

EXECUTIVE SUMMARY



AN ACCOUNT OF ACTIVITIES FOR THE PERIOD
1 JANUARY – 31 DECEMBER 2004

BOARD CHAIRPERSON'S FOREWORD

The year got off to a flying start, with the Ombudsman for Banking Services (OBS) being recognised by the Department of Trade and Industry (DTI) for “excellence in consumer protection”.

A survey showed that the level of satisfaction of the banks with the OBS's performance was high, perhaps higher than was to be expected given the percentage of cases that went against the banks. The OBS has thus accomplished a fine balancing act, having gained the

support of both banks and consumers, their customers.

The board's decision to rename the organisation the “Ombudsman for Banking Services” was vindicated by the survey results produced by Markinor that 44% of customers questioned had heard of the Banking Ombudsman.

Advocate John Myburgh SC
Chairperson of the OBS board

OMBUDSMAN'S COMMENTS

In recent years there have been media reports of several “near misses” of the earth by meteors hurtling through space. In 2004, the OBS experienced its own near miss. It emerged at the parliamentary hearings on the *Financial Services Ombud Schemes Act (FSOS)* that government had given serious consideration to doing away with the voluntary schemes (the long- and short-term insurance ombudsman offices and us) and introducing a single statutory scheme, along the lines of the Financial

Ombudsman Service (FOS) in the United Kingdom.

We received a reprieve, reportedly because we (the voluntary schemes) were doing “good work”. Instead, we will be subject to a system similar to that in Australia, and we will be required to meet certain requirements to achieve recognition under *FSOS*.

Advocate Neville Melville
Ombudsman for Banking Services

CASE STATISTICS

The total amount recovered from the banks increased to R13,8 million.

THE TOP FIVE CAUSES FOR COMPLAINTS WERE

Maladministration	24%
Fraud	19%
Unfair treatment	16%
Misrepresentation	13%
Negligence	10%

THE TOP TEN CATEGORIES OF COMPLAINTS

ATM	22%
Mortgage finance	18%
Investments	11%
Consumer finance	9%
Credit/debit cards	8%
Savings accounts	7%
Cheques	5%
Payment systems	4%
Current accounts	3%
Insurance	3%

FILES OPENED IN 2004

Top five banks represent 98% of the total files opened

ABSA	915 cases	(32%)
STANDARD	834 cases	(29%)
NEDBANK	537 cases	(19%)
FNB	465 cases	(16%)
AFRICAN	76 cases	(2%)

Cases resolved in favour of the bank	44%
Cases resolved in favour of the complainant	56%

Total helpdesk calls received	14 351	(10 884 in 2003)	32% increase
Files opened	2 885	(2 294 in 2003)	26% increase
Files closed	2 830	(2 242 in 2003)	26% increase

DECISIONS IN FAVOUR OF THE BANK OR COMPLAINANT

Step 2 cases

In favour of bank (partly or wholly)	34%
In favour of complainant (partly or wholly)	66%

The number of cases resolved in favour of the complainant at the initial step of the process reflects the fact that a large number of cases are resolved by the bank before they have to be escalated to the investigation phase. Often the bank will also have made an offer to the complainant before the matter is reported to us, which we are requested to confirm as reasonable.

Step 3 cases

In favour of bank (partly or wholly)	58%
In favour of complainant (partly or wholly)	42%

The fact that more cases are resolved in favour of the bank in the investigation phase is indicative that the banks are generally resolving the clear-cut matters at an early stage and allowing only the more complicated matters to proceed to investigation.

Average time taken to close a file	70 days
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Percentage of cases closed within six months of the file being opened	93%
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ACTIVE FILE AGES

As on 3 January 2005 the average age of all the active files was 66 days. The mean for the year (obtained by adding the average active file age for each month and dividing by 12) was 58 days.

FINAL RECOMMENDATIONS OUTCOMES – PER BANK

BANK	In favour of bank	%	In favour of complainant	%	Total	%
Standard	4	33%	8	67%	12	37%
ABSA	2	25%	6	75%	8	25%
FNB	3	50%	3	50%	6	19%
Nedbank	2	40%	3	60%	5	16%
Investec	1	100%	0	0%	1	3%
	12	38%	20	62%	32	100%

In most cases it is the complainant who is unwilling to accept the provisional recommendation that was made in his/her favour and wants a higher award, making it necessary to proceed to a final recommendation. The bank in most cases accepts the finding made in the provisional recommendation.

DETERMINATIONS

The revised *Terms of Reference* introduced at the beginning of the year provide for two additional steps to the process: an Ombudsman's determination and a review of same by a member of an external review panel (retired judge). A determination by the Ombudsman is, in essence, an internal appeal.

Where all parties concerned have not accepted a final recommendation, the Ombudsman personally may make a binding written determination based on the law or the *Code of Banking Practice*, provided that the total amount involved in the dispute exceeds R10 000.

During the year, no participating bank applied for a determination. All the final recommendations made against banks were accepted and implemented.

In contrast, applications for a determination to be made were lodged by eight complainants who were not satisfied with the *final recommendations*, where the adjudicators had found only partly in their favour or not at all.

The Ombudsman made determinations in six of the matters and disposed of the other two without making a determination.

DEVELOPMENTS

REVISED CODE OF BANKING PRACTICE

In last year's report, we commended the banks on the positive improvements in what was then still a draft version of the *Code*. On 1 October 2004, the final version was released and became operational.

We were disappointed to see that some of our suggestions were not adopted. There are, in our view, a number of deficiencies in the *Code*. The most significant of these are:

- There is no independent review of the *Code*
- The *Code* is not legally binding (unlike its Australian equivalent)

- The *Code* imposes responsibilities ("expectations") on customers
- The *Code* lessens the liability of the banks in several crucial respects
- Certain more onerous obligations are imposed on customers
- There is no penalty for a failure to comply with the *Code*
- The *Code* does not specifically prescribe that its provisions override conflicting terms in bank contracts (cf clause 2.2)

Full details of our comments on the *Code* are available on our website (www.obssa.co.za)

TERMS OF REFERENCE

During the year, the new *Terms* were 'field tested'. There was some unease on the part of the legal advisers and compliance officers of some of the major banks about certain of the provisions, particularly the provision that a determination can be made an order of court

Otherwise, apart from a few difficulties presented in the interpretation of certain of the provisions, the *Terms* have been seamlessly implemented.

FINANCIAL SERVICES OMBUD SCHEMES ACT (FSOS)

This act provides for the recognition of financial services ombud schemes and lays down minimum requirements. It further seeks to coordinate the activities of the various ombuds.

The OBS had raised concerns regarding the practical implementation of the FSOS and its conferring of exclusive jurisdiction upon the Ombud for Financial Services Providers in respect of the provision of financial advice.

BULLETINS

The OBS issued one bulletin during 2004. *Bulletin nine* dealt with events that occurred after a sale in execution of a repossessed house. Work was also done on bulletins relating to ATM-related complaints, debit orders, credit cards and Internet banking. These will be finalised and published in 2005.

ANNUAL AWARDS: COMPLAINTS HANDLING

At the fourth OBS annual awards function at the Westcliff Hotel, Johannesburg in October 2004, embattled Nedbank walked away with the main award, for "excellence in complaints handling".

An unexpected beneficial spin-off from the awards was the value the banks gained from the comprehensive feedback of survey findings, covering a wide range of topics, which Markinor provided.

These awards have contributed to the improvement of co-operation between the OBS and the dedicated complaint handling departments of the banks. In turn this has contributed, in no small measure, to the OBS's success in complaint resolution and turnaround time reported elsewhere.

BANK WORKSHOP

Nearly 100 people attended the second OBS bank workshop, held in September 2004. The workshop explained the way the OBS operates and explored ways to improve the working relationship between it and the banks. Delegates participated in role-playing in a case study.

Delegates commented favourably on the case study, the OBS presentation and the networking opportunities. One delegate commented that it was "nice to see the 'human face' of the OBS".

In follow up discussions with the banks, it was decided to present the workshop throughout the country in 2005.

WEBSITE

We receive up to 50 000 hits per month on our website. Surprisingly, 30% of the interest is offshore.

SERVICE STANDARDS

Core values

The Ombudsman and his staff are committed to the following values: fairness, independence, professionalism, accountability, accessibility and timeliness.

Overall

- We aim to finalise ALL FILES within **six months** of opening the file
- We aim for an average time of **70 days** from date of opening to date of closure of the file

The full service standards document is available on the OBS website (www.obssa.co.za).

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