

**SUBMISSION OF THE BANKING AND FINANCIAL
SERVICES OMBUDSMAN TO THE CONSUMER AND
FINANCIAL LITERACY TASKFORCE DISCUSSION
PAPER:**

AUSTRALIAN CONSUMERS AND MONEY

Background

The Banking and Financial Services Ombudsman Scheme (“BFSO”) is an independent dispute resolution service which considers disputes between individuals or small businesses and financial services providers. The industry members of the scheme include all Australian owned retail banks and their related bodies corporate, as well as some Australian subsidiaries of foreign banks, Australian branches of foreign banks, and non-bank financial institutions.

BFSO has been approved by the Australian Securities and Investments Commission under ASIC’s Policy Statement 139 as an ADR scheme for financial services licence holders.

The Scheme is an alternative to the courts, and its services are free to individuals and small businesses.

The Ombudsman can make a recommendation or determination of up to \$150,000 to compensate a disputant for any direct financial losses caused by a member’s act or omission. A determination is binding on the member. The jurisdictional limit is at present under review and is likely to increase to \$250,000.

Scope of this submission

This submission addresses a number of questions posed in the Consumer and Financial Literacy Taskforce’s Discussion Paper: *“Australian Consumers and Money”*.

The questions addressed are those where it was felt that useful comment could be made given this office’s experience as a dispute resolution scheme in the financial services sector.

This submission has been prepared by the office of the Banking and Financial Services Ombudsman. It does not necessarily represent the views of the Board of BFSO.

Chapter 3: The Information Provider

Question 3.1

The extent to which Australians' needs are met by the currently available consumer and financial education programs needs to take account of a number of factors including the following:

- a) *The availability of information – Are there some topic areas where there is insufficient information? ...*
- d) *The quality of the information provided – Is the available information clear and consistent?*

In recent years, financial service providers have given more attention to issues concerning the availability and quality of information, and their efforts are welcomed. Regulatory changes have also increased pressures on financial service providers to improve information and documentation. For example, the *Financial Services Reform Act* spells out detailed requirements for Product Disclosure Statements, and the revised *Code of Banking Practice* requires banks to provide effective disclosure of information and provide information in plain language.

However, we believe that there is still room for improvement and financial service providers need to continue their efforts to:

- Improve written and oral communication;
- Ensure that consumers have a real opportunity to clarify their understandings and ask further questions;
- Minimise product complexity; and
- As far as possible, provide information in a format that facilitates comparisons with other products.

Complaints received by BFSO

BFSO has a case management system which records, amongst other matters, the types of problems that are raised by disputants. There is a problem category that relates specifically to “inadequate or incorrect information”.

Of the 6,117 disputes closed by BFSO in the 2003 – 2004 financial year, a total of 837 (13.7%) were recorded in this category. Whilst there are other more common problem categories , for example, “transaction and calculation errors” and “service quality”, the fairly significant number of complaints in the “inadequate/incorrect information” category indicates that there is still a problem with the manner in which information is presented to consumers by financial institutions. (It is important to note, however, that the “problem” categories recorded by BFSO are those identified by the consumer. There may, therefore, be a level of subjectivity about how problems are defined.)

The “inadequate/incorrect information” category can be divided into a number of sub-categories. In the last financial year, complaints were recorded as follows:

Advertising/promotion (eg. misleading advertising):	29
Advice (eg. disputes about quality of advice):	87
Contract terms and conditions (eg: confusing contract):	191
Fees and charges (eg: wrong information about fees):	157
Investment advice (eg: bad investment advice):	13
Product/service advice (eg: insufficient information about how a product/service works :	384
Lending decisions (eg: inadequate explanation for loan rejection of loan application):	13
Total:	837

In our view there are examples of documentation relating to financial services that is complex and poorly designed. Credit card terms and conditions are a prime case in point. In addition, key information is not always easy to identify in documentation, and technical or unfamiliar terms are still used.

The complexity of documentation also reflects the complexity and number of available products. The range of options, fee structures, and other variables even within one institution and one product type are not always conducive to consumer understanding.

The problems that arise from poor documentation can be compounded by an increased reliance on automated systems for enquiries, transactions and product applications. This reliance means that it is often difficult (and sometimes more costly) for a consumer to speak with a representative from a financial services provider. As a result, misunderstandings or confusions can remain uncorrected for some time.

Efforts by suppliers to improve communication and reduce complexity will reduce consumer misunderstandings and difficulties, promote financial literacy in consumers, and minimise disputes.

Problem areas

We have observed a number of areas in which consumers continue to be unaware or confused about their rights and obligations. Whilst we do not have specific statistics to establish that this lack of awareness is necessarily due to “gaps” in the information provided by financial institutions, it is reasonable to conclude that this is one contributing factor.

The following are areas of concern, where it appears that financial service providers need to improve the quality of information given to consumers:

Mortgage Insurance

Many consumers appear to misunderstand the nature of, and protection offered by mortgage insurance. They often believe that the insurance will protect them if they default on their home loan, when in fact, protection is given only to the financial institution if there is a debt remaining after the sale of a security property. The financial institution is still able to pursue the debtor for repayment of the shortfall.

“Authorisation” of credit card transactions

We have received a number of disputes from small businesses where the merchant has been of the view that a credit card transaction was genuine and safe to proceed with because it had been “authorised” by the bank. In practice, such authorisation means only that the card number is valid and that there are sufficient funds in the account. It does not prevent the transaction being charged back if the credit card details are stolen and the true cardholder disputes the transaction.

BFSO has previously recommended to the industry, in Bulletin No. 40, that the word “authorisation” should be replaced by another word that does not confuse it with cardholder authorisation of the transaction.

Credit card contracts

The terms and conditions for credit card accounts are notoriously difficult to understand. Consumers are particularly confused about the manner in which interest is calculated if the full balance is not paid by the due date.

Confusing terminology

There are other terms that are often used in the financial services industry that do not actually reflect the every day meaning of the word. Terms such as “conditional approval”, “pre-approved”, “indicative interest rates” tend to cause confusion amongst consumers.

Chapter 4 : An integrated solution

Question 4.1

The Taskforce is proposing that a coordinating body be established to promote and facilitate a coordinated and targeted approach to consumer and financial information in Australia.

Is a coordinating body necessary? Should it be Government or industry funded? What functions should it perform?

We support the proposal to establish a coordinated body to promote and facilitate a coordinated and targeted approach to consumer and financial information in Australia.

We would be keen to become involved in the proposed coordinated body, for example, through:

- Providing feedback about financial literacy and disputes (including information about the terms, phrases, products and processes that consumers and small businesses find difficult to understand); and
- Providing information about dispute resolution and BFSO policies for resources that are developed under the auspices of the overseeing body.

BFSO does not have a firm view on whether the coordinating body should be government or industry funded. We do, however, support the proposed functions for the overseeing body, as outlined in the Discussion Paper. Whilst the body is in its early stages of development, it might be prudent to concentrate on two or three roles, to avoid spreading the available resources too thinly. These initial key roles might be to:

- Develop the Consumer Behaviour Model;
- Develop a specific awareness program for the Consumer Behaviour Model; and

- Provide a clearing house and an accreditation service for financial information.

Further information

For further information about these comments, please contact Jacqueline Rush, Manager, Projects and Public Affairs, on 03 9613 7308.