

Financial Co-operative Dispute Resolution Scheme

Effective: January 2008

.....That's what we're here for.



Here for good.

Terms of reference

The Financial Co-operative Dispute Resolution Scheme ('the Scheme') established by the Financial Co-operative Dispute Resolution Scheme Inc ('the Association') is a self regulatory Scheme providing an external and impartial dispute resolution process for members or customers of participating Credit Unions, Building Societies and other financial service providers who are Retail Clients and who have a Dispute with their Credit Union, Building Society or Financial Services Provider about the provision of Financial Services.

Members or customers of a Participant who are Retail Clients may refer complaints or disputes to the Ombudsman where those complaints or disputes cannot be resolved to the satisfaction of the member or customer internally by the Participant.

The Scheme is a free service for Retail Clients with Disputes about the provision of Financial Services. The Ombudsman's determinations are binding upon Participants if the Disputant accepts the decision. Until such time as a Disputant accepts a determination of the Ombudsman a Disputant's rights against the Participant and the Participant's rights against the Disputant are preserved.

Scope of eligible disputes

Any Dispute between a Participant and any Retail Client relating to the provision within Australia of Financial Services may be referred to the Ombudsman for determination.

The Ombudsman shall decide whether or not a Dispute falls within the Terms of Reference including whether an applicant is a Small Business applicant and in reaching this decision shall consider representations from the Disputant and the Participant. When requested the Ombudsman shall give reasons for the decision as to whether or not a Dispute falls within the Terms of Reference, in writing, within a reasonable time.

To facilitate the satisfaction, settlement or withdrawal of such Dispute whether by agreement, by making recommendations or awards or by such other means as seem expedient the Ombudsman shall have regard to applicable and binding industry codes of practice or guidelines, good industry practice, the

Participant's constitution, any applicable rule of law or relevant judicial authority and what is fair and reasonable in all the circumstances to both the Participant and the Disputant.

At any time that a Dispute is under consideration by the Ombudsman the Ombudsman may seek to promote a settlement or withdrawal of the complaint by agreement by facilitating negotiations between the Disputant and the Participant.

Ombudsman's Power in Relation to Disputes

In making any determination the Ombudsman may make any of the following types of orders:

- (1) An order declaring that the whole or any part of any disputed liability be extinguished;
- (2) An order rectifying the terms and conditions of the Participant's product or service utilised by the Disputant which is the subject of the Dispute in such manner as is specified in the Ombudsman's determination;
- (3) An order directing that the Participant refund money or return property to the Disputant; and
- (4) An order directing that the Participant pay compensation to the Disputant.

Limits on the Ombudsman powers in relation to disputes

The Ombudsman shall have power to consider a Dispute except:

- (1) To the extent that the Dispute relates to the Participant's Commercial Judgements in decisions about lending or security;
- (2) To the extent that the Dispute relates:
 - (a) To a Participant's general interest rate policies; or
 - (b) Solely to the underlying performance of an investment;
- (3) If at any time it appears to the Ombudsman that it is more appropriate that the Dispute be dealt with by a Court, the office of the Privacy Commissioner, the Superannuation Complaints Tribunal, under another independent complaints or conciliation procedure or under an arbitration procedure;
- (4) If at any time it appears to the Ombudsman that the Dispute is being pursued frivolously or vexatiously;

- (5) If it appears to the Ombudsman that the Participant has not had sufficient opportunity to consider the matter;
- (6) If at any time up to the point at which the claim is received by the Ombudsman it appears to the Ombudsman that:
 - (a) The amount which the Disputant has claimed or could claim in respect of the subject matter of the Dispute exceeds \$280,000.00; or
 - (b) The claim comprised in the complaint is part of a larger claim which the Disputant has made or could make, or is related to another claim which the Disputant(s) has made or could make, and the aggregate amount of all such claims exceed \$280,000.00.

Other powers and duties of the Ombudsman

In connection with the operation and administration of the Scheme the Ombudsman has the following powers and duties:

- (1) To attend each meeting of the Council and to provide the Council with any information reasonably requested by it;
- (2) To actively promote the existence of the Scheme particularly to any groups (such as people located in rural areas or with a non English speaking background) which are under represented in the people who access the Scheme;
- (3) To publish and promote details about how the Scheme operates including:
 - (a) How a Dispute can be lodged;
 - (b) Assistance which is available to Disputants; and
 - (c) The time frames which are imposed on the procedure.
- (4) To collect and record information about:
 - (a) The number of Disputes and enquiries received including for each Participant and class of Participant and each type of Dispute;
 - (b) Demographics of the Disputants (where practicable);
 - (c) Details of cases that fall outside the Scheme's Terms of Reference and why;
 - (d) The current caseload including the age and status of open cases;
 - (e) The time taken to resolve disputes;

- (f) A profile of Disputants to enable identification of:
 - (i) The type of financial product or service involved;
 - (ii) The product or service provider;
 - (iii) The purpose for which the financial product or service was obtained;
 - (iv) The underlying cause of the Dispute; and
 - (v) Any Systemic Issues or other trends.
- (5) To identify and report to the Council and relevant Participants all Systemic Issues, Serious Misconduct and any failure by a Participant to comply with a decision made under the Terms of Reference;
- (6) To publish and regularly distribute case summaries to Participants;
- (7) To liaise with consumer representatives on an on-going basis in relation to the operation of the Scheme;
- (8) To provide assistance where considered appropriate by the Ombudsman in a manner that does not affect the impartiality of the Ombudsman to disputants with translating, lodging or presenting disputes;
- (9) To appoint, supervise, suspend and dismiss staff as may be necessary for the operation of the Scheme; and
- (10) To provide the Council on an annual basis with a comprehensive report on the operation of the Scheme including a qualitative assessment of its performance.

Ombudsman may require information

The Ombudsman may require a Participant or a Disputant to provide any information relating to the Dispute which is or is alleged in the possession of a Participant or Disputant.

If the Participant possesses information which the Ombudsman requires to be provided the Participant will do so as soon as reasonably convenient unless:

- (1) The information pertains or is confidential to a third party and is not otherwise available to the public; or
- (2) The information is the subject of legal privilege; or
- (3) The information is of a sensitive nature relating to the financial or prudential standing of the Participant and which is not otherwise available to the public.

If the Participant or Disputant supplies information to the Ombudsman and requests that the Ombudsman treat that information as confidential:

- (1) The Ombudsman will not disclose the information to the other party or to any other person without the consent of the party supplying the information; and
- (2) The Ombudsman will not be entitled to use that information to reach a decision adverse to the party against whom the confidential information relates.

Where the Participant or Disputant has supplied information to the Ombudsman and the Ombudsman has made a determination in relation to the Dispute the Ombudsman shall return the information within thirty days to the party who has supplied the information.

Interpretation

The following words have the following meanings where they appear in these Terms of reference:

'ASIC' means the Australian Securities and Investments Commission;

'Business' includes every trade, occupation and profession continuously carried on, whether or not for profit;

'Commercial Judgement' means assessments of risk, financial or commercial criteria or character;

'Council' means the Council appointed under the rules of the Association;

'Decisions about lending or security' include any decision (or the consequences thereof) concerning any advance or similar facility, guarantee or security;

'Disputant' means a member or customer of a Participant bringing a Dispute before the Ombudsman;

'Dispute' means a disagreement in relation to the provision of a Financial Service between a Participant and a member or customer of that Participant which has not been resolved by the parties;

'Financial Service' means all financial services provided by a Participant in the ordinary course of their Business including:

- (a) A loan or any other kind of credit transaction (including, without limitation, credit card use overseas);
- (b) A deposit (such as a term deposit, a fund management deposit or a retirement savings account);

(c) A facility under which a Person may make, or cause to be made, a non cash payment (such as a direct debit arrangement or a facility relating to cheques, bills of exchange, travellers cheques or a stored value card);

(d) Guarantees or charges in favour of the Participant given or created by:

(i) An Individual not carrying on a Business; or

(ii) A Small Business;

to guarantee or secure any monies owing to the Participant by any other Individual or Small Business under an advance or analogous facility; but excluding any insurance, superannuation and financial advisory services.

'Incorporated Entity' means an entity registered under the Corporations Act;

'Individual' includes a natural person, a partnership or other unincorporated body of persons not consisting entirely of bodies corporate but excludes unincorporated statutory authorities and unincorporated charity;

'Participant' means a Credit Union, Building Society or other Financial Services Provider that has agreed to participate in the Scheme;

'Person' includes an Individual and an Incorporated Entity;

'Retail Client' means an individual or a small business who is a member or customer of a Participant and who is a retail client for the purposes of Section 761G of the Financial Services Reform Act 2001;

'Serious Misconduct' means conduct that is fraudulent, grossly negligent or involves wilful breaches of applicable laws;

'Small Business' means a Business or Incorporated Entity which at the time the events relating to the Dispute occurred had:

- (a) If the Business or Incorporated Entity is or includes the manufacture of goods – less than one hundred full time (or equivalent) employees; or
- (b) If the Business or Incorporated Entity is of another nature – less than twenty full time (or equivalent) employees;

'Systemic Issue' means an issue which will have a material effect for a class of people receiving a financial service from a Participant including:

(a) Poor disclosure or communication;

(b) Administrative or technical errors;

(c) Product flaws; or

(d) Inaccurate interpretation of standard terms and conditions.

Drop into your local
branch, visit the website
or call 13 19 87

www.newcastlepermanent.com.au

Here's some more information for you:

Newcastle Permanent Building Society Limited ABN 96 087 651 992, AFSL 238273.

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