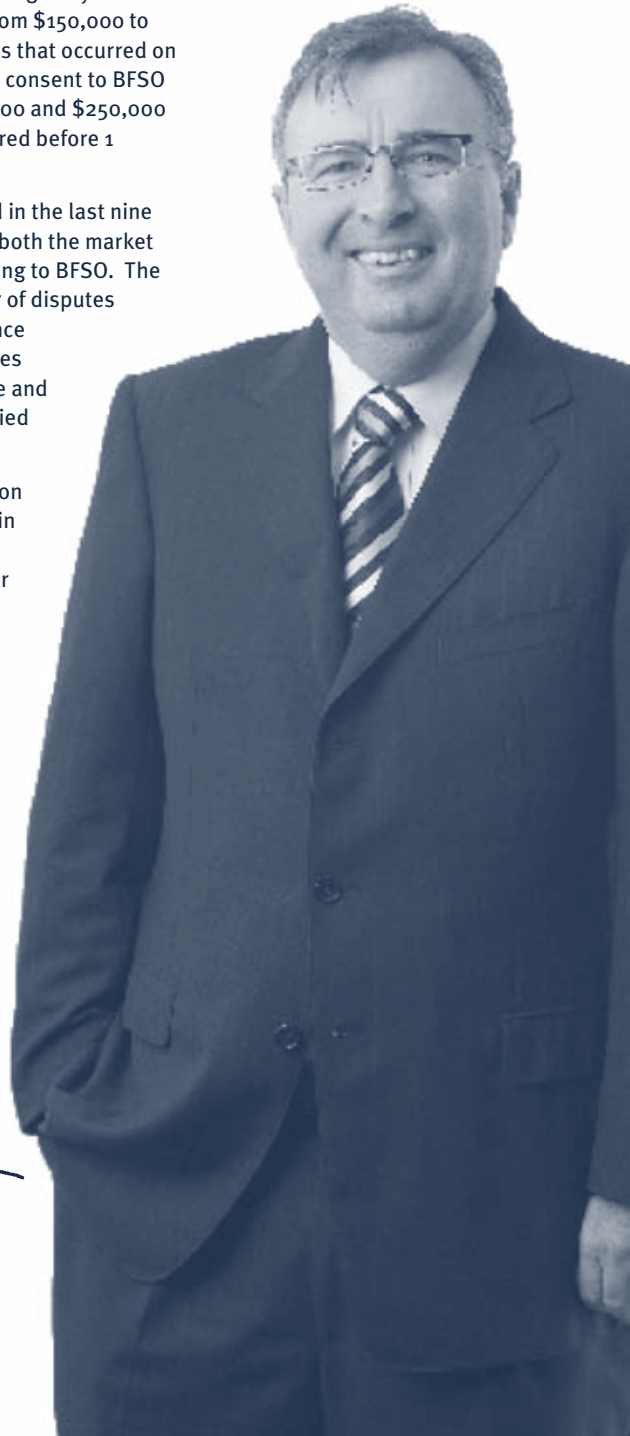
I have greatly valued the support I have received from Colin Neave and the members of the BFSO Board in my first year as Chairman of the Scheme.

The Board joins me in congratulating the BFSO team for another year of outstanding effort and looks forward to their continued commitment in the year ahead.



Michael Lavarch

Chairman





BFSO Board Members June 2005

Prof Michael Lavarch Chairman

Professor Lavarch is currently Dean of the Faculty of Law at Queensland University of Technology and was a former Commonwealth Attorney-General and secretary-general of the Law Council of Australia from 2001 – 2004. His current service on boards and committees includes membership of the advisory board, Key Centre for Law, Ethics and Governance, Griffith University, Chief Adjudicator of the Alcohol Beverages Advertising Complaints Panel and Director, National Electricity Market Management Company.

1 Ms Deborah Batten Member Representative

Ms Batten is a General Manager of the National Australia Bank, Office of the CEO, Australia. Ms Batten was appointed to the BFSO Board in June 2002.

2 Ms Jill Lester Member Representative

Ms Lester was appointed to the BFSO Board in September 2001. She is currently the Executive General Manager, Communication, Community and Reputation, Commonwealth Bank of Australia.

3 Mr Jeremy Griffith Member Representative

Mr Griffith is the General Manager Corporate Relations of St George Bank Limited. Mr Griffith was appointed to the BFSO Board in May 2003.

4 Ms Carolyn Bond Consumer Representative

Ms Bond is the Manager of the Consumer Credit Legal Service in Melbourne. She was appointed to the BFSO Board in December 2001.

5 Ms Su Mahalingham Consumer Representative

Ms Mahalingham is the Director of the Consumer Credit Legal Service in Perth. She was appointed a Board Member of the BFSO in September 2002

6 Mr Roger du Blet AM Small Business Representative

Mr du Blet was appointed to the BFSO Board as the small business representative in 2003. He is a Director of the Australian Chamber of Commerce and Industry and chairs the Building Products Innovation Council, the Small Business Forum and the Small Business Coalition.

Ombudsman's Foreword

This year marks the fifteenth anniversary of the commencement of the BFSO Scheme. From a service that started with 17 member banks and 16 staff, the Scheme has grown considerably. We now employ 44 staff, and have 64 members including banks, mortgage brokers, financial planners, debt collection agencies, foreign exchange providers and non cash payment facilitators.

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I welcome the 16 new members who have joined the Scheme during the year, and look forward to a co-operative relationship with them.

For the third consecutive year, there has been a decline in the number of telephone enquiries received by BFSO. The number of written disputes lodged, however, has risen by 4.2 per cent. A significant proportion of these written disputes raise issues which contribute to the increasing complexity of disputes which come to us for resolution. The efforts made by my staff, in particular the case management and legal counsel teams, to resolve the disputes as efficiently as possible and also provide members and consumers with guidance about the difficult issues raised by the cases, is to be commended.

As stated in the Chairman's Message, the Independent Review of the operations and procedures of BFSO was completed in November 2004. I am very pleased with the outcome of the Review as it confirmed that the Scheme is operating extremely well. In summary, the reviewer found:

"...the BFSO scheme is a very successful operation – widely and strongly endorsed by its stakeholders and demonstrably meeting each of the ASIC PS 139 benchmarks. Our observation and investigation found an environment of professional management, strong systems, high standards of quality and performance, sustained staff morale and active continuous improvement."

Against this backdrop, a series of recommendations were made which the reviewer described in the following way:

"The recommendations for change that we have made ... are not dramatic; rather they are incremental in nature and involve minor refinements, shifts in emphasis and adjustments to process and policy."

Most recommendations were accepted by the Board and a great deal of work has been undertaken by our staff to implement the initiatives as quickly as possible. I am pleased to report that the majority of the recommendations have now been implemented and work is well underway on the remaining projects. Some examples of the changes that have been made as a result of the review are:

- Annual continuous improvement forums for consumers and members have commenced. These provide an opportunity for stakeholders to provide feedback about their experiences of BFSO; and
- A series of strategies are being developed with other ASIC approved dispute resolution schemes to increase awareness of the Scheme amongst younger people, older people, people from non-English speaking backgrounds and people in rural and regional areas.

Another project is underway to integrate the information technology systems operated by BFSO, the Financial Industry Complaints Service and the Insurance Ombudsman Service. This will provide each scheme with a range of benefits including improved security and risk management, enhanced workflow practices and access to superior technology. A number of other joint ventures with these schemes are currently being considered, and I look forward to reporting further about these in my next report.

I take this opportunity to thank the Board for the support it has given to the Scheme during the year. In particular, the contribution that Michael Lavarch has made in his first year as Chairman has been outstanding and much appreciated by both myself and the members of the Board.

I also thank my staff for their dedication and enthusiasm this year. Their professionalism and expertise has enabled BFSO to continue to provide a high quality service in an ever changing environment.

A handwritten signature in black ink that reads "Colin Neave". The signature is written in a cursive, flowing style.

Colin Neave AM
Banking and Financial Services Ombudsman



Our People – Our Strength

BFSO employs a group of highly qualified and skilled professionals whose expertise in areas such as the law, accountancy, financial markets and information technology contributes significantly to the quality of the service provided by BFSO.

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We also use consultants regularly to provide specialist advisory services to our staff. A financial planning adviser is called on from time to time to advise on specific cases. A professional writing consultant assists the case management team and a voice and word consultant advises case officers who provide the telephone service to the public.

BFSO employs 44 staff, or 35.9 full-time equivalents. The roles performed by some staff have changed to meet the different demands faced by the Scheme during the year.

Administrative Support (3) The Administrative Support staff provide personal assistant services to the Ombudsman and reception, mail and maintenance services for the Scheme. They contribute to case management by documenting all incoming correspondence to the office on the Scheme's case management database.

Assistant Information Systems Manager (1) The Assistant Information Systems Manager undertakes statistical reporting on the performance of the Scheme both internally, and for the Scheme's stakeholders. He also provides user support and assists the Information Systems Manager with management of the Scheme's infrastructure.

Assistant Finance Manager (1) The Assistant Finance Manager provides clerical assistance to the Finance Manager

Banking Adviser (1) The Banking Adviser provides advice to the Ombudsman and staff on banking practice standards, technical knowledge of banking and banking procedures and systems. The banking adviser is seconded annually from one of the member banks.

Case Managers (13) Case Managers are responsible for resolving disputes that have not been resolved at the initial referral and facilitation stage and which require investigation. They investigate disputes and resolve them through providing a written Finding, convening conciliation conferences and facilitating negotiation. One of the Case Managers has responsibility for privacy issues and another is responsible for coordinating the training and staff development program.

Case Officers (12) Case Officers provide the telephone information and referral service of the BFSO. They classify and summarise written disputes, manage the initial referral and facilitation process and are also involved in investigating some disputes.

Communications Systems Manager (1) The Communications Systems Manager ensures the provision of quality telephone systems through the management of call flow traffic and the review and improvement of telephone processes, including the call centre service shared with other schemes, the Financial Ombudsman Service (FOS). The Communications Systems Manager is also responsible for the maintenance of the website, the electronic communication within BFSO as well as technical support for special projects.

Enquiries Officers (2) The Enquiries Officers are responsible for answering all calls received by the Financial Ombudsman Service (FOS). They direct callers through to the participating scheme with the most appropriate jurisdiction or to other more appropriate organisations.

Finance Manager and Company Secretary (1) The Finance Manager and Company Secretary is responsible for the preparation of the Scheme's annual budget and arranging the funding of the Scheme from members. Other responsibilities include the maintenance of all financial records and the company registers, the preparation of the Scheme's financial statements and the payment of staff salaries and benefits.

General Manager (1) The General Manager contributes to internal management, BFSO policy, quality assurance in case management and the management of external relationships. The General Manager also reviews and responds to complaints about the Scheme.

Information Systems Manager (1) The Information Systems Manager has responsibility for the information technology infrastructure of the BFSO, and is responsible for the integration of the IT systems across BFSO, Finance Industry Complaints Service and Insurance Ombudsman Service. He also provides assistance to FICS and IOS by way of support for their respective Case Management Systems and assistance with statistical reporting.

Legal Counsel (3) The Legal Counsel group, which includes the General Counsel, provides legal and jurisdictional advice to the Ombudsman and to staff and also provides quality assessment services to Case Managers and Case Officers to ensure all relevant legal and decision-making principles are considered during dispute resolution. The group also contributes to policy direction and to internal and external education. One of the Legal Counsel also has a role in liaising with non-bank members.

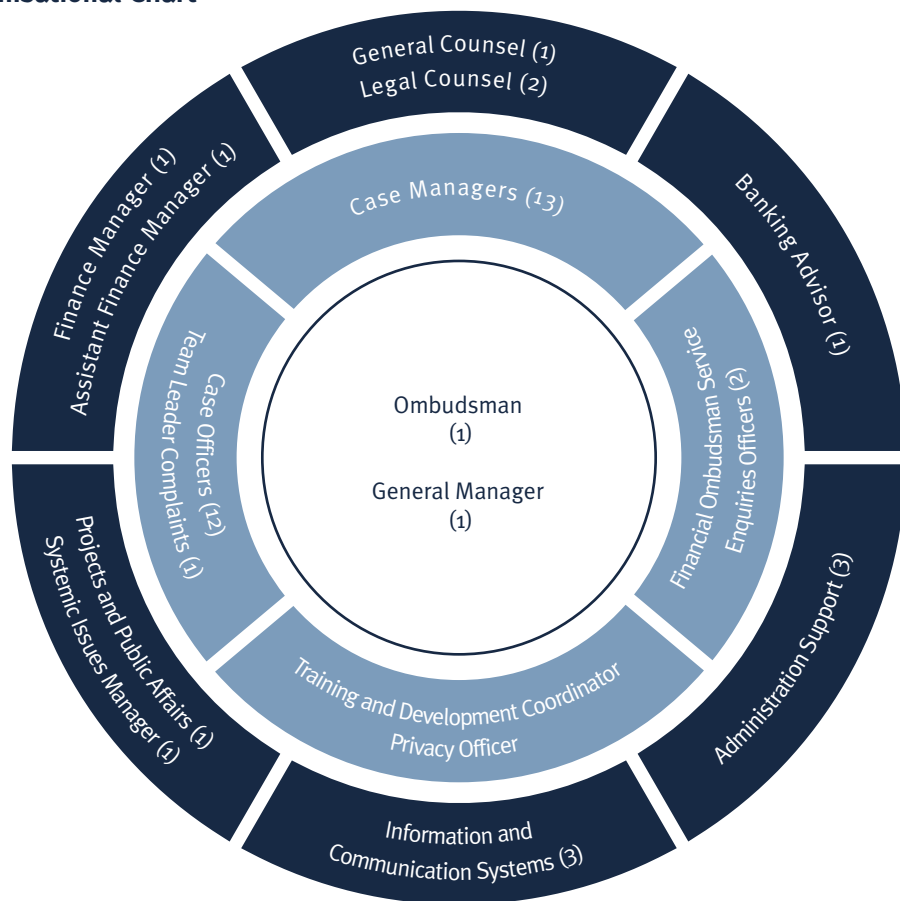
Ombudsman (1) The Ombudsman is the Chief Executive Officer of the BFSO whose principal powers and duties are to consider disputes within the Terms of Reference and to facilitate the satisfaction, settlement or resolution of such disputes.

Policy and Public Affairs Manager (1) The Policy and Public Affairs Manager is part of the team which develops and publishes internal and external policy, and coordinates the publication of BFSO materials including the Scheme’s annual report, and the development of the Scheme’s website. She also liaises and works with external bodies operating in the financial services sector and prepares submissions in response to government reviews and inquiries.

Systemic Issues Manager (1) The Systemic Issues Manager is responsible for the management of all systemic issues including reporting quarterly to ASIC.

Team Leader – Complaints (1) The Team Leader – Complaints provides leadership and case management support to Case Officers, in addition to producing assessments of disputes and monitoring Case Officer’s workloads.

**BFSO Organisational Chart
2005**



Industry and Community Involvement

BFSO embarked upon a significant promotional program during the year in review. The program was aimed at increasing public awareness of the Scheme and clarifying the Ombudsman's role – areas of need that were highlighted in the 2003 Stakeholder Survey.

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Australia wide briefing sessions with members of the Scheme have continued with over 500 people attending one of 14 sessions around Australia. A number of presentations about BFSO's systems have been made to other dispute resolution services.

The number of presentations conducted by BFSO has risen from 54 in the previous year to 70 this year. Presentations have been given by the Ombudsman as well as the General Manager, Legal Counsel, Case Managers and the Information Systems Manager.

Presentations were made to a wide range of industry and community groups including:

- The Victorian Bar;
- LaTrobe University Law Faculty;
- Aboriginal communities including the Bagot, Larrakia, and Yuendumu communities;
- Melbourne Rotary;
- Consumer Affairs National Consumer Credit Conference;
- Cards Australia Conference;
- Banking and Finance Technology Conference;
- UN Online Dispute Resolution Service; and
- Citizens Advice Bureau, Western Australia.

Topics presented to community groups included:

- *"Helping Consumers with their Complaints"*
- *"Banking Issues for Residents of Remote Areas in Australia"*
- *"The Role of the Ombudsman"*
- *"Current Issues for the Ombudsman"*
- *"Credit Card Limits and Maladministration"*

Topics presented to industry groups included:

- *"How BFSO Investigates Disputes"*
- *"Procedural Fairness in Decision Making"*
- *"Cybercrime in Banking and Financial Services"*
- *"Enhancing Customer Retention by Better Understanding Customer Behaviour"*
- *"What Customers Say to the Ombudsman about their Financial Services Provider"*
- *"Apportioning Liability for Misleading and Deceptive Conduct"*
- *"EFT Code and Allocation of Liability"*
- *"EFT Code and Chargebacks"*
- *"Ombudsman's Perspectives on the Card Industry and its Regulation"*

BFSO also launched its first Continuous Improvement Forum on 17 June 2005 with representatives from a number of community legal centres and financial counselling services present. The forum provided an opportunity for consumer advocates to give feedback about their experiences with BFSO.

Users Of The Scheme

BFSO has continued its efforts this year to promote the Scheme and provide equitable access to its services.

The Independent Review Report noted:

“The BFSO has achieved a high profile in the community and has taken opportunities to continue to improve its profile and brand recognition. It provides ready access through telephone and internet to Australian consumers.”

Summary of Users of Scheme and the Percentage of Population in Each State

BFSO compares the percentage of telephone enquiries and written complaints from each state and territory to the total population in each state and territory. The comparison this year shows a similar pattern to previous years. There was an over-representation of enquiries and disputes in Victoria and the Australian Capital Territory, proportional representation in the Northern Territory and Western Australia, and an under-representation in New South Wales, Queensland and Tasmania. As in the previous year, there was an over-representation of telephone enquiries from South Australia, but an under-representation of written complaints from that state. This may indicate that callers who were put in contact with their financial services provider by BFSO often resolved their problems without the need to formalise the complaint in writing to BFSO.

Rural Users

Rural users of the Scheme are those consumers living in the non-capital city statistical divisions identified by the Australian Bureau of Statistics.

This year there has again been an over-representation of telephone enquiries and disputes from rural consumers in Victoria. Rural consumers in the Northern Territory continue to show proportional representation in their use of the Scheme. This year there continues to be a slight under-representation of use of the Scheme by rural users in Tasmania. Last year, Western Australia had proportional representation, however, in this reporting period, users were under-represented.

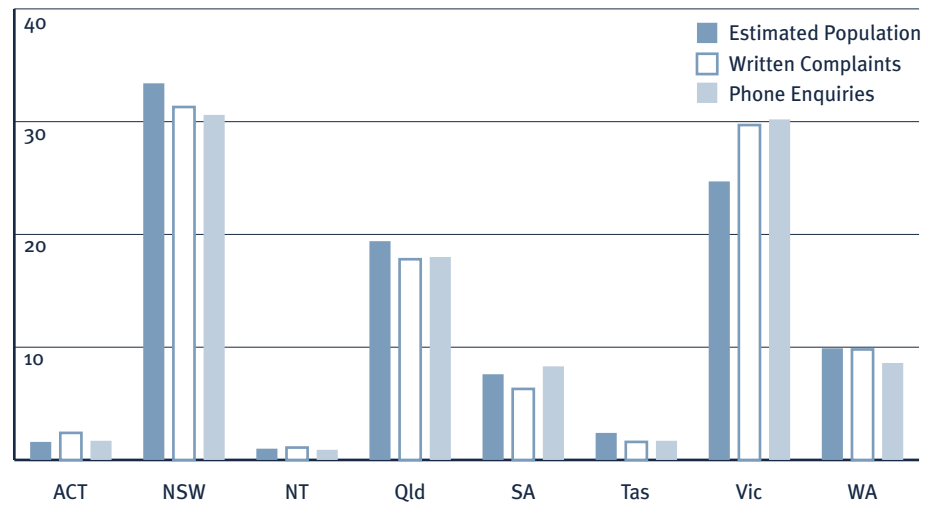
There was an under-representation of telephone enquiries from rural users in Queensland, but an over-representation of written disputes. The reverse applied in South Australia where users were under-represented in written complaints but over-represented in telephone enquiries. New South Wales had proportional representation for telephone enquiries and an under-representation in written complaints.



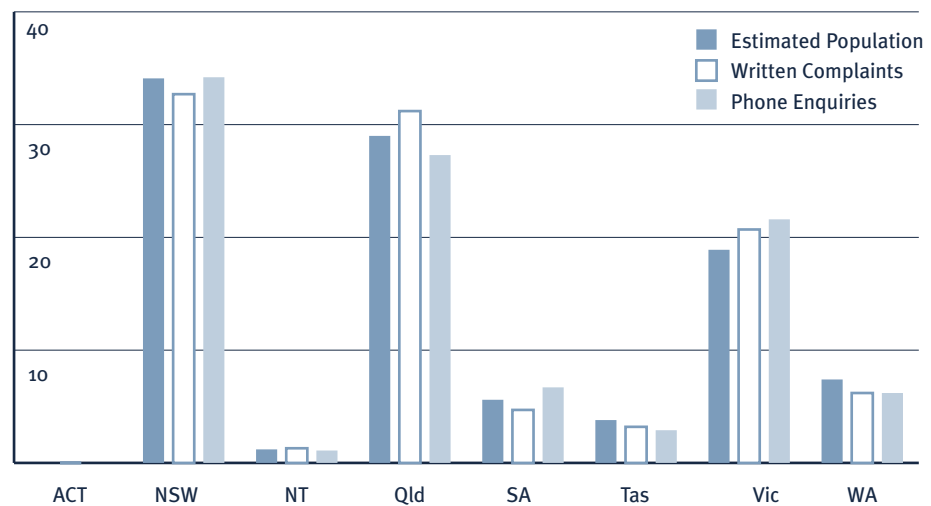
Small Business

The relative proportion of individual and small business consumers using the Scheme was similar to previous years, with 7 per cent of telephone enquiries and 9.9 per cent of written disputes from small businesses.

All Users (%)



Rural Users%



Users of the Scheme	Individuals	Incorporated Businesses	Unincorporated Businesses
Phone Enquiries	93.0%	3.9%	3.1%
Written Disputes	90.1%	6.2%	3.7%

Telephone Service

The data below relates to the Financial Ombudsman Service (FOS) and the 32,572 calls answered by BFSO case officers. The FOS is a joint venture between BFSO, Financial Industry Complaints Service Limited and Insurance Ombudsman Service.

Financial Ombudsman Service

The Financial Ombudsman Service is the first telephone contact point for consumers wishing to access a financial services dispute resolution scheme. Consumers ring the number 1300 780 808 and an Enquiry Officer refers them to the most appropriate service.

The Financial Ombudsman Service answered a total of 148,148 calls for the reporting period, a decrease of 1.0 per cent from the previous year's 149,710.

Of the calls answered by the Financial Ombudsman Service, 20.8 per cent were directed to BFSO staff. 13.3 per cent were provided with referral details to organisations other than those participating in the Financial Ombudsman Service.

BFSO: The Year in Review

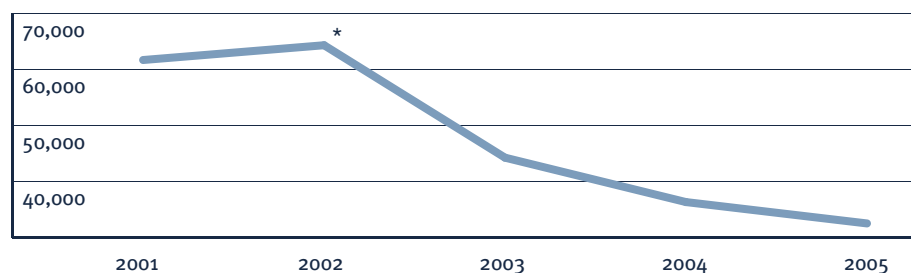
A total of 32,572 calls were answered by BFSO case officers during the year in review, a decrease of 10.5 per cent compared to the 36,382 calls answered in the last reporting period. 69.8 per cent of new telephone enquiries were within the BFSO's Terms of Reference and 9.3 per cent were outside Terms of Reference. 15.0 per cent of enquiries were follow up calls on open cases, and 5.9 per cent were administrative calls not related to cases. This is similar to last year's break up of calls.

This is the third year of a decline in the number of telephone calls to BFSO. This is to be expected as members improve the promotion of internal dispute resolution avenues, reducing the need for external dispute resolution services, and consumers use the BFSO website as an alternative to the telephone service. For the reporting period, there were 63,260 hits to the website with 1,402 disputes lodged online. This is a 17.1 per cent increase from last year's 1,197 online dispute lodgements.

Performance figures once again met BFSO targets for waiting times and abandonment rates:

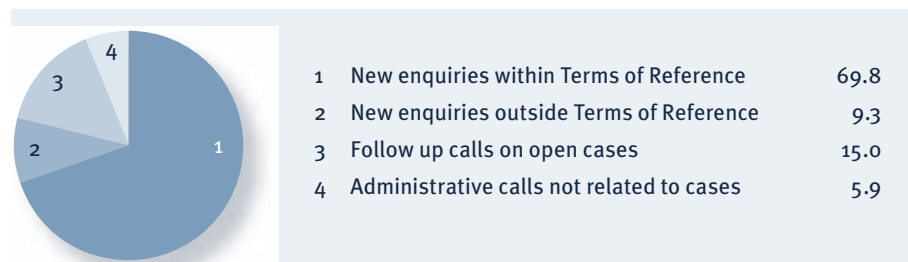
- The average monthly abandonment rate was 2.1 per cent; and
- The average speed of answer of all calls was 18 seconds, a significant decrease from 33 seconds in the previous year.

Telephone Calls Answered – 5 Year Trend



* Introduction of Financial Ombudsman Service referral centre

Distribution of Calls Answered (%)

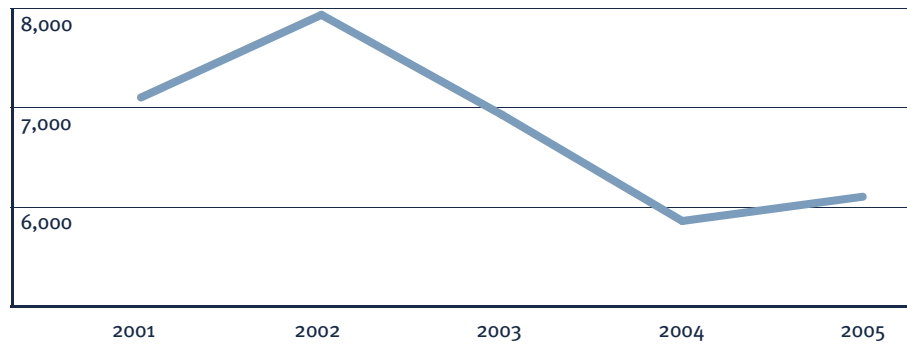


New Disputes

BFSO received 6,104 new cases during the year. Whilst the previous two reporting periods have seen a decline in the number of new disputes lodged with the Scheme, this year there was an increase of 4.2 per cent. Of the 6,104 new cases received, 1,402 were lodged online via our website.

BFSO considers disputes lodged by the customers of bank members and their related bodies corporate, in addition to disputes from customers of non-bank members. In the reporting year, disputes about related bodies corporate of bank members included disputes about ANZ Funds Management, CBFC Ltd, Commonwealth Securities (CommSec), Esanda Finance Corporation, National Australia Funds Management Limited and Westpac Financial Services Ltd.

New Cases Received – 5 Year Trend



Work in Progress

At year's end, there were 1,231 open cases distributed as follows:

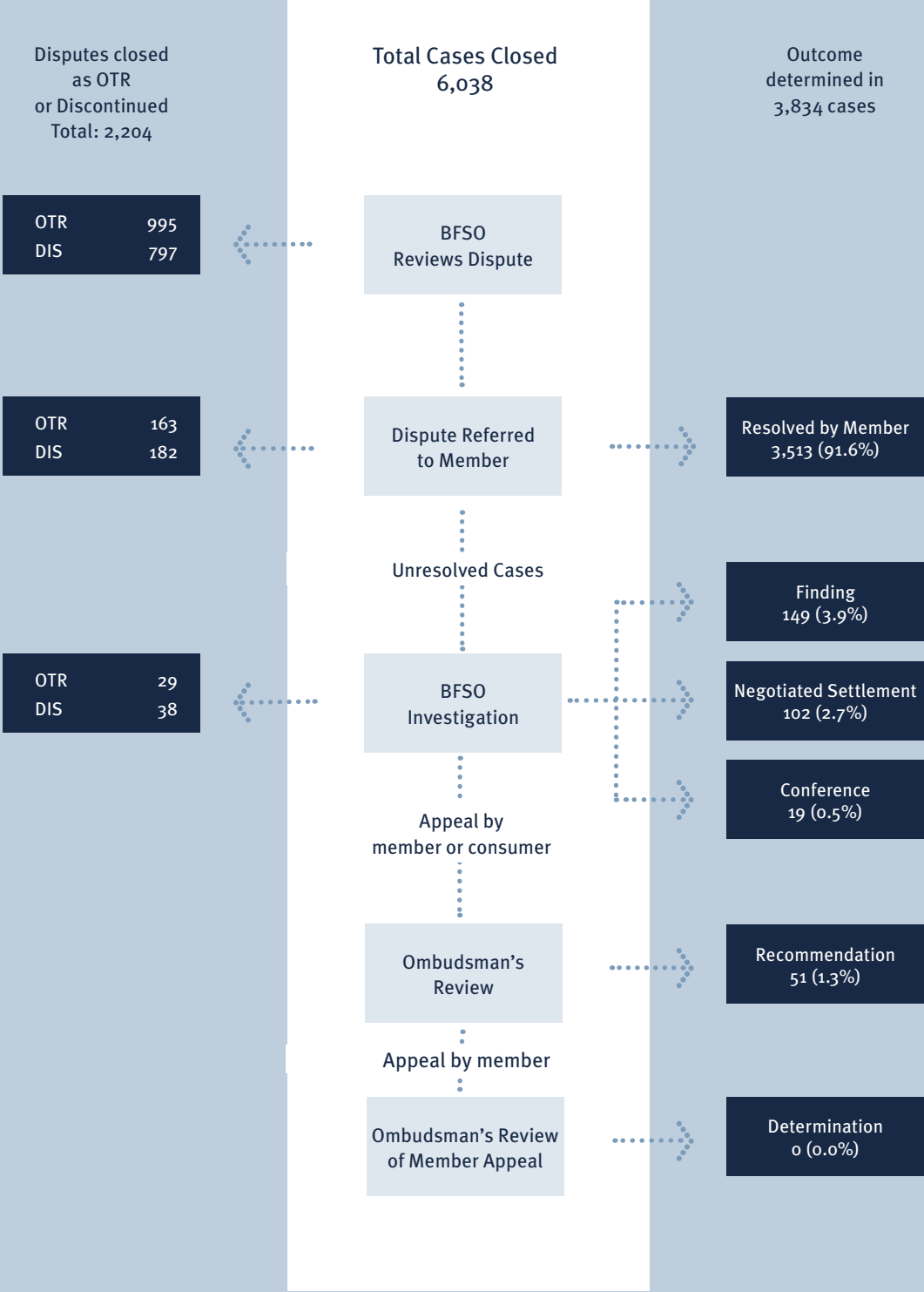
Distribution of Open Cases



Cases received but not classified ('preliminary stage')	68	5.5%
Cases under investigation by BFSO ('investigation stage')	134	10.9%
Cases referred to the member and awaiting response ('with member stage')	431	35.0%
Cases provisionally closed, pending acceptance or appeal of BFSO's assessment ('provisionally closed stage')	598	48.6%

Dispute Resolution Process and Outcome of Closed Cases

Cases Closed - By Level



Closed Cases

A total of 6,038 cases were closed during the year, a decrease of 1.3 per cent from the previous year.

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Cases outside the Terms of Reference

Of the 6,038 closed cases, 1,187 were considered to be outside the Ombudsman's Terms of Reference ("OTR").

If it is clear from the consumer's correspondence that the dispute is OTR we write to the consumer to explain why the matter is OTR and refer the consumer to the customer relations department of the member or to a more appropriate forum.

If there is any doubt about jurisdiction, the dispute is referred to the member.

Further information about OTR disputes is provided in the Disputes Outside Terms of Reference section of this report.

Discontinued Cases

1,017 of closed cases were discontinued. Discontinued cases are considered to be within the Terms of Reference but do not proceed to a conclusion about the merits of the case.

There is a variety of reasons for cases being discontinued. 797 cases were discontinued prior to referral to a member. The main reasons for discontinuing these cases were that:

- The dispute was sent to BFSO and the member at the same time, and the member resolved the matter without BFSO's involvement (42.2 per cent); and
- The disputant did not respond to BFSO's request for additional information (26.0 per cent).

For the 220 cases that were discontinued after referral to the member, the main reasons were:

- The disputant did not respond to BFSO's request for additional information (40.0 per cent); and
- The disputant accepted BFSO's view that the member's action was appropriate (31.4 per cent).

Early Resolution

Of the 3,834 cases where an outcome was determined, 91.6 per cent were resolved by the member at an early stage prior to a BFSO investigation, a slight increase from 90.1 per cent in the previous year. Although these cases did not involve a BFSO investigation, in approximately 12.6 per cent of early resolution cases, BFSO facilitated the resolution by writing to the member to point out unresolved questions or facilitating a negotiated settlement.

Investigations

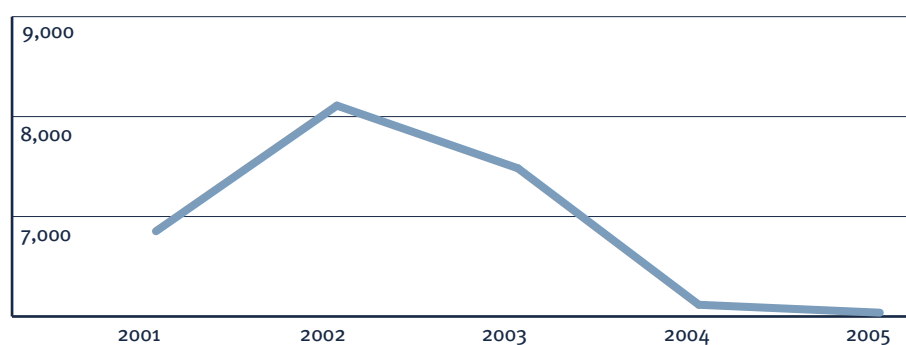
The 321 cases that were not resolved at the early resolution stage were investigated by BFSO case managers.

There are various options for resolving disputes after an investigation has taken place, and the method chosen will depend largely on the complexity of the issues raised, the expectations of the parties and their willingness to compromise. This year, 102 investigations were closed after BFSO facilitated a settlement between the parties, an increase of 37.8 per cent compared to last year's 74 negotiated settlements. 30.4 per cent of these negotiated settlements involved disputes about maladministration in granting credit, maladministration in debt recovery and inappropriate collection activity. A further 19 cases were closed after a conciliation conference was held by the Ombudsman. 149 cases were closed after the parties were provided with a Finding, which is a written assessment of the merits of the dispute issued by a case manager.

Where the consumer or member rejects a Finding, the dispute is referred to the Ombudsman for his consideration. The Ombudsman then issues a Recommendation on how the dispute should be resolved. This year, 25.5 per cent of Findings were rejected and referred to the Ombudsman. During the reporting period, 51 cases were closed after Recommendations were issued.

The Case Studies section of this report provides examples of the various resolution methods being applied to cases.

Cases Closed – 5 Year Trend



Outcome of Closed Investigations

In the 321 cases closed after a Finding, Negotiated Settlement, Conciliation Conference or Recommendation, the outcomes were as follows:

- The member's actions were considered correct in 34 per cent of cases, a decrease of 7.7 percentage points from the previous year;
- The consumer's claim was upheld in 24 per cent of cases, compared to 17.9 per cent last year; and
- In 42 per cent of cases, the outcome was a compromise benefiting both parties, a 1.6 percentage point increase from last year.

Case Resolution Time

The resolution time is the period of time between the date the dispute is referred to the member and the date it is closed. This includes the 30 day appeal period during which the case is said to be provisionally closed.

Of the cases referred to members during the year, 53.4 per cent were closed within 60 days, an improvement on the previous year's figure of 47.2 per cent. This is the third consecutive year in which there has been an improvement in the number of cases closed within 60 days.

There has also been an improvement in the number of cases that took over 181 days to close, with the figure decreasing once again this year to 8.7 per cent. These cases represent complex unresolved disputes that require detailed investigation by BFSO. The Scheme will continue its efforts to improve efficiency in this area in the year ahead.

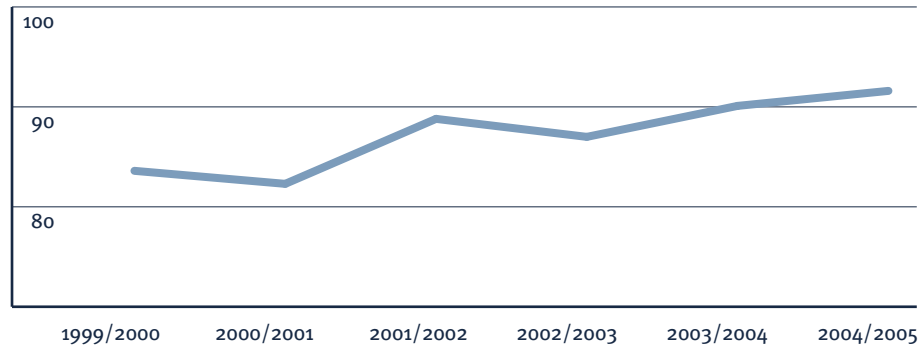
Unresolved cases wait in a pool for allocation to a case manager for investigation. This year, the median number of days before cases were allocated to case managers was 14. Whilst this is a slight increase from the previous year's figure of 13 days, it is well within BFSO's performance targets.

Resolution Time:

3-year comparison of time taken to resolve disputes

Cases within Terms or Reference (ex DIS)	2003	2004	2005
0 to 60 days	44.3%	47.2%	53.4%
61 to 90 days	24.0%	24.0%	22.7%
91 to 120 days	9.2%	9.0%	7.8%
121 to 150 days	4.8%	6.4%	4.6%
151 to 180 days	3.8%	3.4%	2.8%
181 days & over	13.9%	10.0%	8.7%
Total Cases	5074	3995	3834
Median Days - All Cases Sent to Member	65	62	58

Early Resolution Rate (%)



Member Statistics

The following table sets out the dispute resolution statistics for each member of the Scheme who had a dispute lodged with BFSO. The provision of this information reflects BFSO's commitment to independence and transparency.

Readers should keep in mind the following points to avoid forming inaccurate views about the dispute resolution performance of any member:

-> Members have vastly different market shares. A large number of disputes lodged against a particular member may reflect these differences in customer base size rather than the member's performance;
-> Some figures will include disputes lodged against a member's related bodies corporate. Some members, however, have few or no related bodies corporate; and
-> Some figures may reflect the length of time that the financial institution has been a member of the Scheme. Members can join the Scheme at any stage during the year, and some may only have joined shortly before the end of year.

The table has three columns which shows for each member:

- The number of disputes within Terms of Reference that were closed during the year in review, excluding cases that were discontinued;
- The percentage of disputes resolved by each member at an early resolution stage, which did not require an investigation by BFSO; and
- The median number of days to resolve the cases at the early resolution stage. This is measured from the date a case was referred to the member to the date on which the case was closed (including the 30 day appeal period).

The table lists members in alphabetical order.

Members	Total Cases Closed (Ex OTR and Discontinued)	Early Resolution Rate %	Early Resolution Time (Median Days)*
Adelaide Bank Limited	36	83.3	62
American Express International Inc	4	100.0	58
AMP Bank Limited	12	91.7	53
ANZ Banking Group Limited	552	90.8	55
Arab Bank Australia Limited	4	100.0	66
Bank of China	1	100.0	168
Bank of Queensland Limited	37	94.6	53
Bank of Western Australia Limited	80	91.3	55
Bank SA (a division of St George Bank Limited)	20	85.0	48
Bendigo Bank Limited	45	80.0	66
Citibank Pty Limited	337	96.1	69
Commonwealth Bank of Australia	1,109	93.4	47
Elders Rural Bank Limited	1	100.0	142
GE Money	9	100.0	48
Habib Finance (Australia) Ltd	1	100.0	38
HSBC Bank Australia Limited	81	88.9	56
ING Bank (Australia) Limited	28	85.7	50
Laiki Bank	2	100.0	51
Macquarie Bank Limited	12	100.0	60
Members Equity Pty Limited	15	93.3	63
National Australia Bank Limited	562	88.1	58
Rabobank Australia Limited	1	100.0	109
St George Bank Limited	174	86.8	51
Suncorp-Metway Ltd	72	93.1	62
Westpac Banking Corporation	639	92.6	59
All Members	3,834	91.6%	55

NB: List excludes those members who did not have cases closed during the period.

* Calculated from the date the case was referred to the member, to the date the case was closed. Excludes those members which did not have cases closed during the quarter.

Types of Disputes

BFSO classifies all cases according to:

- The product or service obtained by the consumer; and
- The problem with the product or service as reported by the consumer.

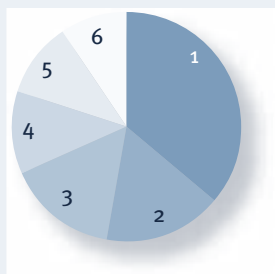
Every dispute involves at least one product and for each product recorded, there is at least one problem.

The pie charts below show the broad financial product categories in descending order according to the number of cases involving a dispute about the product category. The tables show the proportion of disputes involving discrete financial product groups within the broad categories.



Payment Systems

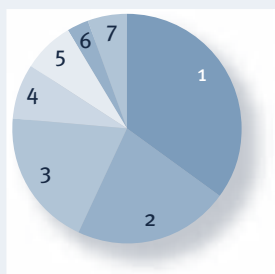
No. of Cases: 780



1 ATM	36.3%
2 Periodical Payments, Direct Debits	16.7%
3 Cheques (inc. 3rd Party)	15.6%
4 Telegraphic Transfers	11.5%
5 Computer Banking	10.5%
6 Other	9.4%
Currency exchange/Travellers cheques	3.3%
EFTPOS	2.6%
Bank Cheque	2.2%
Telephone Banking	1.2%
Store Value Cards	0.1%

Business Facility

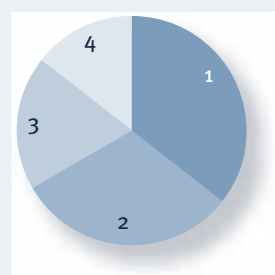
No. of Cases: 430



1 Business Cheque Account	35.1%
2 Merchant Facility	22.1%
3 Business Loan - Variable	19.3%
4 Business Overdraft	7.7%
5 Lease	7.4%
6 Bank Guarantee	3.0%
7 Other	5.4%
Business Loan - Fixed	2.8%
Commercial Bills	1.4%
Cash flow Lending	0.5%
Hedging Facilities	0.5%
Trade Facilities	0.2%

Financial Planning

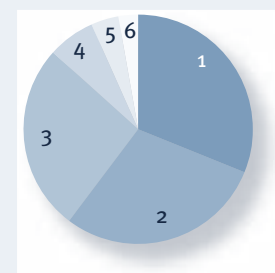
No. of Cases: 42



1 Superannuation	35.7%
2 Shares/Bonds	31.0%
3 Managed Funds	19.0%
4 Life Insurance	14.3%

Other products or services

No. of Cases: 151



1 Holding Title Deeds	31.2%
2 Other products or services	29.1%
3 Insurance	26.5%
4 Safe Custody	6.6%
5 Deposit to 3rd party account	4.0%
6 No product or service	2.6%

Product Groups and Problems – All Closed Cases

As in the previous five years, Consumer Finance (32.5 per cent) was the top product category in disputes this year. The other main product categories were Deposit Accounts (18.5 per cent), Housing Finance (18.2 per cent) and Payment Systems (17.1 per cent).

Consumer Finance

The main product complained about in the Consumer Finance category continues to be the credit card account. Complaints about this product have increased from 1,101 last year to 1,189 this year. The main problems identified were the same as last year: unauthorised transactions and maladministration in granting credit.

Deposit Accounts

The main product complained about in the Deposit Account category was the statement savings account, with incorrect fees identified as the main problem.

Housing Finance

In the Housing Finance category, the main product complained about continues to be the variable rate home loan, representing 76 per cent of cases in this category. The main problems identified were delays in loan approvals or loan settlements and calculation errors.

The table below shows a breakdown of the main products complained about and the problems with the products, as described by the consumer.



Product Group	Major Products	Main Problems	%
Consumer Finance	Credit Cards	Unauthorised transactions	14.2
		Maladministration in granting credit	9.8
	Personal Loan	Maladministration in granting loan	14.7
		Request for indulgences	9.8
	Line of Credit/ Personal Overdraft	Balance Transfers	15.5
		Fee excessive, inappropriate or wrong	9.9
Deposit Account	Statement Savings account	Fee excessive, inappropriate or wrong	19.3
		Unauthorised Transactions	11.3
	Term Deposit	Product/Service advice	11.8
		Fee excessive, inappropriate or wrong	8.2
	Personal Cheque account	Fee excessive, inappropriate or wrong	24.2
		Unilateral member action	10.6
Housing Finance	Home Loan - Variable rate	Delays (eg, loan approval, settlement)	18.4
		Calculation error	7.6
	Investment Property Loan	Delays (eg, loan approval, settlement)	16.6
		Fee excessive, inappropriate or wrong	8.6
	Home Loan - Fixed rate	Early repayment fee excessive, inappropriate or wrong	18.4
		Delays (eg, loan approval, settlement)	15.5
Payment System	ATM	Incorrect cash given	44.6
		Unauthorised transactions	43.3
	Periodical Payments, Direct Debits	Contractual breach, written instruction not carried out	27.9
		Fee excessive, inappropriate or wrong	13.6
	Cheques (inc. 3rd party)	Dishonoured transactions	17.4
		Lost funds	13.8
Business Facility	Business Cheque Account	Fee excessive, inappropriate or wrong	13.7
		Withdrawal or Deposit errors	11.6
	Credit Card Merchant Facility	Dishonoured transactions	31.0
		Product/Service advice	13.2
	Business Loan - Variable	Fee excessive, inappropriate or wrong	11.6
		Contractual information provided inadequate / incorrect	8.0
Financial Planning	Superannuation	Delays	26.3
		Investment advice	15.8
	Shares / Bonds	Delays	28.6
		Withdrawal or Deposit errors	21.4
	Managed Funds	Advice	18.2
		Delays	18.2
Other products or services	Holding Title Deeds	Lost documents/safe custody items	32.1
		Delays	30.4
	Insurance	Product/Service advice	19.1
		Unilateral member action	14.9
	Other	Other	21.3
		Delays	10.6

Product Groups and Problems – Investigation Cases

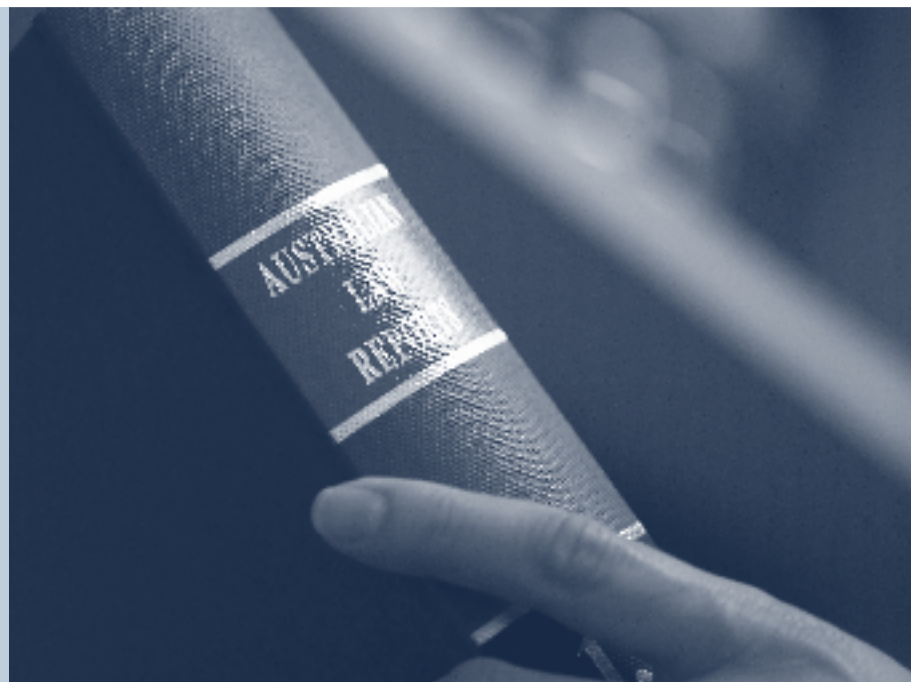
The profile of product groups in investigation changed this year, with an increase in the number of cases involving Consumer Finance. Last year, Consumer Finance represented only 17.2 per cent of all investigation cases. This year, the figure increased to 25.8 per cent. The main product identified in the Consumer Finance category in investigations was the credit card.

Disputes about Housing Finance continued to predominate, representing 26.5 per cent of investigation cases. Disputes involving Business Products comprised 22.5 per cent of investigations. This is an increase from 21.6 per cent last year. The merchant facility continued to be the subject of most investigations in this category.

The table below shows a comparison of the product categories that were the subject of a BFSO investigation and the product categories in cases that were readily resolved by members.

Comparative Data

Product Group	Representation Of Product Group		
	All Cases Referred to Member	Early Resolution Cases	Investigation Cases
Consumer Finance	32.5%	33.2%	25.8%
Deposit Account	18.5%	19.5%	8.5%
Housing Finance	18.2%	17.3%	26.5%
Payment System	17.1%	17.6%	12.4%
Business Facility	9.5%	8.1%	22.5%
Financial Planning	0.9%	0.9%	1.4%
Other Products or Services	3.3%	3.4%	2.9%



Disputes Outside Terms of Reference

The Terms of Reference set out the Ombudsman’s jurisdiction to consider disputes. The Terms of Reference were amended during the year to increase the limit for monetary claims from \$150,000 to \$250,000. The increase only applies to events occurring on or after 1 December 2004.

In addition to size of the claim, there are other categories of dispute that the Ombudsman is unable to consider. These include disputes about:

- Members’ policy decisions – such as levels of interest rates or fees; and
- Commercial decisions – such as decisions not to provide finance, where there is no pre-existing obligation to lend.

The Year in Review

This year, 9.3 per cent of telephone enquiries answered were considered to be outside the Ombudsman’s jurisdiction (“OTR”). This figure has steadily declined from 12.8 per cent two years ago and 10.5 per cent last year. This decrease can be attributed to the filtering of telephone enquiries by the Financial Ombudsman Service which results in fewer OTR enquiries being received by BFSO staff.

The percentage of closed written cases that were classified as OTR rose slightly from 17.5 per cent last year to 19.7 per cent this year. Despite the increase, the Jurisdiction Checker function on the website continues to provide a useful guide for consumers prior to lodging a written dispute. This year, there were 12,083 hits to the Jurisdiction Checker page.

The table below shows the main OTR categories for disputes received during the year from both individuals and small businesses.

Top 4 OTR Reasons

Individuals			
Closed Cases		Telephone Enquiries	
Non Bank Financial Institution	22.0%	Member Policy	23.0%
Other Jurisdiction more Appropriate	17.3%	No Financial Service	16.9%
Member Policy	16.8%	Other Jurisdiction more Appropriate	14.8%
No Financial Service	14.4%	General Complaint	12.4%
Small Business			
Closed Cases		Telephone Enquiries	
No Financial Service	28.3%	No Financial Service	29.0%
Other Jurisdiction more Appropriate	20.7%	Member Policy	18.1%
Member Policy	14.5%	Commercial Decision	15.5%
Commercial Decision	10.3%	Other Jurisdiction more Appropriate	12.3%

OTR Categories in Disputes from Individuals

The profile of written disputes received from individual consumers that were classified as OTR was similar to the previous year. Whilst the largest OTR category changed from member policy last year to non bank financial institution this year, the top four OTR categories remained the same: non member financial institution (22 per cent), other jurisdiction more appropriate (17.3 per cent), member policy (16.8 per cent) and no financial service (14.4 per cent).

Consumers who write to BFSO about non member financial institutions are directed to the customer relations department of the financial institution, the appropriate ASIC approved external dispute resolution scheme, or other services that may be able to assist.

In relation to telephone enquiries, the largest category was member policy at 23 per cent.

OTR Categories in Disputes from Small Businesses

The main reason for small business telephone enquiries and written disputes to be categorised as OTR this year was that no financial service had been provided to the disputant. 28.3 per cent of written cases were categorised as OTR for this reason and 29 per cent of telephone enquiries. These are instances where a disputant may be affected by dealings with a financial service provider and may even have a claim for loss, but because they did not receive a direct financial service from the member, BFSO is unable to assist.



Systemic Issues

The Year in Review

BFSO's workload in relation to systemic issues increased with a total of 27 investigations being conducted during the year in review. Of these, 2 issues were determined not to be systemic, 11 issues were determined to be systemic and were resolved to the satisfaction of BFSO and 14 investigations were on-going at the end of the period.

Identification of Systemic Issues

BFSO staff are encouraged to identify potential systemic problems and report them to the systemic issues manager. Potential issues are identified when:

- Case officers notice a number of disputes about the same issue;
- Case officers or reviewing legal counsel believe that an issue raised in a single dispute could affect other customers in a similar way to the disputant; or
- A disputant claims that the issue they have raised in their complaint is systemic in nature.

Investigation and Resolution

The systemic issues manager conducts a preliminary investigation to determine whether the issue is likely to have affected, or have the potential to affect, other consumers in addition to those who have complained to BFSO. The investigation into the systemic issue identifies:

- the acts or omissions of the financial services provider;
- the affected customer group; and
- the formula or approach to calculate the financial loss of the customer group.

After consultation with legal counsel and the Ombudsman there are generally two limbs to the resolution of any systemic issue:

- Ensuring that the problem is fixed at its source; and
- Ensuring that customers who have been disadvantaged financially as a result of the problem are appropriately compensated.

Reporting

BFSO is obliged, under our Terms of Reference and as an ASIC approved alternative dispute resolution Scheme, to report systemic issues to ASIC on a quarterly basis.

The reports do not identify the member, but include details of the nature of the problem and the manner in which it was resolved. A member is only identified if it does not rectify the matter to the Ombudsman's satisfaction.

In some cases the member may choose to identify itself to ASIC.

The following are examples of some systemic issues that BFSO considered over the last year.

New Credit Applications – Balance Transfers and Account Downgrades

In accepting applications for credit cards and lines of credit one member was:

- Downgrading unsuccessful applications for a line of credit and unilaterally providing a credit card account instead; and

•→ In relation to promotion of balance transfers the member was:

- (i) Unilaterally processing a partial transfer if the applicant did not qualify for a full balance transfer; and
- (ii) Automatically activating the facility by processing the balance transfer without the applicant's consent.

BFSO received a number of disputes that illustrated that these issues had either affected or had the potential to affect a large number of consumers.

In order to resolve the problems the member agreed to:

- Immediately cease the practice of automatically downgrading unsuccessful line of credit applicants;
- Not process any balance transfer until the account had been activated by the customer;
- Not process a partial balance transfer without the express consent of the customer; and
- Resolve any current or future disputes of this nature by returning the customer to the position they would have been in had the balance transfer not been processed including the reimbursement of all related fees and charges.

Multiple Charging of Annual Package Fees

In a previously resolved systemic issue investigation, one member had failed to register an annual fee waiver on credit card accounts for customers who joined a particular package. A new complaint received at BFSO then indicated that package customers had also had fees incorrectly charged to accounts other than their credit cards, specifically equity and home loan accounts.

The matter was reopened as a new systemic issue investigation and the member has been providing BFSO with monthly reports of affected customers who continue to be identified by a dedicated team. The report also contains details of the refunds provided to customers as they are identified.

The member has agreed to comply with a timetable for identifying and reimbursing affected customers.

Failure to Inform Customers of Alternate Forums for Hardship Applications

The Code of Banking Practice requires its subscribers to inform customers of their rights under the Uniform Consumer Credit Code to apply to the court or a tribunal for a variation of their credit contract if the member does not agree to a variation.

The member in this case had considered and refused the customer's hardship application for a variation of the credit contract but had failed to inform the customer that they may apply to the relevant court or tribunal for an order varying the contract.

When this matter was brought to the member's attention it agreed to amend its letters to affected customers to include the information required.

Charging Account Debits Tax in Error

In April 2005, a dispute illustrated that one member had incorrectly charged debits tax to an account where the cheque book facility had been removed. BFSO felt that a broader group of customers may have been affected in a similar way, and raised the matter as a possible systemic issue with the member. The member informed BFSO that it had reported the extent of the system problem to the Australian Securities and Investments Commission (ASIC). BFSO ceased its investigation when ASIC took over the matter. Following ASIC's investigation, the member agreed to reimburse all the affected customers. As many as 140,000 customers will be refunded a total of approximately \$10 million.

Case Studies

The case studies selected for this report include cases that are illustrative of the legal and industry practice issues raised in disputes, the investigation process and different types of resolution.



Failure to Register Transfer of Land

Mr and Mrs M purchased a block of land in New South Wales in December 2002 and obtained finance from a financial institution. Mr and Mrs M became aware in March 2003 that the title had not been registered with the Land Titles Office. The title was still in the name of the developer. The disputants notified the financial institution of this in March 2003 and were told that it was experiencing problems and there was a three month delay in the registration of all documents. Ultimately, the title was not lodged for registration with the Land Titles Office by the financial institution until eight months after settlement.

In the meantime the owners of the block adjacent to Mr and Mrs M's block had lodged an application for a planning permit with the Council. Notification of the plans was not sent to Mr and Mrs M as they were not registered as the owner at that time. Mr and Mrs M did not find out about the development of the adjacent block until construction started in September 2003.

Mr and Mrs M said that they had lost the opportunity to object to the proposed development as a result of the financial institution's delay in lodging the title for registration. The development on the adjacent lot significantly restricted the view that Mr and Mrs M had from their property and caused them to redesign their own plans. Mr and Mrs M claimed \$87,900 in loss which included loss in land value, redesigning costs, additional building costs and additional rental costs as a result of the delay caused by redesigning the building.

The financial institution admitted it had made an error by delaying the lodgement of registration of the title but denied liability for the loss claimed by the disputants.

Investigation

The file was referred to a case manager for investigation. The central question for the case manager's consideration was:

Was any loss caused by the financial institution's delay in registering the title?

In the course of the investigation Mr and Mrs M provided material from a town planner which showed that they may have succeeded in altering the development had they had the opportunity to object. They also provided information from the City Council that supported this view. Mr and Mrs M provided the redrawn plans to show that changes had been required. Valuations were provided by both the financial institution and Mr and Mrs M. The valuations showed that the value of the land may have been adversely affected by the development on the adjoining block and the loss of the view.

The case manager accepted that the disputants would only be notified directly of the development application if the title was registered in their names. She considered that a notice put up on the adjoining block for a two week period did not exonerate the financial institution because the disputants did not visit the block during the period of notification.

Resolution

The case was referred to a Case Conference conducted by the Ombudsman to discuss the issues in dispute and the amount of compensation that was payable by the financial institution. The financial institution agreed to pay Mr and Mrs M an amount of \$62,500 in full and final settlement of the dispute. Mr and Mrs M accepted this offer and the matter was resolved.

Distribution of Proceeds of Sale of Property

Mr P and X bought a property as tenants in common in equal shares. X obtained a \$120,000 home loan. Mr P gave the financial institution a guarantee *limited* to \$120,000 in relation to X's obligations under the home loan, supported by a first mortgage over the property.

X then obtained a business overdraft. Mr P gave the financial institution a guarantee *limited* to \$14,000 in relation to X's obligations under the overdraft, supported by a second mortgage over the property.

X defaulted under the facilities, and the financial institution sold the property and retained the net proceeds of sale of \$169,000.

In apportioning the net sale proceeds, the financial institution divided them equally between Mr P and X. In relation to Mr P's share of \$84,500, it deducted half of the home loan debt (\$67,500), then deducted the amount secured by the second guarantee plus interest (\$14,500), then deducted its enforcement costs (\$3,000), leaving a shortfall of \$500 as against Mr P. In relation to X's share of \$84,500, the financial institution also deducted half of the home loan debt (\$67,500), and then deducted the net overdraft debt of \$32,900 (comprising the overdraft debt less the amount secured by the second guarantee plus interest), leaving a shortfall of \$15,900 as against X.

Claim

Mr P said that he had not signed the second guarantee and mortgage and was not liable under them. On this basis, he would have received a share of the net sale proceeds after the home loan debt had been satisfied.

An argument was also put that the financial institution had distributed the net sale proceeds incorrectly. When enforcing its securities against him, the financial institution should have calculated the difference between the net proceeds of sale (\$169,000) and the total amount to which the securities were limited (\$134,000) plus interest and costs, and then reimbursed him a half share of those proceeds, plus interest (\$15,000).

Investigation

After obtaining a report from a handwriting expert, the BFSO concluded that Mr P had signed the second guarantee and mortgage and the financial institution was entitled to enforce them against him.

After obtaining advice from legal counsel, BFSO concluded that the securities allowed the financial institution to apply the sale proceeds to any part of the secured debt (that is, the loan and overdraft debts) as it saw fit. The securities also allowed the financial institution to treat Mr P as if he were the principal debtor under the loan and overdraft rather than a guarantor of X's obligations under the facilities. The security documents, in respect of which he had obtained independent legal advice, had the effect of making Mr P jointly and severally liable for the debt, rather than a surety for it. Mr P's limited liability under the securities was not exceeded by the financial institution's method of distributing the sale proceeds.

BFSO accordingly concluded that the financial institution was entitled to distribute the sale proceeds in the manner it had and Mr P was not entitled to any compensation from the financial institution in this regard.

Incorrect Interpretation of Court Orders

Ms E was involved in Family Court proceedings with her former husband. Orders were issued by the court stating that an amount of money held in an account by Ms E was to be paid to her former husband.

The solicitor for Ms E's former husband presented the court order to the financial institution. The financial institution subsequently withdrew funds from Ms E's account and paid them to the solicitor.

Ms E complained to BFSO stating that the financial institution should not have made the payment to her former husband without obtaining her consent.

BFSO Approach

The Ombudsman's legal counsel reviewed a copy of the court order. She found that the court order did not direct the financial institution to pay funds to the former husband. Rather, it was an order as between the parties, Ms E and her former husband. As the account was in Ms E's sole name, the preliminary view of the legal counsel was that the financial institution ought to have checked with Ms E and her solicitor before making any payment.

Resolution

The matter was referred to the financial institution with a summary of legal counsel's opinion. The financial institution acknowledged that it should have made contact with Ms E before making the payment and agreed to pay Ms E the sum of \$4,000, representing the payment, interest and out of pocket expenses.

Loss of Safe Custody Box

Mr L and Ms C had a safe custody box with a financial institution. Ms C accessed the box on one occasion and says that she returned it to the counter staff on the same day. Seven months later, the financial institution wrote to Mr L and Ms C advising that it no longer held a safe custody box in their names and seeking confirmation that the safe custody box had been collected by them. Mr L and Ms C advised the financial institution that they had not collected the box.

Mr L and Ms C lodged a dispute with BFSO claiming the value of the items in the box which they said had been lost by the financial institution, totalling \$67,000.

Resolution

The financial institution held discussions with Mr L and Ms C after BFSO referred the dispute to them. The matter was resolved on the basis that the financial institution would pay Mr L and Ms C \$7,500 in full and final settlement.



Claim of Maladministration in Granting Loan

Ms E's father complained to BFSO that the financial institution had advanced two \$5,000 personal loans to his daughter. He said the financial institution had treated his then 19 year old daughter unfairly because:

- the money had been borrowed on behalf of Ms E's then boyfriend;
- she had only been working for 10 months;
- she had no savings history;
- there was insufficient checking of her income; and
- the financial institution should have consulted her parents before approving the loans.

Ms E's father wanted the financial institution to waive Ms E's liability for the outstanding loan amount.

Investigation

During the course of the investigation it was established that:

- During November 2003, Ms E applied for a personal loan of \$5,000 repayable over 5 years. The stated purpose of the loan was to buy a car. Ms E provided the financial institution with a letter from her employer confirming her employment and her income. The financial institution funded the loan by crediting the proceeds to Ms E's savings account;
- The funds in the savings account were gradually reduced by cash withdrawals and EFTPOS purchases. In other words, it did not seem that the funds were used to buy a car. Ms E explained that she let her boyfriend access her account when he wanted money;
- In early December 2003, Ms E's employer gave her 4-5 weeks notice of retrenchment;
- It seems that Ms E's boyfriend persuaded her to apply for another loan while she was still employed. So, at the beginning of January 2004, she applied for a second loan of \$5,000 to buy a car. The financial institution approved a loan of \$9,338 (including repayment of the original loan), again repayable over 5 years;
- When Ms E presented at a branch to arrange draw down, she told the financial institution that she was upgrading her car and that she was obtaining the new car privately from a Mr W. Accordingly, the financial institution funded the additional \$5,000 by drawing a cheque in favour of Mr W and giving the cheque to Ms E. Mr W, in fact, was Ms E's then boyfriend, though this was not known to the financial institution;
- The financial institution said it would have asked Ms E for confirmation of her income before approving the second loan, but it could not locate its lending file for the second loan. However, during the course of BFSO's investigation, Ms E acknowledged that she had provided a letter confirming her income by re-generating the first letter provided by her employer;
- The day that the second loan was funded was the last day of Ms E's employment. Subsequently she was unemployed for some months;
- After only four loan repayments had been made, the relationship between Ms E and her boyfriend ended. She was unable to maintain payments herself as she had no income. It was only when the financial institution took action to obtain repayment of the arrears that her parents became aware of the loan.

Analysis

Obtaining consent of parents

On the matter of the parents being consulted, the case manager found that:

- As Ms E was an adult, the financial institution did not need the consent of her parents before approving the loans; and
- It would have been a breach of privacy laws for the financial institution to have discussed the loan with Ms E's parents without her express consent.

Code of Banking Practice

Because the dispute was effectively a claim that there was maladministration in the decision to lend, the case manager had regard to what the Code of Banking Practice says about the provision of credit. The relevant clause [cl 25.1] obliged the financial institution, before offering or increasing a credit facility, to exercise the care and skill of a diligent and prudent banker in selecting and applying its credit assessment methods and in forming its opinion about the borrower's ability to repay the loan.

First loan of \$5,000

After consulting with the Ombudsman's banking adviser, the case manager was satisfied that the financial institution had processed the first loan application in line with its credit scoring guidelines, and that approval of the loan was consistent with good banking practice. In forming his view, the case manager took into account that the financial institution had confirmed Ms E's income by obtaining a confirmatory letter from her employer, and that Ms E did not disclose to the financial institution that she intended to make the funds available to her boyfriend rather than to buy a car.

Accordingly, the case manager found that there was no element of maladministration in the financial institution's approval of the first loan, and that Ms E was liable to repay it.

Second loan of \$5,000

In assessing the second loan, the case manager noted that the information provided to the financial institution by Ms E was incorrect on a number of accounts including that:

- She stated that one of her assets was a car valued at \$5,000, but no such car existed;
- She stated that she intended to purchase another car, but actually only intended to pass the loan proceeds on to Mr W; and
- She stated that she was in fulltime employment, but knew that she was about to be retrenched.

Given the relatively low value of the car that was said to exist, and after consulting with the Ombudsman's banking adviser, the case manager took the view that the financial institution was entitled to accept Ms E's word that the car existed.

With regard to confirmation of income, on the basis that Ms E had provided the financial institution with a letter about her employment and income that was similar to the letter provided previously, the case manager was satisfied that the financial institution had followed its usual practice of requiring income to be verified.

With regard to the disposition of the second amount of \$5,000, the case manager was satisfied that the financial institution was entitled to rely on Ms E's word that Mr W was the vendor of the new car to be purchased. The case manager was also satisfied that the financial institution was not on notice at any time that Ms E was obtaining the funds at the request of Mr W and that she was not to benefit from the loan.

In all the circumstances of the second loan, the case manager found that there was no element of maladministration in the financial institution's approval of the loan, and that Ms E was liable to repay it.

Finding

The case manager issued a Finding which concluded that Ms E was liable to repay in full the second loan of \$9,938 (that incorporated the first loan of \$5,000).

Negotiated Settlement

After the Finding was issued, Ms E's father made an offer of a lump sum payment of \$5,000 in full and final settlement of his daughter's debt.

The financial institution accepted the offer, and the case was closed on payment of the amount.

Fraudulent Credit Card Transactions

A company operated a clothing export business (“the business”). The business received an e-mail order from Ghana for 5,000 plain white t-shirts valued at \$15,125. The customer asked for payment to be processed in three transactions using three separate credit cards, purportedly all in the customer’s name. The business’ sales manager, Ms A manually entered the credit card details into the business’ EFTPOS terminal. Initially the transactions were not accepted because the cards had insufficient available credit. However, the customer was able to provide details of four other cards, and these transactions were successful.

The business then offered to pay for the shipping of the order on its own freight account once it had received payment of \$25,300 from the customer for the freight costs. The customer agreed and requested that the payment be split across seven credit cards, four of which had been used to pay for the t-shirts. He assured Ms A that all seven cards were in his name, and he provided the three digit number located at the back of each card.

Ms A became suspicious about the order and contacted the financial institution’s Merchant Help Desk prior to processing the freight component of the order. The business claimed that the Help Desk led it to believe that the transactions were genuine and secure, and that it was safe to ship the goods to Ghana.

The business then processed the credit cards, and when the transactions were accepted, instructed the freight company to ship the goods to Ghana.

A few days later, the freight company contacted the business expressing concern that the order could be fraudulent due to the destination and value of the goods. At this stage, it was understood that the goods were at Heathrow in the UK. The business instructed the freight company to hold the goods at Heathrow, but by that stage, the goods had already been shipped from Heathrow to Ghana. The business then arranged for the t-shirts to be returned to Australia by the cheapest means available.

Fraudulent Transactions

The transactions were subsequently found to be fraudulent and not authorised by the true cardholders. The cardholders’ banks charged back the transactions and the business’ account was debited for the value of the goods and the freight costs to Ghana which had been paid for with the credit cards (a total of \$40,425).

The Claim

The business said that at the time of the order, it believed that credit card transactions, once processed and accepted by the EFTPOS terminal, were authorised and secure. The business claimed that the financial institution had never explained that telephone and email transactions could be charged back to the merchant, and in particular, failed to explain this when the business contacted the financial institution’s Merchant Help Desk.

The business claimed compensation of \$24,318.19 for the costs involved in transporting the goods to Ghana and back to Australia. The claim did not include the cost of the t-shirts because these had been returned to and accepted by the supplier in Australia.

Financial Institution’s Position

The financial institution denied liability for the loss on the following grounds:

- The Merchant Operating Guide clearly states that the authorisation of a credit card transaction only establishes that funds are available to cover the purchase and that the card has not been reported lost or stolen. It does not guarantee that the purchase is being made by the true cardholder; and
- The business was not provided with incorrect or misleading advice by the Merchant Help Desk. Whilst the financial institution did not have a record of the discussion, it maintained that it would be unlikely that a member of staff would indicate that the transactions were legitimate.

Investigation

The issues considered by the case manager included:

- Should the Merchant Operating Guide have alerted the business to the fact that transactions could be charged back after processing and authorisation?
- What was said in the discussion between Ms A and the Merchant Help Desk?
- Was the information provided to Ms A by the Merchant Help Desk inaccurate or misleading? and
- If so, did the business rely on this information and incur a financial loss?

Merchant Operating Guide

The business claimed that it had never received the Merchant Operating Guide. The financial institution was not able to confirm, to the case manager's satisfaction, that the Guide had been provided, as the Merchant Installation Checklist had not been completed by the financial institution.

Discussion with Merchant Help Desk

In assessing what was most likely to have been said between Ms A and the Merchant Help Desk, the case manager took into account the following:

- The available information supported a conclusion that Ms A was suspicious of the transactions, was unsure what to do, and was not prepared to process the transactions and ship out the goods until she obtained advice from the financial institution;
- Whilst the financial institution had no record of the business' discussion with the Merchant Help Desk, Ms A had recorded her recollection of the conversation in an e-mail a few days after the event;
- The business' actions in making further enquiries of the financial institution upon becoming aware of the freight company's concerns indicated a level of reliance on the financial institution's advice; and
- The business' conduct in halting the delivery as soon as it became aware of even the potential for the transactions being fraudulent was consistent with its claims that it was acting cautiously and would not have sent the goods if it had known there was a risk of the transactions being charged back.

The case manager concluded that the weight of information indicated that:

- The Merchant Help Desk had sufficient information to be aware that the transactions were potentially fraudulent and that Ms A was requesting the financial institution's advice; and
- The Merchant Help Desk told Ms A that she should process the transactions and see if they were accepted.

The case manager then found that in the context of Ms A's request for advice, the information was not complete. The financial institution should have ensured that Ms A understood that:

- It could not provide an assurance that the transactions were made by the true cardholder; and
- If the transactions were fraudulent and the true cardholder disputed the transactions, the amounts would be charged back to the merchant's account.

The case manager concluded that the financial institution's failure to provide this information to Ms A following her request for advice about the transactions amounted to misleading conduct which the business relied upon in processing the transactions and shipping the goods to Ghana.

Resolution

The case manager issued a Finding which concluded that the financial institution should pay to the disputant the sum of \$24,318.19 plus interest. This represented the costs incurred by the business in shipping the goods to Ghana and back to Australia. Both parties accepted the Finding.

Claims of Forged Signature on Account Operating Authority

D was the executor of her deceased father's estate. She found that in the last two months of her father's life, there were frequent over the counter withdrawals from his account. Some of these withdrawals occurred when he was in hospital.

When D asked the financial institution for further details about the withdrawals, she learned that the financial institution had an account operating authority which allowed her sister to operate the account. Many of the withdrawals had been made by her sister, but there were also a number of withdrawals bearing her deceased father's signature.

D believed that her father's signature had been forged on the account operating authority form. D also disputed some withdrawals bearing the deceased's signature, claiming that these too were forged.

Investigation

The financial institution provided BFSO with the original operating authority and withdrawal slips for the disputed transactions. The case manager referred these to a handwriting expert for examination with a signature specimen that all parties agreed was completed by the deceased. The handwriting expert concluded that the deceased had in fact signed the operating authority and the withdrawal slips.

Resolution

The case manager issued a Finding which concluded that the withdrawals were made either by the deceased or by the sister, with the authority of the deceased. As there was no question about the deceased's state of mind when he gave the sister the authority to withdraw from his account, there were no grounds for any compensation being paid to the estate. D did not appeal against the Finding.



Poor Investment Returns - Advice versus Performance

Mr B was 80 years old in April 2002 when he invested approximately \$200,000 in Australian and international share investments, property trusts and a conservative trust. He maintained an equivalent amount of cash in a cash management account and overseas bonds.

Mr B was shocked by the decreasing value of the share investments and when he returned from overseas in November 2002, he consulted with a second adviser. He then redeemed the share investments and reinvested the funds into new property trusts and debentures. Despite the capital value of these investments improving, in May 2003 Mr B redeemed all of the investments.

Mr B wrote to the Ombudsman and said that the investment advice was not appropriate for his needs and that he suffered a financial loss when he redeemed the investments.

The case manager examined in detail the documents completed by the financial advisers, including the fact find document and the customer advice record. He considered the legal obligations of a financial adviser pursuant to s.851 of the *Corporations Act (Cth)* and consulted with the industry adviser on investment advice. He issued a Finding that concluded that the investment advice was appropriate given Mr B's expressed desire for a "balanced" portfolio with a 50-50 exposure to growth and defensive assets. As Mr B's total asset allocation was 56% invested in defensive assets and 44% invested in growth assets, the recommendation met the expressed need and erred on the conservative side. The case manager concluded that the loss had been sustained because of the early redemption of the investments which were performing poorly at the time. Mr B rejected the Finding and the dispute was referred to the Ombudsman.

The Ombudsman issued a Recommendation that concluded that the investment advice was appropriate for Mr B and that he had been fully informed about the benefits and risks of the investments at the relevant times. The Ombudsman noted that although the particular investment strategy may not be appropriate for other 80-year-olds, it was appropriate in Mr B's circumstances. In forming this conclusion, the Ombudsman had regard for the following:

- > Mr B did not require the returns from the investments for his living expenses;
- > The financial plan and customer advice record were comprehensive and clear. A range of investment options were proposed;
- > The investment option selected was a broad spread of investments and met the stated needs of moving away from capital guaranteed investment with no capital growth to one with a higher income return that was more tax effective and which had longer term capital growth;
- > The investment option that was selected had sufficient warnings about the risks of the various investments. The amounts of funds invested were altered indicating that Mr B had the opportunity to consider the recommendations of the financial adviser;
- > Mr B's children were involved with his financial affairs and an investment strategy based on moderate growth and tax effectiveness over 5 – 7 years was consistent with an investment for the longer term benefit of Mr B's children; and
- > In November 2002, Mr B did not withdraw all his investments but changed the volatile share investments to more conservative investments and to property trusts, which had been performing well. This indicated that Mr B was dissatisfied with the performance of the share investments rather than the investment strategy.

The Ombudsman concluded that the financial advisers were not liable to compensate Mr B for the losses incurred when he terminated the investments.

Amount of Cash Dispensed by ATM

Mr V claimed that one morning he went to his financial institution's ATM to withdraw \$1,000. He said his card was returned and a receipt given, but no cash was dispensed.

He said he immediately made a balance enquiry to see if his account was debited for \$1,000, and found that it was.

The next day he went to the financial institution to complain and lodge a dispute form.

Financial Institution's Allocation of Liability

The financial institution allocated liability to Mr V, saying that:

- Its records confirmed that \$1,000 was requested, \$1,000 was dispensed, and the transaction was conducted with Mr V's card and entry of correct PIN;
- Its records showed that funds from the disputed transaction had not been retracted by the ATM; and
- There was no system or equipment malfunction at the time of the disputed transactions, and the ATM balanced for the day.

Investigation

The file was investigated by a case manager. The investigation revealed that:

- The maintenance report for the ATM showed that it was operating normally at the time of the disputed transaction, with previous down time being three days previously, and subsequent down time being two days later;
- The ATM error report showed that it was operating normally at the time of the disputed transaction. No cash handling errors occurred at the time of the disputed transaction;
- The bill counter report showed that notes totalling \$4,000 were dispensed during the one-hour period in which the disputed transaction occurred. The transaction report confirmed that there were withdrawal transactions totalling \$4,000 during the same one-hour period;
- Various documents supplied by the armoured security company that serviced the ATM showed that:
 - \$240,000 had been loaded into the ATM four days earlier;
 - The ATM was next cleared and reloaded five days later;
 - During the nine-day dispensing session, notes totalling \$235,490 were dispensed; and
 - The notes that remained from the original amount loaded, \$4,510, were returned by the security company to the financial institution;
- The transaction reports for the entire nine-day dispensing session showed that cash withdrawals for the period totalled \$235,490. Therefore, the financial institution's total agreed with the security company's balancing documents;
- The financial institution confirmed that the ATM in question had a retraction facility, that notes would be retracted if they were not taken from the ATM, and that notes would not be presented a second time; and
- A retracted notes report prepared by the financial institution did not show any instance of notes being retracted at the ATM on the day.

Outcome of Investigation

On the basis of the balancing information provided by the financial institution and the armoured security company, the case manager accepted that cash had been dispensed for the disputed transaction in accordance with Mr V's instruction at the ATM. He also accepted that the cash had not been retracted.

The case manager was unable to reconcile Mr V's statement, that he received his card and receipt but no cash, with the information provided by the financial institution that indicated that cash was dispensed.

Resolution

The case manager issued a Finding stating that, on the weight of information, he considered that cash had been dispensed at the ATM in accordance with Mr V's instructions, and that there had been no failure of institution system or equipment.

Accordingly, it was not appropriate for any compensation to be paid to Mr V by the financial institution.

Mr V did not respond to the Finding and the case was closed.



Summary Financial Statements

Banking and Financial Services Ombudsman Limited ABN 48 050 070 034

Statement of Financial Performance

For the year ended 31 March 2005

	31 March 2005 \$	31 March 2004 \$
Revenue from ordinary activities	5,195,349	4,839,729
Employee benefits expense	(3,417,541)	(3,323,422)
Depreciation and amortisation expense	(132,273)	(138,827)
Occupancy costs	(268,733)	(270,629)
Technology costs	(212,999)	(249,254)
Telephone expense	(141,938)	(132,482)
Directors' fees	(111,550)	(132,949)
Consulting fees	(177,848)	(143,254)
Travel and accommodation expenses	(103,273)	(69,250)
Promotion and information expenses	(44,144)	(64,292)
Auditor's remuneration	(7,200)	(6,500)
Other expenses from ordinary activities	(342,180)	(273,728)
Profit (loss) from ordinary activities before income tax expense	235,670	35,142
Income tax expense relating to ordinary activities	-	-
Profit (loss) from ordinary activities after income tax expense	235,670	35,142
Total changes in equity	235,670	35,142

Banking and Financial Services Ombudsman Limited
ABN 48 050 070 034

Statement of Financial Position

As at 31 March 2005

	31 March 2005 \$	31 March 2004 \$
Current Assets		
Cash assets	2,280,807	1,454,782
Accounts receivable	238,915	536,405
Other	100,700	99,045
Total Current Assets	2,620,422	2,090,232
Non-Current Assets		
Plant and Equipment	124,029	233,860
Total Non-Current Assets	124,029	233,860
Total Assets	2,744,451	2,324,092
Current Liabilities		
Payables	641,434	396,545
Other liabilities	475,000	606,100
Provisions	529,700	438,000
Total Current Liabilities	1,646,134	1,440,645
Non-Current Liabilities		
Payables	250,000	250,000
Provisions	130,700	151,500
Total Non-Current Liabilities	380,700	401,500
Total Liabilities	2,026,834	1,842,145
Net Assets	717,617	481,947
Accumulated Funds	717,617	481,947

Audited Financial Statements and Directors' Report for Banking and Financial Services Ombudsman Limited have, in accordance with legal requirements, been lodged with ASIC and are available for public scrutiny

Definition of Terms

ASIC

The Australian Securities and Investments Commission

BFSO

Banking and Financial Services Ombudsman Limited, formerly Australian Banking Industry Ombudsman Limited

Case Manager

Investigates unresolved disputes

Case Officer

Takes telephone calls from the public, processes new disputes and investigates some unresolved disputes

Case Resolved

A dispute that is resolved after referral to the financial institution

Conciliation Conference

A case conference conducted by the Ombudsman or senior staff member

Customer

An individual or small business user of a financial services provider

Determination

A written decision issued by the Ombudsman if the member rejects a Recommendation. A determination is binding on the member

Directors

The Directors of the BFSO Board

Discontinued

Cases that do not proceed to resolution through BFSO, including disputes sent to BFSO for information without a request to investigate, and disputes subsequently withdrawn by the disputant

Disputant

An individual or small business bringing a dispute before the Ombudsman

Dispute

A written request for assistance to resolve a disagreement between a financial services provider and a customer

Enquiry

A telephone enquiry from a person

Financial Institution

A member of the BFSO Scheme

Financial Ombudsman Service

Financial Ombudsman Service telephone referral service, a co-operative venture between BFSO, Financial Industry Complaints Service (FICS) and Insurance Ombudsman Service Limited (IOS)

Finding

A written assessment of the merits of a dispute after investigation of the dispute by BFSO staff

Guidelines

A manual published by BFSO which explains the clauses of the Terms of Reference

Member

A financial services provider that has agreed to participate in the Scheme (see Appendix B)

Negotiated Settlement

An investigation that is resolved by way of a settlement that is acceptable to both parties. Usually a case manager will facilitate the settlement

OTR

(Outside Terms of Reference) A dispute that is outside the Ombudsman's jurisdiction

Problem

The term used by BFSO to describe the nature or description of the complaint that the disputant has about a financial service

Product

The term used by BFSO to categorise the various financial products, services, accounts or facilities available to customers from financial services providers

Provisionally Closed

The status of a case for the 30 day period between BFSO seeking confirmation of the resolution of the case and the date when the appeal period expires and the case is closed

Recommendation

A decision made by the Ombudsman if either the member or disputant rejects a case manager's Finding

Related Body Corporate

A company that belongs to the same group of companies as a member

Small Business**For events occurring between 6 July 1998 and 10 March 2002:**

An incorporated or unincorporated business with less than 15 employees and a turnover of less than \$1 million, which is independently owned and managed

For events occurring on or after 11 March 2002:

An incorporated or unincorporated business that employs less than 100 full time equivalent employees if the business is manufacturing, and less than 20 employees if the business is of another nature

Serious Misconduct

A broad term that includes fraudulent conduct, grossly negligent or inefficient conduct, and wilful or flagrant breaches of relevant laws and codes of practice. BFSO is obliged to report cases of serious misconduct to ASIC

Systemic Issue

An issue which has been raised in a dispute or several disputes to BFSO which will affect a class of people in addition to those who have complained to the Scheme. BFSO is obliged to report systemic issues to ASIC

Telephone Dispute

Details of a dispute recorded by a case officer

Terms of Reference

A written document setting out the powers, duties and obligations of BFSO

The Board

The governing body of the Scheme comprising an independent chair, two consumer and one small business representative, and three bank representatives

Full list of members as at 30 June 2005

Bank Members

Adelaide Bank Limited
 AMP Bank Limited
 ANZ Banking Group Limited
 Arab Bank Australia Limited
 Bank of China
 Bank of Cyprus Australia Pty Ltd
 Bank of Queensland Limited
 Bank of Tokyo - Mitsubishi Ltd
 Bank of Western Australia Limited
 Bank SA (a division of St George Bank Limited)
 Bendigo Bank Limited
 Citibank Pty Limited
 Commonwealth Bank of Australia
 Elders Rural Bank Limited
 GE Money*
 HSBC Bank Australia Limited
 ING Bank (Australia) Limited
 Laiki Bank
 Macquarie Bank Limited
 Members Equity Pty Limited
 Mizuho Corporate Bank Ltd
 National Australia Bank Limited
 Rabobank Australia Limited
 Royal Bank of Canada
 St George Bank Limited
 State Bank of India
 Suncorp-Metway Ltd
 Taiwan Business Bank
 The International Commercial Bank of China
 United Overseas Bank Limited
 Westpac Banking Corporation

Non - Bank Members

All-States Group
 American Express International Inc
 Anglican Community Fund (Incorporated)
 Australian Postal Corporation
 Australian Seniors Finance Ltd
 Bennetto Finance Pty Ltd
 Camlan Qld Pty Ltd
 DC Corporation Australia Ltd ATF
 The Capital Trust T/as The Capital Trust
 eChoice Pty Ltd
 EMerchants Australia Pty Ltd
 Elders Limited
 Forex Plus Australia Pty Ltd
 Habib Finance (Australia) Ltd
 Home Loan Selection Services (Australia) Pty Ltd
 Home Loan Selection Services Pty Ltd (Incorporating Nelson Alexander Home Loans)
 IMF (Australia) Ltd
 Lift Capital Partners Pty Ltd
 Michael McHugh Lawyers T/as Independent Finance
 Mortgage Selection Services Pty Ltd
 PayPal Inc
 Platinum Partners Pty Ltd
 ProLoan (Australia) Pty Ltd
 Prosolution Group Pty Ltd
 Prudential Term Deposits Limited
 RCP Finance Limited
 Real Financial Services Pty Ltd
 RTP Group Pty Ltd T/as Northern City Finance - Upper North Shore
 Sherlock Home Loans (Aust) Pty Ltd
 StrataPay Pty Ltd
 Technocash Pty Ltd
 Telecheck Payment Systems Limited
 XAVAX Pty Ltd
 Yes Finance

*GE Money is authorised under *The Banking Act 1959* to carry on a 'banking business' as a specialist credit card institution, but is not an authorised deposit taking institution.

Thank You BFSO

“We appreciate the fact that our contact with you has resulted in a satisfactory resolution of our dispute for which we are most grateful.”

“We would just like to thank you for all your efforts in retrieving the amount of \$2,484.00 that had wrongfully gone into an account through internet banking. It is very much appreciated.”

“I am happy with the answers and explanations I received from the bank and there is no need for you to be further involved in this case. I do thank you for your prompt replies and actions.”

“The advice on procedure and the professionalism ... by your officers at a very difficult time for me was very much appreciated.”

“Thank you very much. We really appreciate your help as we know this would not have been possible without your intervention.”

“Your involvement allowed me to be contacted by the bank and be able to solve the problem in a very efficient manner. Your excellent work is appreciated.”

“Both my client and myself would like to thank your office, as your intervention has been the turning point in negotiations with the bank.”



Banking and Financial Services Ombudsman

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Melbourne 3000

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Local Call 1300 780 808

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TTY 03 9613 7344

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