



# FINANCIAL OMBUDSMAN SERVICE



## Financial Ombudsman Service News

Issue 1

### Welcome to Financial Ombudsman Service News

It is my pleasure to welcome you to the first edition of *Financial Ombudsman Service News*.

The Financial Ombudsman Service was launched by the Hon Nick Sherry, Minister for Superannuation and Corporate Law, on 10 July 2008. I am pleased to be leading a newly established, highly skilled and experienced organisation which provides a quality service to consumers and our members.

At the Financial Ombudsman Service we bring together many years experience in resolving disputes involving the complete range of financial services products. As many of you will be aware, the new Financial Ombudsman Service brings under one roof independent dispute resolution services for up to 80% of Australian banking, insurance, investment and other financial services disputes.

We are sure that the simplified structure will enable greater ease of access to our services for consumers and the industry alike.

### Thanks

I would like to take this opportunity to thank: Philip Field, Ombudsman – Banking & Finance, Alison Maynard, Ombudsman – Investments, Life Insurance & Superannuation and Sam Parrino, Ombudsman – General Insurance, for their help and support during the months leading up to this merger.

I would also like to thank the Chair of our transitional Board, Mr Peter E Daly AM, for his ongoing encouragement and support during this time as well as each of the following board members for their unstinting support and encouragement:

- Fiona Guthrie *BFSO Board Member*
- Kerrie Kelly *Insurance Council of Australia and IOS Board Member*
- Dr Elizabeth Lanyon *IOS Board Member*
- Jenni Mack *FICS Board Member*
- Russell McKimm *former financial planner and stockbroker and FICS Board Member*
- Professor the Hon Michael Lavarch *BFSO Chair*
- David Squire *of MLC and FICS Board Member*
- Susie Upton *BFSO Board Member*

### About *Financial Ombudsman Service News*

Each issue of *Financial Ombudsman Service News* will update our many stakeholders on vital issues and trends we are seeing in financial services disputes and complaints. In Latest Developments, you will receive updates from the three Ombudsmen on issues of importance as well as an overview of recent trends in cases.

The Case Studies section will contain examples of recent important cases and determinations where applicable.

The newsletter will also contain news about recent initiatives from the Financial Ombudsman Service, such as educational outreach programmes, new publications and consumer education priorities.

In later editions, we will include a Q&A section, creating a forum for all stakeholders to submit questions to myself and the other Ombudsmen, as well as regular updates on news about the Banking Code of Practice and the General Insurance Code of Practice.

I hope you will enjoy our new publication and I look forward to hearing from any of you with views on how we can improve our newsletter to meet your information needs.

**Colin Neave**  
Chief Ombudsman

### Terms of Reference

The Financial Ombudsman Service management team are engaged in an extensive consultation process with all stakeholders in order to draft a single set of procedures and Terms of Reference for financial services disputes by June 2009, to take effect later that year. I look forward to meeting with many of you during this period and discussing in this consultation process your views and suggestions with respect to our Service.

I will be keeping you up to date with this consultation process through this newsletter. In the meantime, if you would like to communicate any ideas or suggestions about the consultation process to us, please feel free to contact Carolyn Bruns on 1300 78 08 08 or email [cbruns@fos.org.au](mailto:cbruns@fos.org.au).

### Financial Ombudsman Service Annual Conference 2009

The inaugural Financial Ombudsman Service Annual Conference will be held on 11-12 June 2009 at Crown Promenade Hotel in Melbourne.

More details to follow in Issue 2 of *Financial Ombudsman Service News*.

## Latest Developments:

# Banking & Finance

By Philip Field

Ombudsman – Banking & Finance



Welcome to the Banking & Finance section of our first issue of *Financial Ombudsman Service News*. The merger of the Banking & Financial Services Ombudsman into the Financial Ombudsman Service has been an exciting and challenging time. However, from the point of view of resolving disputes, it is "business as usual" in the Banking & Finance division.

### Overview of new disputes

The number of new complaints received has increased, continuing the growing trend of the last twelve months. In the year to 30 June 2008, the Banking & Finance division received 7,913 new complaints, a 22.8% increase on the previous year. At the same time, we have seen a small fall in the percentage of cases resolved before a need for an investigation.

### Financial hardship

We are seeing greater interest in relation to how financial services providers deal with financial hardship, no doubt as a response to recent interest rate increases and mortgage stress.

We have published two Bulletins on dealing with customers in financial difficulty (Bulletin 46 and Bulletin 53) – see box below. We have also been talking to banks individually about how to deal with financial difficulty. More recently, I attended a joint Australian Bankers' Association/Consumer forum on financial difficulty, and was on a panel at a Housing Stress Information Night which attracted over 200 people to the Bankstown (NSW) Town Hall. The Information Night was organised by local Federal MP Jason Clare.

In the six months to June 30 we have seen an increase in the number of disputes involving financial difficulty. Further, while some disputes may not be directly attributable to financial difficulty, it may nevertheless be an underlying cause. However, we are of the view that, partly as a response to our Bulletins and our subsequent discussions with banks who subscribe to the Code of Banking Practice, the subscribing banks are getting better at dealing with their customers in financial difficulty without the need for intervention by the Financial Ombudsman Service.

As you will see in our case study, we receive complaints from time to time from customers about the response they have received from a bank after having raised their financial difficulty. When considering such a complaint, we will have regard to a financial services provider's obligations under the Uniform Consumer Credit Code (UCCC), if the borrowing is covered by UCCC, and the Code of Banking Practice if the financial services provider is a subscriber. We will also consider what is fair and reasonable in the circumstances and what, in our view, would represent good industry practice.

In our view, a financial services provider will be obliged to give fair and reasonable consideration to a request for hardship consideration. If the request is rejected, it should provide its reasons and make a counter proposal if appropriate. If the UCCC applies, the consumer should be informed that there is a right to appeal to a tribunal.

In considering financial difficulty disputes, the Banking & Finance division is unable to substitute its decision about what is an appropriate variation of a credit contract. This is because, under our Terms of Reference, we are unable to consider a dispute that relates solely to a financial services provider's commercial judgement in decisions about lending. However, we will review the process that led to that decision and in the course of that review, we actively encourage the parties to come to an appropriate repayment arrangement.



**Philip Field**  
Ombudsman - Banking & Finance

### Did you know?

The Banking & Finance division publishes Quarterly Bulletins on relevant issues, setting out the Ombudsman's approach to particular types of disputes.

We released Bulletin 59 in September 2008 which looks at the impact of the Electronic Funds Transfer Code of Conduct on particular types of credit card transactions.

Issues covered in past Bulletins include:

- > Maladministration in lending
- > Credit listings
- > Elder financial abuse

Access the full archive at [www.fos.org.au](http://www.fos.org.au) (click Publications).

If you would like to receive an email notifying you when new Bulletins are available, take a few moments to complete and return the Subscriber card on the back page of this newsletter.



The Ombudsman joined the Minister for Housing and representatives from The Smith Family, Consumer Credit Legal Centre, Creating Links and Legal Aid for a Housing Stress Information Night hosted by financial journalist Paul Clitheroe and organised by Jason Clare, MP for Blaxland, in Bankstown, NSW on 8 July 2008

# Latest Developments: General Insurance

By Sam Parrino

Ombudsman - General Insurance



Hello and welcome to the General Insurance section of *Financial Ombudsman Service News*. I am delighted to be part of this inaugural communication as I believe that this newsletter provides a valuable way for us to communicate with our stakeholders and other interested parties. Below you will find a brief overview of trends in insurance disputes and an update on recent insurance news.

## Disputes in General Insurance

In the six months to 30 June 2008 the General Insurance division of the Financial Ombudsman Service, formerly the Insurance Ombudsman Service, received 1182 new referrals, compared to 970 for the previous year, up 22%. Indications are that this increase was in part due to weather-related claims as home building insurance disputes from Queensland and New South Wales rose 50% to 327 disputes in the period.

Motor insurance remained the largest category of disputes overall, with 372 for the six months to 30 June, 31.5% of the total number of general insurance disputes. The number of travel insurance disputes grew from 173 to 208, but remained static as a percentage of disputes overall at 17.6% for the period.

Outcomes in favour of insurers increased by 3% to 58.6% during this period, continuing the trend of recent years. A fall in the number of claims being upheld by the Ombudsman in favour of the consumer is a positive result as it indicates more disputed claims being satisfactorily settled by members at the Internal Dispute Resolution (IDR) stage, ie before a complaint is escalated to the ombudsman. However, with 27% of disputes being brought to the ombudsman still being resolved in favour of the consumer, there is clearly still scope for improvement at the IDR stage.

## Other news

The General Insurance arm of the Financial Ombudsman Service is about much more than decision-making. In many respects our educational role is just as important. A decision simply resolves a dispute between two parties, but our educational program has benefits for all stakeholders, particularly industry and consumers. Some of our educational activities in recent months have included:

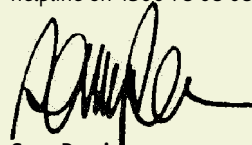
- Open Forum programme sessions in Sydney, Brisbane, Perth and Adelaide and Hobart. These forums are always well attended by members of the industry and other stakeholders and provide an opportunity for direct discussion with decision-makers on a wide range of issues.
- A senior claims officer from a large insurance company coming to work in the Financial Ombudsman Service General Insurance division for an extended period, observing our decision-making process and attending panel meetings. We find that such involvement allows participating companies to understand what we are looking for in terms of submissions.
- Ongoing outreach in the media and at conferences and trade shows to educate consumers on key issues to consider in selecting general insurance products and services.

- Meeting with representatives of ASIC to discuss matters of mutual interest and concern, such as policy documentation, the concept of utmost good faith, disputes arising from natural disasters with particular reference to flood, and our procedures and processes generally

## Climate change, flood and determinations

Climate change is well and truly on the agenda and the weather report is becoming much more important for the Financial Ombudsman Service. Climate change disputes arise primarily from storms, which are usually accompanied by wind and rain or hail and may result in flood erosion or subsidence. The issue for determination in such disputes relates to whether the damage was caused by the storm, or by a separate cause that gives rise to the operation of a policy exclusion. For example, if it is determined that the storm water has caused water inundation to the property the claim will be paid. If however it is considered that the flood water or a mixture of flood water and storm water enters the property initially, the claim will not be paid.

In order to accurately determine these disputes, the panel will visit the various locations and talk to the parties, the expert witnesses and inspect the location. Panel members recently undertook an inspection in the Cessnock region of New South Wales for this purpose. The panel is also in the process of arranging a visit to Gippsland to consider flood related claims caused by flooding in that region late in 2007. If you would like further information on flood or storm related insurance issues, please don't hesitate to call our helpline on 1300 78 08 08.



Sam Parrino  
Ombudsman - General Insurance

## General Insurance National Workshop

Over 145 delegates attended this event in Melbourne at the end of August.

Entitled "Tackling the Thorny Issues," the conference looked at many of the most difficult issues facing those involved in the insurance industry. In a series of interactive workshops delegates examined issues ranging from the concepts of utmost good faith and duty of disclosure to fraud and communication of policy terms.

Case studies covered during the conference can be viewed on our website at [www.fos.org.au](http://www.fos.org.au).



Ombudsman Sam Parrino and delegates participating in the Financial Ombudsman Service General Insurance National Workshop in August.

## Latest Developments:

# Investments, Life Insurance & Superannuation

By Alison Maynard

Ombudsman - Investments, Life Insurance & Superannuation



Welcome to the Investments, Life Insurance & Superannuation section of *Financial Ombudsman Service News*.

## Recent disputes in Investments, Life Insurance & Superannuation

The table (bottom right) shows a snapshot of the recent disputes handled by the Investments, Life Insurance & Superannuation division for the six month period 1 January 2008 to 30 June 2008. During that period we received 739 new written disputes across the different industries we cover. Comparing the 2008 figures with the same period from 2007, the obvious difference is the jump in financial planning and managed investment disputes, reflecting the recent period of market volatility. This also explains financial planning overtaking life insurance as the category generating the most disputes during this period.

## Members' obligation to give out brochures

Financial Ombudsman Service members are required to inform consumers unhappy with the outcome of the internal dispute resolution process that the Financial Ombudsman Service exists. Under the Investments, Life Insurance & Superannuation Terms of Reference, members must, when advising consumers of the outcome of disputes dealt with by their internal complaint handling system, also advise the consumer that they can may complain to the Financial Ombudsman Service if they are unhappy with that outcome.

Members must also provide consumers with a Financial Ombudsman Service brochure that outlines the service. You can meet your obligation in several ways:

- when sending out advice of the outcome by email, you can attach a PDF/soft copy of the brochure, or
- when sending out the advice of the outcome by mail or fax, include a printed version or fax a copy of the hard copy version of the brochure, or

- you can also provide the full contact details of the Financial Ombudsman Service in your letter of advice, together with the full web link to the brochure on the Financial Ombudsman Service website ([www.fos.org.au/centric/home\\_page/publications/brochures.jsp](http://www.fos.org.au/centric/home_page/publications/brochures.jsp)). You will also need to include a statement that if the consumer is unable to access the brochure on the website, or would prefer a hard copy to be sent to them, they can call you to request a copy.

If you did not receive any brochures or require additional copies, please email your request to [publications@fos.org.au](mailto:publications@fos.org.au).

Alison Maynard

Ombudsman - Investments,  
Life Insurance & Superannuation

Dispute by industry	1 Jan 2008-30 Jun 2008 (1 Jan 2007-30 Jun 2007)			
	Quantity		%	
Life insurance	203	(188)	27	(34)
Financial planning	258	(156)	35	(28)
Managed investments	124	(53)	17	(9)
Stockbroking	85	(107)	12	(19)
Other*	9	(10)	1	(2)
Out of jurisdiction	60	(42)	8	(8)
Total	739	(556)	100	(100)

\*Denotes cases that don't fit into the main 4 categories (e.g. futures traders who are not ASX participants)

## Westpoint update

Disputes arising from the collapse of Westpoint Group have slowed considerably but not abated completely.

	Cumulative totals to 30 Jul 08
Calls about Westpoint	574
New Westpoint written complaints	427
Westpoint complaints resolved by conciliation	79
Westpoint complaints resolved by determination	54
Claim value of resolved Westpoint complaints (ie actual claimed amounts)	\$10.7m*
Paid out for resolved Westpoint complaints (ie amount paid to complainants)	\$5.4m*

\*Rounded down



Visit [www.fos.org.au](http://www.fos.org.au) for a PDF copy of the brochure that was distributed to all Investments, Life Insurance & Superannuation members in July.

# Scheme Launch and Community News

## Official Launch for Financial Ombudsman Service

On Thursday 10 July 2008 the Financial Ombudsman Service was officially launched by Senator the Hon Nick Sherry, Minister for Superannuation and Corporate Law at the scheme's office in Melbourne.

The Minister welcomed the advent of the merged scheme, saying: "This Government believes the new Financial Ombudsman Service is good news for consumers and the financial services industry alike.

A single entry point for consumers allows for easier access to dispute resolution services and will increase public awareness of the availability of this free service."

In a short ceremony, Peter E. Daly, Chair of the Board, and Colin Neave, Chief Ombudsman, outlined the next steps for the Financial Ombudsman Service and thanked the Minister, industry and consumer groups for their support for the new scheme.

Both emphasised that there will be extensive consultation during coming months with all stakeholders regarding the review of the Terms of Reference. Mr Neave commented, "We aim to have a standard Terms of Reference, or Rules, and associated procedures for the Financial Ombudsman Service in place by 1 January 2010 at the latest."

The launch was well attended by senior representatives from the financial services industry and senior consumer representatives as well as government, the media and Financial Ombudsman Service staff.



*Chief Ombudsman Colin Neave accepts a plaque commemorating the official launch of the Financial Ombudsman Service from Minister Nick Sherry*



*Left to right: Sam Parrino, Colin Neave, Alison Maynard and Philip Field at the launch ceremony*

## Community News and Events

Resolving disputes gives us a unique perspective on the nature of disputes that arise in the financial services sector.

We are committed to using this knowledge to help increase the financial literacy of consumers and raise industry standards. We do this by giving talks, hosting workshops and making submissions on issues concerning financial services to consumers, community agencies, scheme participants and government.

Below we highlight just a few of the events and initiatives in which we have participated since the Financial Ombudsman Service launched in July.

### Centrelink Financial Information Service (FIS)

The Financial Ombudsman Service gave a talk to over 40 officers from the Victorian branch of FIS, a free, independent financial education and information service available to everyone in the community. To learn more about this service visit the FIS page at [www.centrelink.gov.au](http://www.centrelink.gov.au).

### Home Buyer Show 2008

The Home Buyer Show is an event dedicated to helping home buyers and investors. Over 3,000 consumers visited the Financial Ombudsman Service stand at this year's shows in Brisbane, Melbourne and Sydney, and several hundred more attended our free seminars on home loans and insurance.

### Seniors' Safety Forum

Over 100 seniors from the Victorian community of South Morang turned up to a morning of talks organised and hosted by the City of Whittlesea local council with guest speakers from the Financial Ombudsman Service, Commonwealth Ombudsman, Seniors Rights Victoria, Whittlesea Community Legal Service and Mill Park Police.

### Law Talks: Wangaratta

Law Talks (originally known as the Civics Roadshow) is a series of free legal information sessions for regional communities throughout Victoria organised by the Victoria Law Foundation.

As part of the dedicated program for schools, the Financial Ombudsman Service hosted an interactive workshop for VCE students based on its Sort It youth debt awareness initiative. We also co-presented a session with the Financial Counselling Service entitled 'Finances, The Law And You' for the Law Talks Community Program.

### Good Service Forum

The aim of these information forums is to ensure NSW-based Aboriginal and Torres Strait Islander communities are aware of their rights as consumers. The forums are a collaboration between a total of nine Government and other agencies including State, Commonwealth and industry-based ombudsman schemes.

The Good Service forum visited Grafton and Coffs Harbour in August and Batemans Bay and Bega in October.

You can find more details on upcoming events in which the Financial Ombudsman Service is participating in our Events Calendar at [www.fos.org.au](http://www.fos.org.au).

**We look forward to bringing you more news of our community involvement in future editions of *Financial Ombudsman Service News*.**

# Case Studies

In this final section of *Financial Ombudsman Service News* we draw your attention to three new Case Studies – one from each division of the Financial Ombudsman Service – that have recently been added to the Case Study archive on our website. Case Studies may be based on recent Determinations or prepared specially for recurring cases or cases of particular interest.

We have provided a brief introduction to each Case Study. To read the Case Study in full you will need to visit the dedicated area on our website at [www.fos.org.au](http://www.fos.org.au) where you will also find links to relevant background reading material.



### Banking & Finance Case Study

#### Financial hardship

Mr and Mrs S are in the process of selling their home. However there has been a delay in settlement and they have fallen behind in their home loan repayments. Their finances are under further strain as a result of Mr S having suffered a workplace injury, while Mrs S recently gave birth to their child. The couple contact their bank seeking assistance.



### General Insurance Case Study

#### Legal costs, cover and utmost good faith

This Determination relates to a home contents claim following a burglary. The insurer is not satisfied the consumer can prove ownership of items being claimed for and appoints an investigator. Some months later the consumer feels the insurer has not progressed their claim within a reasonable period and has engaged a solicitor to act on their behalf.



### Investments, Life Insurance & Superannuation Case Study

#### Life insurance

In 2005 a man with a heart condition loses consciousness while driving. His vehicle goes off the road and into a dam. The driver dies. There are no witnesses. The coroner's report states that his cause of death was consistent with drowning in a man with a heart condition. The driver's wife makes a claim on her husband's Accidental Death Plan insurance policy. The claim however is denied.

**Need to know more about the Financial Ombudsman Service?**


The Financial Ombudsman Service regularly presents seminars, workshops and talks to help community organisations, consumer representatives, participating companies and other stakeholders become better informed about the work of the Ombudsman's office.

If you would like a Financial Ombudsman Service representative to visit your organisation, please call 1300 780 808 and ask to speak with our Public Affairs Officer or email [info@fos.org.au](mailto:info@fos.org.au).

**What do you think of *Financial Ombudsman Service News*?**

This is only our first issue but we'd welcome your feedback.

We want the newsletter to be as relevant, interesting and useful as possible, so please do let us know if you have any ideas or suggestions for future issues. Email [publications@fos.org.au](mailto:publications@fos.org.au).



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