Banking Ombudsman

ANNUAL REPORT || 2010|11

Scheme participants

(at 30 June 2011)

ANZ National Bank
ASB Bank
Bank of Baroda New Zealand
BNZ
Citi New Zealand
Credit Union Baywide
Credit Union South
Heartland Building Society
HSBC New Zealand
Kiwibank
Nelson Building Society
PGG Wrightson Finance
Rabobank New Zealand
Southland Building Society
TSB Bank
Westpac

(plus related companies, subsidiaries and staff financial advisers)

$3.8M
compensation facilitated

4,000+
banking customers helped

71%
reduction in cases carried forward at year end

$26.4M
returned to ANZ's ING customers through our scheme since 2009

489
registered participants

0
cases on our waiting list

From the Chair

It's been a busy and productive year for the Banking Ombudsman Scheme. A notable feature of 2010/11 has been important changes in the regulatory landscape for the protection of customers of financial service providers in New Zealand.

The Financial Service Providers (Registration and Dispute Resolution) Act 2008, which came into effect this year, aims "to promote confidence in financial service providers by improving consumers' access to redress from providers" through "accessible, independent, fair, accountable, efficient, and effective" approved dispute resolution schemes.

The Banking Ombudsman Scheme, established in 1992, has a wealth of experience in resolving disputes between customers and their banks, and a well-earned reputation as the premier financial services dispute resolution scheme in New Zealand. Originally confined to banks, our membership has expanded over the past year to cover most building societies, two large credit unions, some finance companies and a range of bank subsidiaries – all meeting our participation criteria of being financially sound and having a strong customer service ethic.

We know that complainants and financial service providers look to our scheme to provide scrupulously fair, independent dispute resolution services, with a focus on sorting things quickly. Banks have become much more adept at listening to customers' concerns and sorting out problems. But sometimes it takes an independent, authoritative agency like an ombudsman to facilitate a resolution and, if necessary, investigate a case and make a specific recommendation.

The case studies and data in this year's Annual Report show a continuing high demand for our services – no surprise given uncertain economic times. Most complaints are sorted out promptly, with more complex cases leading to full investigation and, where appropriate, educational messages for the banking sector and the public. Our systemic issues protocol – a feature unique to our financial services dispute resolution scheme – enables us to draw attention to issues that may be widespread in the sector.

Our scheme is overseen by a talented board, which I lead as independent chair. We are fortunate to have the skills of two leading consumer advocates, Sue Chetwin of Consumer New Zealand and Mary Holm, financial columnist, together with two very experienced bank CEOs, Andrew Thorburn and George Frazis, backed up by Kevin Murphy as alternate. I thank them for their commitment to the scheme, and acknowledge the contribution of former banking director Sam Knowles, who stepped down from the board in September 2010 after nearly eight years' service as a director.

As part of our quality assurance of the Banking Ombudsman Scheme, we commissioned Chapman Tripp to review a sample of 30 files. We were pleased to have independent verification that high standards of procedural fairness, confidentiality and effective dispute resolution are being maintained. A second review, by the Retirement Commissioner, confirmed the openness and accessibility of our scheme. We also surveyed participating banks and other scheme members. Respondents expressed high levels of satisfaction with our services, but emphasised the importance of timeliness. Next year we will survey complainants to find out their views on the scheme.

The broad range of achievements recorded in this Annual Report is a tribute to the professionalism and skills of Banking Ombudsman Deborah Battell and the staff of the office. A dispute resolution scheme is ultimately dependent on the quality of its leadership and staff. We are very well served by our small but dedicated team. I thank them, on behalf of the board, for their hard work over the past year.

We look forward to continuing to improve our services in the years ahead, and to lifting the profile of the scheme amongst the general public. The Banking Ombudsman has a key role to play in speaking up for customers about emerging financial issues, drawing attention to customers' rights, and ensuring good quality dispute resolution services for the benefit of customers and financial institutions.

Professor Ron Paterson | Chair

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From the Banking Ombudsman

As I reflect on the last year, three words come to mind: listen, resolve, learn. These words not only describe our approach to dealing with the complaints and issues we face in the banking services industry, but also, I think, to the way we have approached change over the last year.

Twelve months ago, the board was making critical decisions about the future of the Banking Ombudsman Scheme in light of changes to the regulatory landscape. At the heart of their decision-making was the importance of maintaining customer and bank participant confidence in a scheme of nearly 20 years' expertise and reputation.

As a result of their deliberations, we are now a slightly bigger scheme. We have widened our membership – carefully – to include a small number of other deposit-taking organisations that provide banking services, are regulated by the Reserve Bank, and meet our stringent quality criteria. And we are formally covering the majority of banks' subsidiaries and related companies.

I believe we are now a better scheme. Our expansion has meant immediate improvements for both participants and customers. We have taken the opportunity to update and upgrade many of our scheme documents and resources. We have improved both our case management system and online complaints form. We have also increased the maximum amount of compensation we can award customers for inconvenience from $6,000 to $9,000.

Our participants dominate New Zealand's financial markets: not only do most New Zealanders belong to a banking service, but our participants account for 96 percent of the total assets[1] of all deposit-taking institutions that have joined a financial dispute resolution scheme or that are regulated by the Reserve Bank[2].

With this level of market coverage, we can potentially touch the lives of all New Zealanders. We have a real opportunity and responsibility to help improve customers' experiences with their banking service providers and to lift standards across financial markets.

In 2010/11 we helped more than 4,000 customers resolve disputes with their banking service providers and facilitated over $3.8 million in compensation payments to customers. I am delighted to add that we helped customers ranging in age from just 7 months (non-payment of bonus interest on a savings account) to over 90 years old (investment-related).

In the previous financial year, the ING cases dominated our work. We have now all but completed these cases and eliminated our waiting list. As a result of our experience handling these and other investment-related investigations (more than 780 cases to date), we are in a strong position to play our part in ensuring that the new Financial Advisers Act is effective in raising standards in this important industry.

The unprecedented workload forced us to think laterally about how we can resolve complaints more simply and effectively. Our staff have become expert in using facilitation and conciliation methods rather than written assessments. That said, we are at all times mindful that customers may want a full investigation and formal Banking Ombudsman report.

1 Calculated using the total assets listed in KPMG's Financial Institutions Performance Survey Review of 2010. Only companies with at least $100 million of total assets are included in this survey.
2 The calculations include only those companies that have joined a dispute resolution scheme. Registered banks that do not provide financial services to retail clients are exempt from joining a financial dispute resolution scheme.

With investment complaints largely out of the picture, two themes have emerged in terms of our caseload.

First, complaint levels remain historically high. These are matters that have not yet been through a participant's internal complaints process and the high levels suggest that knowledge of our scheme is improving. Typically, we assist complainants to articulate their concerns and forward them to a participant's complaints department. Participants may ask us to assist at this early stage to help facilitate an early resolution. The longer a complaint festers unresolved, the more difficult it becomes to find an acceptable resolution.

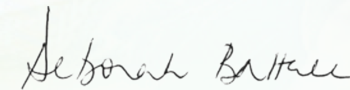
The second theme is a drop in disputes – back to pre-global financial crisis levels. Disputes are complaints that have been through a participant's complaints process without reaching a satisfactory outcome for the customer. In the past two years we've needed to request a supplementary levy from our participants to fund the record dispute levels. This year we've returned $150,000 to our original participants and ended the year with a surplus of $93,000.

Many of the disputes we're dealing with are complex because they involve financial hardship, but the considerable expertise and ability within our team puts us in a strong position to tackle these challenges. My confidence in the team has been further strengthened by the appointments of Nicola Sladden as our Deputy Ombudsman and Emma Corrigan as Enquiries Manager. Both bring extensive experience in other dispute resolution schemes and a real commitment to both lifting our performance and to dispute resolution.

I extend my thanks to both staff and the board – our scheme benefits greatly from their skills and enthusiasm. It is a privilege to be working with such capable people.

We are poised for an exciting year in 2011/12. We expect to see a continued reduction in investigation times, greater use of the scheme, and improved transparency around these measures and the value we deliver.

One thing is abundantly clear: the Banking Ombudsman Scheme is going from strength to strength.



Deborah Battell | Banking Ombudsman

In 2010/11 we helped more than 4,000 customers resolve disputes with their banking service providers and facilitated over $3.8 million in compensation payments to customers.

Our Organisation

Our vision

The Banking Ombudsman Scheme is a leader in investigating and resolving disputes in the financial services sector for the benefit of customers, the industry and New Zealand.

We will go from strength to strength by continually improving our service and resolving cases more quickly and effectively while maintaining integrity, professionalism and independence in everything we do.

Our core values

Accessibility

Independence

Fairness

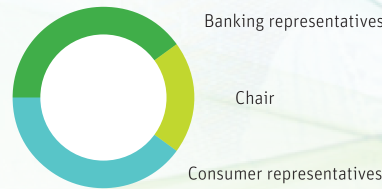
Accountability

Effectiveness

Efficiency

Our board

The Banking Ombudsman Scheme is a company, Banking Ombudsman Scheme Limited, governed by a board on which banking service providers and consumers are represented with neither having a majority. The Chair of the board is independent of banking service providers and consumers. The main function of the board is to ensure the independence of the Banking Ombudsman and to make sure that the scheme is well-run and effective.



Chair

Prof Ron Paterson

Banking representatives

George Frazis (from 1 October)
Andrew Thorburn
Sam Knowles (to 30 September)

Consumer representatives

Suzanne Chetwin
Mary Holm

Alternates

Kevin Murphy (for bank directors)
David Naulls (for Sue Chetwin)
Helen Walch (for Mary Holm)

CHAIR

Prof Ron Paterson

LLB (Hons), BCL (Oxon), ONZM

Chair since July 2010

- Professor of Law, University of Auckland
- Board Member, Royal Australasian College of Physicians

Formerly

- Health and Disability Commissioner
- Deputy Director-General, Safety and Regulation, Ministry of Health
- Fulbright Visiting Professor, Case Western Reserve University
- Harkness Fellow, Georgetown University
- Visiting Law Professor, Universities of Ottawa and British Columbia

CONSUMER REPRESENTATIVE

Suzanne Chetwin

Member since November 2007

- Chief Executive, Consumer New Zealand
- Alternate Board Member, Electricity and Gas Complaints Commission
- Member, Electricity Commission's Market Development Advisory Group
- Member, Department of Building and Housing's Sector Advisory Group on the Building Act Review
- Member, Advisory Panel for Landcare's CarboNZero programme
- Law student, Victoria University of Wellington

Formerly

- Editor, Sunday News, Sunday Star Times and Herald on Sunday
- Editorial Business Manager, New Zealand Magazines Limited

BANKING REPRESENTATIVE

George Frazis

B Eng (Hons), MBA

Member since October 2010

- Chief Executive Officer, Westpac New Zealand Limited
- Chairman, Sir Peter Blake Trust
- Director, Westpac Life NZ Limited
- Director, BT Funds Management NZ Limited
- Member, Advisory Board to the School of Economics, Sydney University

Formerly

- Group Executive General Manager of Business and Private Banking, National Australia Bank
- Senior Management roles, Commonwealth Bank of Australia

CONSUMER REPRESENTATIVE

Mary Holm

MA, MBA

Member since February 2010

- Senior Lecturer in Financial Literacy, University of Auckland (part-time)
- Award-winning personal finance columnist and author
- Member, Financial Markets Authority Board
- Seminar presenter

Formerly

- Member, Savings Working Group
- Member, Capital Market Development Taskforce
- Business Editor, Auckland Sun and Auckland Star

BANKING REPRESENTATIVE

Andrew Thorburn

MBA

Member since May 2009

- Managing Director and Chief Executive Officer, BNZ
- Member, National Australia Bank Group Executive Committee as Group Executive, New Zealand, United States and Asia

Formerly

- Executive General Manager, Retail Banking, National Australia Bank
- Director, MLC, the Wealth Management Division of National Australia Bank

Our people

At the core of the Banking Ombudsman Scheme are the people who answer the calls, emails and letters, investigate cases, and work with participants and their customers to come up with common-sense and fair solutions. Our staff also develop resources to help customers and banking service providers prevent future complaints.

In 2009/10, we introduced a leadership team to help provide better support and direction to staff. This year, Nicola Sladden and Emma Corrigan have joined this team as Deputy Banking Ombudsman and Enquiries Manager respectively.

At 30 June 2011, the Banking Ombudsman Scheme employed the equivalent of 15 full-time staff.

From left to right

Nicola Sladden – Deputy Banking Ombudsman, LLB, MPH (Boston)

Emma Corrigan – Enquiries Manager

Deborah Battell – Banking Ombudsman, BA, MBA

Cheryl Thomson – Executive Administrator

Alan Westbury – Finance Manager, BCA, ACA

Community and Industry Outreach

The Banking Ombudsman Scheme:

- has the potential to touch the lives of virtually all New Zealanders
- makes it easy for customers and participants to access its services
- has high quality participants that fit with the banking services brand
- maintains current knowledge of financial services, products and processes
- helps customers and participants learn from the disputes it investigates and resolves.

For us to do our job effectively, New Zealanders need to be aware of the service we provide.

This means that banking customers know when to come to us for help, and that our participants' front-line staff know when to send them our way.

We also have an important role to play in lifting financial literacy and improving the banking experience. To do this, we share our expertise and insights where we can, and ensure our knowledge of banking practices is current.

Over the last year, we have put considerable effort into our relationships with industry, government, community groups and the wider public to increase their understanding of what we do and what we know, and increase our own understanding of how we can make a difference. This has included:

- improving how we gather industry intelligence so that we can better anticipate complaints
- inviting participants to present to us on banking issues and processes
- working with our counterparts in other dispute resolution schemes within the sector to identify areas where we will need to work co-operatively
- continuing to use media releases and our *Current Account* newsletter to flag potential issues and raise awareness of what we do
- making submissions on the Code of Banking Practice review
- introducing 'quick guides' to provide consumers with plain English information about banking issues
- translating our scheme leaflet into Maori, Korean, Samoan, Simplified Chinese, and Traditional Chinese
- presenting at and participating in a number of industry conferences, consumer days and field days
- entering the social media world (*Like* us at www.facebook.com/bankombnz) where we provide up-to-the-minute advice and insights about the banking services industry.

Perceptions of the scheme

The scheme has had three reviews this year. These reviews are important to maintain public and participant confidence in the quality of the service we're providing.

Chapman Tripp review

Every three years, the board commissions a review to obtain independent assurance that we are operating in accordance with our terms of reference, in particular, the principles of natural justice and effective dispute resolution.

Chapman Tripp undertook the latest review and looked at 30 completed files as well as supporting management information. It concluded that we are:

- correctly interpreting our jurisdiction
- conducting investigations in accordance with the rules of natural justice
- acting appropriately when encouraging parties to agree on a settlement
- making recommendations that are fair and that observe relevant judicial authority and/or principles of good banking practice
- maintaining confidentiality.

The review also noted three areas for improvement:

- timeliness: the review took place in a period of unusually high complaint levels, but Chapman Tripp suggested we could have more strictly enforced response timeframes for complainants and participants.
- impartiality: Chapman Tripp acknowledged that investigators were careful, when facilitating a resolution to a dispute, to state that any view offered to the complainant on the likely outcome of the investigation was personal and that the Banking Ombudsman might reach a different conclusion. The review suggested that the Banking Ombudsman should not see correspondence which records investigators' opinions on the likely outcome of a complaint.
- record keeping: the review noted the importance of keeping complete and accurate files.

Retirement Commission review

Under the New Zealand Superannuation and Retirement Income Act, the Retirement Commissioner must "monitor the effectiveness of persons (whether referred to as ombudsmen or by any other term) who have been appointed (other than under statutory authority) to consider complaints and disputes about savings and investments, and to consider any issues addressed to the Commissioner by any such person and, if appropriate, to make recommendations to that person".

The Retirement Commissioner, Diana Crossan, conducted a review of the effectiveness of our scheme in early 2011. It was a desk-based assessment, drawing on publicly available information, and focused on whether the scheme was effective in meeting the legitimate expectations of consumers.

The Retirement Commissioner concluded that our scheme was open and accessible, and particularly commended our plain English award and mystery shopper surveys. She noted that we had responded flexibly to the doubling of complaints during the initial stages of the global financial crisis, and praised our willingness to address systemic issues.

The review also suggested that we:

- check to ensure KiwiSaver customers are given information on complaints procedures
- monitor customer satisfaction with the increased use of informal methods of resolution.

"The Banking Ombudsman Scheme is an integral part of our customer relations proposition."

"An integral, important service. It is very cost-effective for the consumer. It is objective and independent – and that's important."

"It's a great alternative to court. We get good value for money."

"It is a proven, credible scheme."

- Scheme participants

Participant satisfaction survey

This year, for the first time, we formally surveyed our participants about their attitudes towards the Banking Ombudsman Scheme. As a voluntary membership scheme we need to clearly understand what their expectations of service are, and where we can add value.

We commissioned Adrian Sparrow of EIQ to undertake this review. He found that participants generally think we have performed well through a period of intense activity and transition, but with opportunities for improvement. Participants see our greatest value as being a practical alternative to settling disputes in court. New participants consider there is a strategic advantage in joining our scheme by virtue of our credibility, community standing and knowledge of banking services.

Accessibility to our services, our independence, and fairness, were rated highly. For the future, there are clear expectations that timeliness will improve and that we will become more transparent about the time taken to resolve disputes and about our costs.

Participants' expectations have informed our strategic planning. We are now clearly focused on reducing timeframes and resolving disputes at an earlier stage while maintaining the quality of our service and our independence. We are also reviewing our levy structure in 2011/12.

We plan to repeat this survey in future years, using it as a benchmark against which we can monitor participant satisfaction with our processes. We have also reviewed our approach to measuring customers' opinions of our service, and continuous monitoring will be implemented in 2011/12.

Scheme Compliance

Mystery shopper survey

Every year we conduct a survey of bank branches to determine how well banks are fulfilling their obligation under the Code of Banking Practice to provide information to their customers about the complaints process when customers first make a complaint. This year, we visited over 310 branches in 61 locations across New Zealand.

As well as monitoring Code compliance, the survey is intended to assess:

- how well branch staff are dealing with customers who are seeking information about the complaints process
- branch staff's knowledge of the bank's own complaints process
- branch staff's knowledge of the Banking Ombudsman Scheme and our place in the complaints process
- how accessible the Code of Banking Practice is to customers.

This year's survey results showed minor improvements in some areas. Bank staff were clearly willing to assist our mystery shoppers, but still have a way to go before they could be considered well informed on either their bank's internal processes or a customer's right to an independent Banking Ombudsman assessment.

	2011	2010
Internal complaints process leaflet on display	74%	74%
Scheme leaflet on display	75%	72%
Scheme mentioned without prompting	53%	51%
Average branch staff knowledge of internal complaints process *(score out of 10)*	6.7	6.6
Average branch staff knowledge of BOS *(score out of 10)*	6.6	6.7
Average willingness of staff to help *(score out of 10)*	8.2	8.0

Alongside accurate information, staff attitude is an important measure in our survey. It gives a real insight into the quality of service that customers are receiving.

There were a number of examples of unknowledgeable, dismissive and unfriendly staff, but we were encouraged to see a big jump in staff attitude. The proportion of branch staff who received the top score in terms of willingness to help our mystery shoppers improved from 25 percent to 39 percent in the last year.

We remain concerned that some frontline staff do not inform customers about the Banking Ombudsman Scheme and that only 53 percent mentioned it to our mystery shoppers without prompting. We will be looking for a significant improvement next year.

Complaints follow-up

We define complaints as issues that have not yet been reviewed by a customer's banking service provider. Every complaint that comes to our office is forwarded to the participant who then has three months to attempt a resolution. If the complaint is not resolved to the customer's satisfaction within this time, they can have that complaint referred to us.

We follow up with complainants after the three-month period to check on progress. Our checking has revealed that most complaints are resolved. In one notable case, however, a complainant had given up on his bank because it had failed to contact him. After learning this, we contacted the bank to discover that the complaint had been mislaid. It was ultimately resolved by the bank with a $10,000 settlement.

Cases Handled by the Banking Ombudsman Scheme 2010/11

2010/11 was a year of two halves. The first half was characterised by a focus on resolving remaining ING cases and assigning all cases on our waiting list. In addition, the number of new disputes reduced substantially. Just 37 percent of new disputes were received in the first half of the year.

In the second half we focused on completing the longer running cases that had been on our waiting list as well as progressing the new disputes. By the end of the financial year, only a handful of cases that had been with us for longer than six months remained unresolved, and the average time taken to resolve new disputes had reduced considerably.

"I am sorry to have had to bother your Office with such a relatively trivial matter but you have handled it so well and professionally, with a strong service focus."

- Complainant

Case numbers

Even though we received at least 60 percent more cases in 2010/11 than in any of the five years preceding the global financial crisis, the total number of cases we received was 18 percent below the previous year. This is mostly because we had received all the ING cases by the end of March 2010.

Annual statistics by number of cases 2001-2011

Activity	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11
Received	1102	1228	997	766	774	913	949	1888	1924	**1587**
Completed	1103	1250	1080	799	780	906	913	1590	1974	**1857**
Carried Over	233	211	128	95	89	96	132	430	380	**110**

Removing the effect of ING, the number of new cases received increased by nearly 10 percent. This increase is entirely accounted for by an upsurge in enquiries that have most likely arisen from the new requirement for financial service providers to belong to a dispute resolution scheme.

The number of cases completed decreased, by 6 percent. This is related to the reduction in new cases received. The numbers were nevertheless much higher than in any year prior to 2009/10.

Despite continuing high demand for our services, we were able to dispense with the waiting list and reduce the number of cases carried over at the end of the year from 430 and 380 in the previous two years to 110. This positions us well to speed the resolution of new cases.

Definitions

*A **case** is any enquiry, complaint or dispute.*

*A **complaint** is a matter that appears to fall within our terms of reference but has not been considered by the participant's internal complaints process.*

*A **complaint facilitation** occurs when we assist in the resolution of a complaint that is still under consideration in a participant's internal complaints process.*

*A **conciliation** is where the parties to a dispute, together with the assistance of an independent conciliator, attempt to find a resolution to their dispute. This can take place either in person or by telephone.*

*A **dispute** is a complaint that has been considered by the participant's internal complaints process without reaching a resolution that is satisfactory to the complainant.*

*A **dispute facilitation** is a dispute that is resolved at an early stage without the need for a formal investigation and assessment.*

*An **enquiry** is a complaint that is banking-related but that is clearly outside our terms of reference or is not about a participant of the scheme.*

***Participant** refers to banks and other deposit-taker members of the scheme, including their subsidiaries and related companies.*

Use of the scheme

Participants use the Banking Ombudsman Scheme differently according to their individual business model or philosophy. Some consider referral to the scheme an indication that their own internal dispute resolution system has failed, others make a business decision to settle a complaint rather than incur the scheme's costs (these are typically low value complaints). Some participants inform us of the complaints they have received (and resolved), while others proactively offer their customers the opportunity to have a matter independently assessed as part of a customer-centred approach to business. In addition, some participants opt to send cases to us at an early stage of the dispute resolution process while others prefer to wait until an impasse or deadlock has been reached.

Because of these differences, the information on cases received (as shown in the adjacent table) should not be viewed as a definitive indication of how customers view their banking service providers, or as a measure of the success of participants' internal dispute resolution processes.

The table, which excludes ING cases and cases about non-participants, shows that cases received are strongly correlated with market share (as measured by a participant's share of total assets held by all participants in the scheme).

New participants accounted for three new enquiries and seven new complaints in 2010/11, but no new disputes.

Total cases received – by participant

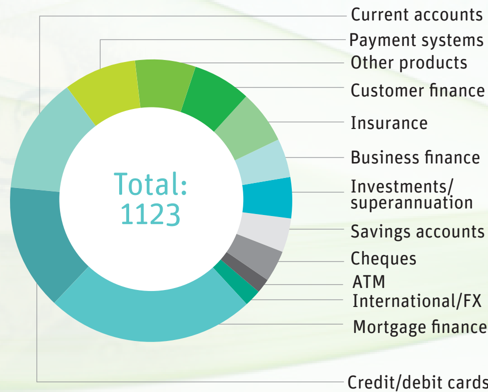
Scheme participant	09/10•				10/11					2010 Share of total assets^
	Enquiry*	Complaint	Dispute	Total	Enquiry*	Complaint	Dispute	Total (n)	Total (%)	
Large participants^										
ANZ National Bank#	70	322	109	501	96	315	75	486	33.9%	31.0%
ASB Bank	22	135	38	195	52	159	43	254	17.7%	19.1%
BNZ	31	138	59	228	66	128	41	235	16.4%	19.1%
Westpac	32	189	80	301	64	189	45	298	20.8%	19.8%
Total large participants	**155**	**784**	**286**	**1225**	**278**	**791**	**204**	**1273**	**88.7%**	**89.0%**
Medium participants^										
Citi NZ	-	-	-	-	-	-	-	-	-	0.7%
Heartland Building Society	-	-	-	-	2	1	-	3	0.2%	0.6%
HSBC NZ	2	5	6	13	6	12	3	21	1.5%	1.4%
Kiwibank	25	96	6	127	17	72	7	96	6.7%	3.4%
Rabobank NZ	1	4	3	8	5	2	1	8	0.6%	2.6%
SBS Bank	-	3	2	5	3	6	4	13	0.9%	0.8%
TSB Bank	2	7	3	12	3	7	3	13	0.9%	1.2%
Total medium participants	**30**	**115**	**20**	**165**	**36**	**100**	**18**	**154**	**10.7%**	**10.7%**
Small participants^										
Bank of Baroda NZ	-	-	-	-	-	1	-	1	0.1%	0.0%
Credit Union Baywide	-	-	-	-	1	3	-	4	0.3%	0.0%
Credit Union South	-	-	-	-	-	3	-	3	0.2%	0.0%
Nelson Building Society	-	-	-	-	-	-	-	-	-	0.1%
PGG Wrightson Finance	-	-	-	-	-	-	-	-	-	0.2%
Total small participants	**0**	**0**	**0**	**0**	**1**	**7**	**0**	**8**	**0.6%**	**0.3%**
Total	**185**	**899**	**306**	**1390**	**315**	**898**	**222**	**1435**	**100.0%**	**100.0%**

• 2009/10 figures are different from those included in the 2009/10 Annual Report as complaint facilitations are now classified as disputes.
* Excludes telephone enquiries and non-participant enquiries.
^ Participants have been classified according to total assets as detailed in the KPMG FIPS Review at 31 December 2010.
# Excludes ANZ/ING cases.

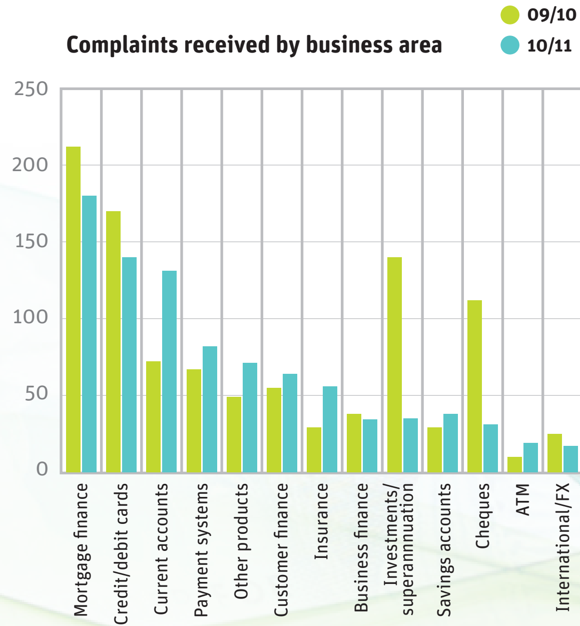
What the issues were

The global financial crisis left many New Zealanders in difficult financial circumstances, struggling to keep up with debt repayments, especially on their mortgages and credit cards (New Zealanders' largest and most common forms of debt). At least half of all new complaints and disputes received during the past year related to mortgage finance, credit/debit cards or current accounts.

Complaints and disputes received 2010/11



Complaints received by business area



This year we also saw a big jump in the proportion of complaints about current accounts, including complaints about accounts being frozen or closed without the customer's permission, participants failing to action customers' requests to close accounts, and complaints about excessive fees.

Misrepresentation of home loan contracts – including allegations of failure to honour an agreement to lend – and complaints about early repayment fees were also key concerns this year. Other complaints included allegations of negligent lending and concerns about participants unfairly pursuing customers for debt repayment.

The reduction in investment-related complaints reflects the economic cycle and the fact that most investment fund and company failures had occurred before July 2010. The reduction in cheque complaints reflects the fact that customers are choosing other forms of payment.

We received twelve enquiries or complaints relating to the Canterbury earthquakes. These involved insurance (we consider complaints relating to insurance sold by some participants), failure to advise of an Earthquake Commission (EQC) payment, use of EQC payments to repay mortgages (banks' right of offset) and misunderstandings about mortgage holidays. We subsequently included advice about mortgage holidays in an issue of *Current Account* and developed a quick guide on hardship to help make sure customers understood that mortgage holidays are not free and ultimately increase total repayment amounts.

"I love our independence and being able to look at problems from all angles."

- BOS staff member

Resolving disputes

Disputes are the cases we investigate and resolve. In 2010/11 we completed 477 disputes. There were 267 non-ING disputes, of which 68 percent began as complaints or enquiries made directly to our office. The remaining 32 percent were referred to us by participants.

Disputes completed – by participant

Scheme participant	Jurisdiction declined		Abandoned		Withdrawn		Settled		Not upheld		Partially upheld		Upheld		Award		Total by bank	
	09/10	10/11	09/10	10/11	09/10	10/11	09/10	10/11	09/10	10/11	09/10	10/11	09/10	10/11	09/10	10/11	09/10	10/11
Large participants^																		
ANZ - Non ING#	11	**7**	8	**1**	4	**10**	23	**13**	7	**2**	1	**5**	-	**-**	-	**-**	54	**38**
ANZ - ING only*	2	**-**	16	**30**	29	**26**	272	**133**	12	**15**	12	**4**	6	**2**	-	**-**	349	**210**
ASB Bank	4	**7**	7	**11**	4	**5**	18	**13**	4	**9**	3	**2**	1	**-**	-	**-**	41	**47**
BNZ	5	**10**	22	**12**	9	**8**	23	**10**	7	**10**	4	**1**	4	**-**	-	**-**	74	**51**
National Bank#	12	**16**	15	**5**	5	**6**	18	**18**	7	**7**	7	**4**	1	**-**	-	**-**	65	**56**
Westpac	11	**10**	18	**8**	10	**10**	45	**16**	15	**9**	3	**2**	1	**2**	-	**-**	103	**57**
Medium participants^																		
Citi NZ	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**
Heartland Building Society	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**
HSBC NZ	3	**1**	1	**-**	-	**-**	3	**1**	1	**1**	-	**-**	1	**1**	-	**-**	9	**4**
Kiwibank	2	**4**	1	**3**	-	**-**	7	**-**	-	**-**	-	**-**	-	**-**	-	**-**	10	**7**
Rabobank NZ	1	**-**	1	**1**	-	**-**	-	**-**	2	**1**	1	**-**	-	**-**	-	**-**	5	**2**
SBS Bank	1	**1**	-	**-**	-	**-**	-	**1**	-	**-**	-	**-**	-	**-**	-	**1**	1	**3**
TSB Bank	2	**1**	1	**-**	-	**-**	1	**1**	-	**-**	-	**-**	-	**-**	-	**-**	4	**2**
Small participants^																		
Bank of Baroda	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**
Credit Union Baywide	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**
Credit Union South	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**
Nelson Building Society	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**
PGG Wrightson Finance	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**	-	**-**
Total	54	**57**	90	**71**	61	**65**	410	**206**	55	**54**	31	**18**	14	**5**	-	**1**	715	**477**

^ Participants have been classified according to total assets as detailed in the KPMG FIPS Review at 31 December 2010.

\# Although the ANZ and National Bank brands both sit underneath the umbrella of ANZ National Bank Limited, they have been reported on separately as both brands are high-use participants of the Banking Ombudsman Scheme.

* Cases relating to the ANZ/ING issue have been ring-fenced as this was a one-off systemic issue.

Parties to the disputes – participants

Following expansion of the Banking Ombudsman Scheme, we now cover some 63 entities as well as staff financial advisers separately registered by our participants. For ease, however, we will continue to report on participants as umbrella organisations.

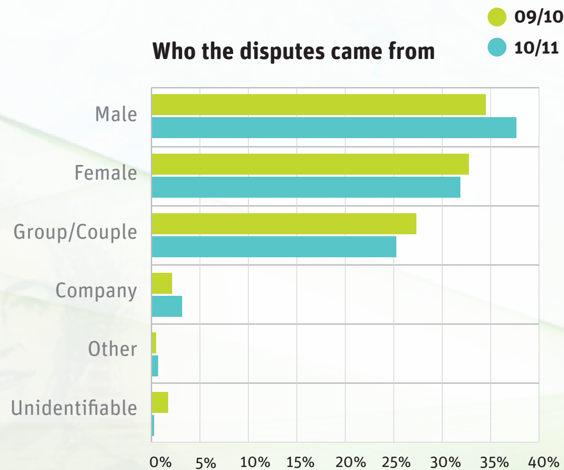
Removing the effect of ING, we completed 99 (27 percent) fewer disputes last year than in 2009/10. Medium-sized participants, who already used our scheme relatively infrequently, referred 36 percent fewer cases. Large participants referred 26 percent fewer.

As complaint numbers have remained high and our complaint follow-up has not revealed serious issues with bank-related resolution, it is likely that the drop in dispute numbers can be explained by an improvement in participants' customer service and complaints-handling processes.

Of particular note, however, was that we issued an award for only the third time in the scheme's history. Awards are issued when a participant does not agree with our recommendation.

Parties to the disputes: customers

In 2009/10, we saw an increase in the proportion of disputes from groups/couples, brought about by investment issues and early repayment fees. In 2010/11 we started to see a reversal in this trend, with more coming from male customers, as the nature of disputes changed.



With investment-related issues falling away, we anticipate the percentage of group/couple complainants to further reduce.

Our scheme also covers companies, but as our compensation is limited to losses of less than $200,000, parties are primarily smaller businesses and trusts. Over the past year, the number of disputes coming from companies has increased, with several disputes arising from tough economic conditions in the wine and property industries.

Disputes outside our terms of reference

We monitor our jurisdictional decisions to ensure that we are consistent in our decision-making and not excluding disputes without good reason.

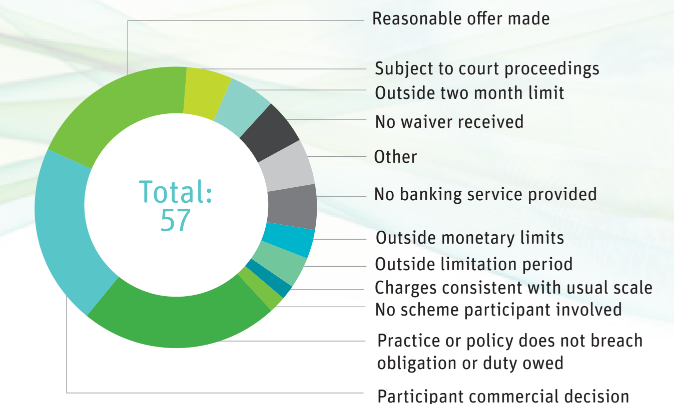
In the past year, all of the disputes we completed relating to ING funds fell within our terms of reference. However, of the other disputes we completed, the proportion that fell outside our terms of reference increased from 14 to 21 percent. This reflects an increase in disputes relating to hardship and financial difficulties. In these situations complainants may have been trying to:

- dispute the requirement to fund a shortfall on the sale of a property (including payment of early repayment costs on breaking fixed term mortgages)
- negotiate the delay or cancellation of a mortgagee sale
- negotiate repayment arrangements that have been unacceptable to the lender
- recall debts from collection agencies
- protect their ability to borrow in the future by requesting the removal of an adverse credit listing.

Although we always enquire into these types of matters, many fall outside our jurisdiction because:

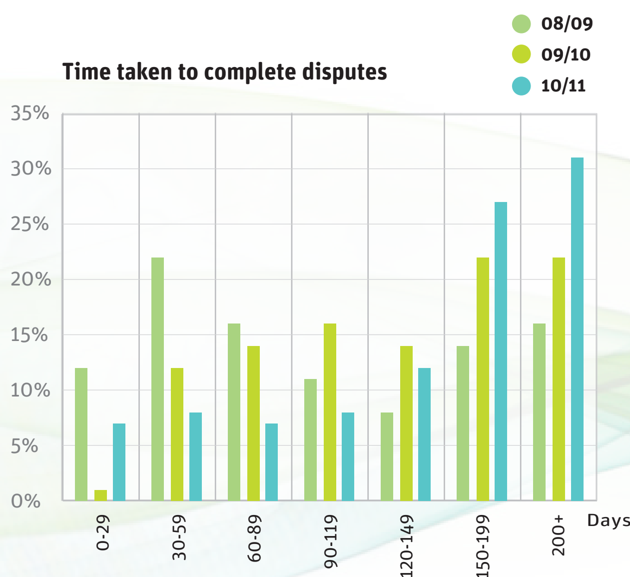
- they involve a participant's commercial judgement
- the practice or policy does not breach an obligation or duty owed to customers
- the participant has made a reasonable offer of compensation.

Looking to the future, we may be able to help resolve disputes previously outside jurisdiction. This is because our terms of reference have changed to enable participants to waive jurisdictional constraints if they consider our intervention may assist.



Timeliness

During 2009/10 and 2010/11, the time we took to complete disputes was skewed by our waiting list – some disputes had to wait up to six months to be allocated. We nevertheless ensured that customers facing a deteriorating position or who had a genuine need for urgency were given priority.



With such high dispute numbers, we have implemented several new initiatives to resolve cases more quickly. We:

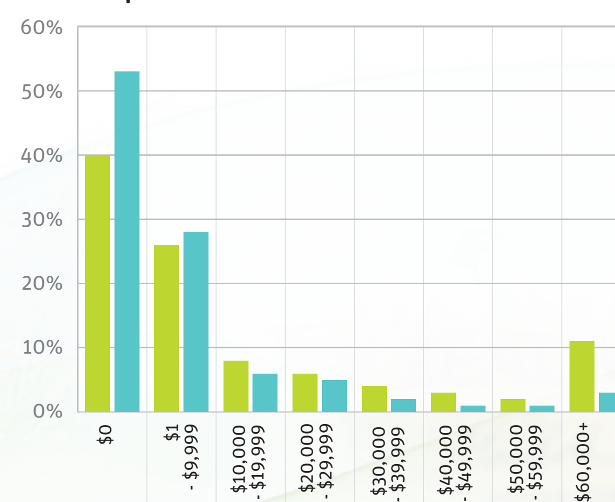
- promoted early resolution methods such as facilitation and conciliation
- provided advanced training in investigative interviewing
- condensed the format of our written reports
- introduced systems improvements
- continued to document our approaches to issues, including introducing an internal wiki (a resource staff can go to for quick guidance on processes, policies and issues they're dealing with).

In 2010/11, we resolved 55 percent of non-ING disputes at an early stage – that is, without the need for a written decision. By the second half of the year, we took, on average, 39 working days to close 58 new disputes received since 1 January 2011.

Compensating customers

ANZ's ING customers received compensation of $2,919,545 through our dispute resolution process last year. Further compensation of $913,410 was paid to other customers.

Compensation amounts were, however, lower this year on average. This is because the proportion of ING disputes that led to a favourable outcome for complainants decreased from 81 percent in 2009/10 to 66 percent in 2010/11. Similarly, the average amount of compensation received by these complainants



decreased from $39,118 in 2009/10 to $13,903 in 2010/11. This is typically because disputes that required a full written assessment or that resulted in an unfavourable outcome for complainants generally took longer to resolve and had not settled in the previous year.

On the other hand, average compensation for non-ING customers rose from $1,150 last year to $3,421 this year. This is due to the larger sums of money involved in loan defaults and mortgage finance disputes.

Systemic issues

From time to time, we are alerted by a complaint that we think has the potential to affect many customers. The ability to identify and assist in the resolution of systemic issues is one of the hallmarks of an effective ombudsman scheme. We are pleased to say that our scheme participants voluntarily co-operate with enquiries into such complaints. To formalise our process, however, the board approved a systemic issues protocol, which is now in use.

Under recent legislation, we are obliged to refer any series of material complaints to the relevant licensing authorities (in most cases, the Reserve Bank). We also have a new requirement to share information with other dispute resolution schemes and with the Registrar of Financial Service Providers.

"You have been responsive, empathetic, efficient and pragmatic in your dealings with my complaint and I very much appreciate it."

- Complainant

ING

The failure of two ING funds, the Regular Income Fund (RIF) and Diversified Yield Fund (DYF), which were sold through the ANZ financial adviser network, is the most significant systemic issue the Banking Ombudsman Scheme has been involved with.

Both funds were unit trusts that invested in a range of structured credit assets, primarily "collateralised debt obligations". These are typically corporate bonds, loans, and other receivables. Such structures are complex, but the funds essentially enabled retail investors to participate in and take on the risks of a market that was formerly confined to banks and institutional investors. The underlying collateral was spread across a large number of industries, countries, and corporates. Initially the funds performed well but during 2007 the value of the units began to decline and by March 2008 the funds had been frozen. This decline was triggered by the events in the United States that ultimately led to the global financial crisis.

Between 2003 and 2007, when the RIF and DYF were promoted, many investors were looking for returns that appeared to be relatively safe, but gave a higher return than term deposits. The RIF and DYF appeared to fill a gap in the market. The funds, however, did not aim to invest in risk-free assets. Risks included the possibility of a capital loss, returns being lower than expected, the funds becoming insolvent, and changes in interest rates. There was no capital guarantee or cap on losses.

The funds were sold to some 15,000 investors, about 3,000 of whom were ANZ customers. Unfortunately, the risks associated with the funds were much higher than many investors – and some advisers – understood. The funds were represented as "targeted average credit rating of BBB". The accuracy of this representation was investigated by the Commerce Commission, which subsequently entered into a settlement with ANZ and ING.

Our investigation revealed that while the impact of the global financial crisis could not have been foreseen, there was nevertheless clear evidence that:

- some advisers mis-sold the products, representing them as less risky than they were
- some advisers engaged in poor advisory practices by, for example, signing less sophisticated investors up to the funds without sufficient explanation of the risks, or recommending allocations that exceeded the 20 percent level considered acceptable for low to moderate risk investors.

On the positive side, we were pleased to be able to work with ANZ to bring about a much more satisfactory resolution for its affected customers than those people who invested in now defunct finance companies.

All investors were ultimately returned a minimum 60 to 62 cents per unit invested plus the opportunity to invest their refunds at an above-market rate (8.3 percent) for up to five years.

Many customers who complained to us also received additional compensation. In total, customers who came through the Banking Ombudsman Scheme received $26,392,597. Returns varied from 86 percent of the capital originally invested through to more than 130 percent. Individual returns depended on how much investors had managed to withdraw before the funds were frozen, how much they had reinvested during the term of their investment, how long they had been invested, and whether they chose to reinvest at the above-market rate.

In addition, many investors also received further compensation through the Commerce Commission's settlement and through claiming tax losses. Some ANZ customers also received compensation directly from ANZ rather than through our scheme.

The constant theme arising from affected customers was that they chose to invest their money through banks because they trusted them. Even though the RIF and DYF application forms stated that customers could lose their capital, many did not understand that they could potentially lose the lot, or a substantial proportion of it.

The key learnings for banks relate to:

- better control and education of the financial advisory network
- better information about risks
- improved due diligence on products and their suitability for types of customers
- ensuring that advisers and customers are kept up to date with any changes to the composition of funds and associated risks.

From our perspective, we now have a large amount of experience in assessing disputes involving financial advisers. The ING disputes, along with those relating to other participants, bring the total number of investment-related complaints we have investigated to more than 780 since 2007. This positions us well for our role under the Financial Advisers Act.

KiwiSaver

In the last financial year, investors who had been in the KiwiSaver scheme for three years became eligible to put their savings towards the purchase of a first home. We received a complaint from two KiwiSaver members after they had been refused access to their funds. This was because their applications had not been approved before the settlement date of the property they had purchased. Under the terms of the KiwiSaver scheme, funds must be applied to the purchase price of the property. You cannot first purchase a property and then apply the funds.

The complainants argued that the participant had breached both the KiwiSaver Act and the Fair Trading Act because the application form was not clear about this requirement.

After analysing the complaint, we concluded that the complainants must not have referred to the explanatory information that was provided to them at the time they received their application form. Had they read the information in conjunction with the form, it would have been very clear that they were required to go through a pre-approval process first, and that they needed approval before they could access their funds. In addition, one of the complainants wasn't eligible because she had not been in the KiwiSaver scheme long enough.

During the investigation, we asked all participants that offer KiwiSaver whether they had received similar complaints. We also asked to see relevant samples of brochures and forms.

The bank in question took the opportunity to completely revamp its brochures – this will undoubtedly help prevent future problems. We also highlighted the issue to other participants so they could improve their information and issued a media release to inform the public about the specific conditions attached to first home purchases.

No further complaints of this nature have since been received.

Voluntary administration and wage payments

We received complaints from a number of staff who worked for a company that went into voluntary administration. They complained that their wages, which had been credited to their accounts the day before the company went into administration, had been reversed out of their accounts. The employees said they were advised by their employer, when the administration was announced, that to secure their wages, they should immediately transfer the money out of their normal account into a different one. This step did not, however, secure the money: the reversal of the transactions caused their usual receiving accounts to be overdrawn. This in turn meant that automatic payments and direct debits were dishonoured.

We learnt that the reason for the dishonour was that the company had had insufficient funds to make the wage payments. It appeared that the transactions were processed as "uncleared" funds. The transactions were dishonoured within 24 hours and the reversed transactions showed in the employees' accounts the following day.

Under the Payment NZ Rules for the Bulk Electronic Clearing System, transactions can be dishonoured within two days if there are insufficient funds in the payer's account to pay them.

"I love the fact that although you pay attention to the law, we have the freedom to look at what is fair and reasonable. That gives us the ability to get the best outcome in the circumstances."

- BOS staff member

In this case, as the dishonour was processed within the two-day timeframe, the employees' banks had no option but to accept the dishonour.

It was clear that the company's employees had been inconvenienced by the misguided advice from their employer to transfer their wage payments out of their normal accounts, and by the dishonours. Many customers time payments to coincide with their salary deposits, and a disruption to this can cause considerable difficulties. However, our initial enquiries did not reveal a breach of a duty owed to the employees by their banks.

The dishonours had been processed in accordance with the Payment NZ Rules. While the employees did not know that their salary payments had been processed as uncleared funds, their assumption that salary payments were cleared funds was not the result of what their own banks had told them.

We used our systemic issues protocol to gather information about the case. This enabled us to provide the affected customers with an explanation for what had happened within two working days of the first complaint.

Typical complaints

The main issues this year, as in recent years, have been mortgage and investment-related. A common theme is hardship: situations where customers have lost money or have not been able to repay loans.

In other cases, customers have complained about unfairness. Underlying these complaints were banks' responses to lending, and customers who expected that banks would continue to lend as they did prior to the global financial. This included allegations of irresponsible lending, banks declining to accept repayment proposals and banks refusing to lend or declining to support existing lending as it came up for renewal. The reality was, however, that the economic environment had changed significantly.

Credit card defaults

The first case involves a customer in financial difficulty and illustrates the importance of both customers and banking service providers managing lending defaults effectively as early as possible. This case is also an example of a complaint being resolved and a repayment arrangement reached through facilitation.

CASE STUDY

Ms Y had a credit card with a $10,000 limit. She had a good account history but had fallen on hard times. Her partner suffered major health problems and was unable to work. As their income dropped, expenses – particularly medical costs – increased. Because Ms Y's partner was unable to tolerate the effects of some prescription drugs, they sought alternatives for which no subsidy was available. Ms Y also subsequently became unwell and was on a sickness benefit.

Ms Y defaulted on payments to her credit card. She entered into several repayment arrangements, but was unable to keep to them, and the debt grew. After many calls and letters, the bank said that it required repayment of $200 per month. Ms Y said that she told numerous bank staff about her circumstances and her inability to meet the required payments, but none offered any assistance.

After two years, the account was referred to the bank's collections team. Ms Y was then told that she could apply for an interest freeze on the debt and lower repayments, but that she needed to complete a statement of position and provide verification of her partner's health problems. After she did this, the bank agreed to reduce her payments to a much more affordable $20 per fortnight for a period of six months and to freeze interest during that six month period.

Ms Y complained to us that the bank should have offered such an arrangement at a much earlier stage, given that she had previously advised bank staff of her circumstances.

We reviewed the bank's records of its contact with Ms Y. We could see that the bank had attempted to obtain regular repayments for some time. We were unable, however, to find evidence that Ms Y had given the bank details of her particular circumstances until she had spoken to the collections team. This was not to say that such information had not been provided to the bank, but there was no independent evidence of it.

We facilitated a settlement of the complaint. The bank noted that Ms Y did not dispute owing the debt and that she had agreed to the terms and conditions of the credit card, which contained provisions about repayment of debt. It also noted that the provisions of the Credit Contracts and Consumer Finance Act did not apply in this case. Under the Act, a borrower cannot access the statutory hardship provisions if they are already in default.

After discussions, the bank agreed to remove all the interest and fees on the debt which had accrued since Ms Y's partner became unwell. It also extended the $20 per fortnight repayment arrangement and the interest freeze for a further six months. The bank also advised Ms Y that it would be willing to consider an extension of these arrangements after the six months expired, depending on her circumstances at that time. Ms Y accepted the bank's offer.

Irresponsible lending

This next case is typical of disputes alleging irresponsible lending. Many customers believe that banking service providers have a duty to analyse their investment ventures for viability when assessing applications for credit. Such a duty may arise if the banking service provider assumes such a duty – but not in the normal course of business.

Banking service providers are concerned about having sufficient security for the lending and seek comfort that prospective borrowers have sufficient income to make the required loan repayments. Customers must satisfy themselves about the viability of planned ventures.

CASE STUDY

Mr and Mrs D were looking at buying an apartment as an investment. They already owned a residential property and their bank held a mortgage over this property, but for this transaction, they were dealing with a broker.

The broker approached another bank on Mr and Mrs D's behalf for finance to purchase the apartment. This bank provided pre-approval of finance subject to a number of conditions, including the apartment being larger than a specified size and having a certain minimum value.

The bank was duly supplied with a valuation of the apartment, a rental assessment, and a valuation of Mr and Mrs D's residential property. It provided a formal offer to refinance the lending with their current bank and to finance the purchase of the apartment. Mr and Mrs D accepted the bank's offer of finance.

However, Mr and Mrs D did not receive the rental income they expected from their apartment and were unable to meet loan repayments, body corporate fees and rates. They eventually sold both their residential home and the apartment but were left with a significant shortfall owing to the bank.

Mr and Mrs D complained that the bank should have noted that the apartment's valuation recorded that it was smaller than the size mentioned in the bank's pre-approval letter and that its value was lower than the minimum value specified. Given that the conditions specified in the pre-approval letter were not met, Mr and Mrs D said the bank should have told them of this and declined to provide finance.

They also considered the bank should have been the "final filter" for the viability of the investment. They sought to be released from their obligation to repay the shortfall.

In Mr and Mrs D's case, nothing in the circumstances of the application for finance indicated that the bank had assumed a duty to advise them about the viability of their venture. The file showed that the bank had assessed the application against its lending criteria and had been satisfied about both its security position and Mr and Mrs D's capacity to repay the loan. We also noted that the valuation of the residential property came in higher than the amount mentioned in the pre-approval.

We did not consider that the bank was obliged to advise Mr and Mrs D that the apartment was slightly smaller. The valuation was provided to the bank by the broker. The bank could not have known that Mr and Mrs D had either not seen the valuation or had failed to note the details. In any event, the difference in size from the bank's initial requirement was minor.

We were also not persuaded that the complainants would not have proceeded with the investment if the bank had advised them that it was still willing to lend even though the apartment was slightly smaller.

We recommended that Mr and Mrs D withdraw their complaint. They did not accept this and asked us to review the file. We considered Mr and Mrs D's further submissions but were not persuaded to alter our findings.

Mortgagee sales

We have assessed a number of mortgagee sale disputes this year: a sign of the times. The following case illustrates a key concern – that a property may have been sold for less than it was worth. This case explores the roles of the valuer and real estate agent.

"Even when you can't help people, at least you know that you have taken their complaints as far as you can."

- BOS staff member

CASE STUDY

Mr R's house was sold in a mortgagee sale. He believed his bank, acting as mortgagee, had failed to take reasonable care to get the best price for his house. He raised concerns about the bank's reliance on a valuation from a registered valuer and deficiencies in the real estate agent's sales process. Mr R said the valuer's costs were exorbitant and the valuation substandard, the real estate agent selected by the bank was unsuitable, and the real estate agent mismanaged the sale of his property.

Under the Property Law Act, the mortgagee (the bank) owes the mortgagor (Mr R) a duty to take reasonable care to obtain the best price reasonably obtainable at the time of sale.

After investigating, we found that it was good practice for the bank to obtain a valuation from a registered valuer and that it was entitled to rely on that valuation when deciding the price to accept for the property.

With respect to complaints about the real estate agent, Mr R was concerned that the agent belonged to a national chain that was new to the area and had not adequately advertised the property for sale.

As a real estate agent is the bank's agent, the bank must accept responsibility for the agent's actions. If a real estate agent's sale process is deficient, causing a property to sell under value, the bank is responsible for the loss. However, in a mortgagee sale, a property is often sold for less than the owner might otherwise expect despite a real estate agent's best efforts.

We did not accept that being new to the area was sufficient reason to exclude the real estate agent. A review of the agent's marketing plan also showed that the property was fairly advertised. Finally, we noted that the agent first attempted to auction the property in February, when Mr R's research suggested a better price would be obtained by waiting until March. The courts have previously considered this point and found there is no obligation on the mortgagee to sell a property at a particular time of year.

We were satisfied that the bank had taken reasonable care to obtain the best price reasonably obtainable at the time of sale and did not uphold the dispute.

Breaking term deposits

Some customers are not aware that they incur a penalty when terms deposits are broken. This year, we publicised this fact because we anticipated that customers might need to break term deposits if they were experiencing hardship or if they decided to take advantage of other investment opportunities. This case illustrates the need for banking service providers to give customers information about penalties and costs.

CASE STUDY

Mr S placed over $400,000 in a term deposit with his bank for a two year term at 5.25 percent interest. Just over a year later, Mr S visited the bank and discussed breaking the deposit to buy a property. Mr S asked the staff member whether there would be any problems or penalties. He was told that he would just receive interest on the remaining funds in the term deposit over the rest of the term.

On settlement day, Mr S went to the bank for a bank cheque to pay the settlement sum. He was told he would have to pay an interest recovery fee of $6,600 for breaking the deposit. Mr S disputed the fee as he had not been warned about it earlier. He then made enquiries at his other bank where he also held a term deposit with sufficient funds to buy the property. His other bank advised him of a similar fee. Mr S considered he had no option but to break the term deposit and pay the interest recovery fee so he could pay for the property he was committed to purchasing.

When Mr S complained to the bank it considered it had no obligation to refund the fee. It referred to the terms and conditions for the term deposit that allowed it to charge an interest recovery fee, and to a diary note made two years previously referring to the calculation of break penalties. It considered Mr S's query about whether there would be any problems or penalties involved was not the right question, and that he should have asked the bank to review the details of breaking a term investment.

Although the terms and conditions allowed the bank to charge an interest recovery fee, we considered the failure to alert Mr S to the fee was conduct likely to mislead and therefore a breach of the Fair Trading Act. The information a bank provides should not be dependent on the customer asking the right question. A customer cannot be expected to ask what they do not know.

We then considered how the complaint might best be resolved, taking into account the position the customer would have been in if the error (the non-disclosure) had not occurred. Mr S said he would not have purchased the property if he had known about the interest recovery fee. However, he had bought the property and it was not reasonable or practical to reverse this purchase.

The interest recovery fee was always payable by Mr S if he wanted to break the term deposit to buy the property, so the fee was not a direct loss. He had received a benefit from breaking the term deposit, by being able to purchase the property. However, the bank's failure to give the correct advice had caused Mr S inconvenience. It would have been stressful to discover the interest recovery fee on settlement day. We proposed compensation of $750.

The bank accepted our proposal but Mr S did not. He considered the compensation failed to take into consideration the amount of money he had invested with the bank and the length of time he had been a bank customer. The interest recovery fee meant the interest rate he received dropped from 5.25 to 1.15 percent.

We considered Mr S's submissions but maintained our view that $750 was reasonable. Mr S ultimately accepted our recommendation.

Joint lending

Joint lending can be fraught with difficulties as both parties are liable for any debts incurred and banking service providers can pursue either party for all or a portion of the debt. It can be especially problematic in relationship breakdowns. The following case involves a complainant who thought he had entered into joint lending, when he had not, but it illustrates many of the relevant issues.

CASE STUDY

Mr G and his partner Ms L visited their bank and asked for a joint personal loan of $25,000. About a third of the loan was to be used to consolidate debt Mr G held with another bank, and the rest was to be used for joint purchases.

The bank agreed to the loan and an account was set up in both names to fund the loan repayments. Both incomes were directed to this account and Mr G recalled the bank officer saying that they would both be responsible for the loan. Regular account statements were also sent in both names. The loan, however, was set up in Mr G's name only.

Some 20 months later, Mr G and Ms L separated. The loan balance at this point was about $14,000. Ms L rang the bank and asked for her name to be taken off the loan account. The bank did so. When Mr G rang the bank to find out why it had done this, the bank said that the loan was not a joint personal loan. It explained that Mr G was the account owner for the loan and solely responsible for its repayment. Ms L was just an additional cardholder and had no liability.

Mr G complained that when he and Ms L applied for the loan, the bank had led him to believe it was a joint personal loan. He also said that the loan funds were mainly used for joint purposes and he would not have agreed to a loan in his name only. Mr G believed that Ms L should be liable for half of the remaining balance of the loan.

The bank believed that it had provided Mr G and Ms L with the correct documentation and that a different process would have been followed for the approval of a joint personal loan. Further, it said that only Mr G's salary had been taken into account when assessing the lending.

The Code of Banking Practice requires that banks provide customers with timely information to help them understand how their accounts and products or services operate, so that customers can decide whether they are appropriate for their needs.

We decided that although there was insufficient information to find that the bank officer told Mr G and Ms L that they would both be responsible for the loan, the bank did bear some responsibility for Mr G's mistaken belief that a joint personal loan had been set up.

The couple had visited the bank to set up a joint personal loan, and they were not specifically advised that the loan had not been set up in this way. We also considered that customers would not know what processes banks follow for different products or what form of wording they use on their documents for different products. Further, Mr G wasn't to know that only his salary was taken into account in making the credit decision on the loan.

We noted that the application referred to both Mr G and Ms L as applicants, and that the loan statements were addressed to them both. This would have created the impression that the loan was, in fact, joint.

We then considered whether Mr G had suffered a financial loss or inconvenience as a result of the bank's failure to discharge its obligations under the Code. We were unable to find that he had suffered a loss. Had the loan been set up as a joint personal loan, he and Ms L would have been "jointly and severally" liable. This means that if the loan wasn't being repaid, the bank would have had the power to require either one or both of them to repay it. It would have been at the bank's discretion which party it sought payment from. Banks do not offer loan products with liability apportioned in the sense of a 50/50 split between account owners.

Thus, had the loan been set up as a joint personal loan, Mr G may have been in exactly the same position – with the bank requiring payment from him alone.

As we couldn't determine with any certainty what would have occurred had the bank given Mr G timely information about its loan product, we could not establish whether Mr G had suffered a financial loss.

We were, however, satisfied that Mr G had suffered significant inconvenience. He was disturbed to find that Ms L had no liability for the loan. Furthermore, if the loan had been set up on a joint basis, it may have been easier for Mr G to negotiate repayment terms with his former partner. While it was not appropriate for us to speculate on the outcome of any such discussions, the bank's failure to give Mr G timely information about the way the loan was set up compromised Mr G's opportunity to have these discussions with Ms L.

We recommended that the bank reduce the loan debt by $2,000 in recognition of the inconvenience Mr G had suffered. Both parties accepted the recommendation.

Investments

Over the past four years, we have assessed some 780 investment-related complaints. This case illustrates the importance for both banking service providers and customers of ensuring that customers are comfortable with the level of risk that is inherent in an investment. If a customer does not want their investment to decrease in value, or is likely to be stressed by such fluctuations, market-traded investments are unlikely to be appropriate.

CASE STUDY

Mr and Mrs B approached their bank with a sum of $600,000 to invest. They advised the bank that they would like around $3,000 per month from the investment to supplement their income. A diversified portfolio was set up, with a range of different investments.

Within 18 months, the portfolio had lost significant value. Mr and Mrs B had withdrawn $100,000, meaning their capital investment was $500,000, but the value of the portfolio was only $380,000.

The volatility and decrease in value of their portfolio was causing Mr and Mrs B considerable concern. Although they had indicated they had a long term investment horizon, Mr and Mrs B were not comfortable with the level of volatility their portfolio was experiencing over the short term.

Mr and Mrs B raised their complaint directly with their bank. The bank did not accept that it had given Mr and Mrs B inappropriate advice, and thought that it had set up an appropriately diversified portfolio. However, it did acknowledge that the decrease in the value of the portfolio was causing Mr and Mrs B a high degree of stress.

The bank offered to meet with Mr and Mrs B to discuss which investments they should sell, and which the bank considered it would be more advantageous to keep. It also offered to refund $8,000 in implementation and monitoring fees. Mr and Mrs B declined the bank's offer.

We met with Mr and Mrs B, and it became clear that their level of stress and concern was so high that they could not continue to hold these investments.

This information was put to the bank, which agreed to manage the sale of Mr and Mrs B's investments, and to ensure that they received no less than $410,000. Any difference between the sale price and $410,000 was to be made up by the bank. This meant that Mr and Mrs B stood to lose no more than $90,000 – not counting the loss of returns on their money over the period – which left them $30,000 better off than the most recent valuation of their portfolio.

Mr and Mrs B consulted with an independent investment advisor and decided to accept the bank's offer.

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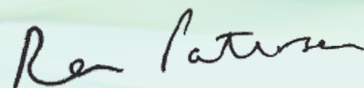
Statutory Information

For the year ended 30 June 2011

The Board of Directors present their Annual Report including the financial statements of the Company for the year ended 30 June 2011 and the auditor's report.

The shareholder of the Company has exercised his right under section 211 (3) of the Companies Act 1993 and agreed that this Annual Report need not comply with paragraph (a) and (e) to (j) of section 211 (1) of the Act.

For and on behalf of the Board:



Prof Ron Paterson Chair

19 September 2011

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Independent Auditor's Report

To the Shareholder of Banking Ombudsman Scheme Limited

Report on the Financial Statements

We have audited the financial statements of Banking Ombudsman Scheme Limited on pages 30 to 36, which comprise the statement of financial position of Banking Ombudsman Scheme Limited as at 30 June 2011, and the statement of comprehensive income, and statement of movements in equity for the year then ended, and a summary of significant accounting policies and other explanatory information.

This report is made solely to the company's shareholder, as a body, in accordance with section 205(1) of the Companies Act 1993. Our audit has been undertaken so that we might state to the company's shareholder those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's shareholder as a body, for our audit work, for this report, or for the opinions we have formed.

Directors' responsibility for the financial statements

The directors are responsible for the preparation of the financial statements in accordance with generally accepted accounting practice in New Zealand and that give a true and fair view of the matters to which they relate, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on the financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing (New Zealand). These auditing standards require that we comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected, depend on our judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we have considered the internal control relevant to the company's preparation of the financial statements that give a true and fair view of the matters to which they relate in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the company's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates, as well as evaluating the overall presentation of the financial statements.

We believe we have obtained sufficient and appropriate audit evidence to provide a basis for our audit opinion. Other than in our capacity as auditor and tax adviser we have no relationship with, or interest in Banking Ombudsman Scheme Limited.

Partners and employees of our firm may deal with the company on normal terms within the ordinary course of trading activities of the business of the company.

Opinion

In our opinion, the financial statements on pages 30 to 36:

- comply with generally accepted accounting practice in New Zealand; and
- give a true and fair view of the financial position of Banking Ombudsman Scheme Limited as at 30 June 2011 and its financial performance for the year then ended.

Report on other legal and regulatory requirements

In accordance with the Financial Reporting Act 1993, we report that:

- We have obtained all the information and explanations that we have required.
- In our opinion proper accounting records have been kept by Banking Ombudsman Scheme Limited as far as appears from our examination of those records.

21 September 2011
Wellington

THE BANKING OMBUDSMAN SCHEME LIMITED

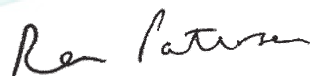
Statement of Financial Position

As at 30 June 2011

The accompanying notes form part of and should be read in conjunction with these financial statements.

	NOTE	10/11	09/10
Current assets			
Bank – cheque account		34,483	14,793
Bank – on call account		160,758	23,399
Accounts receivable	9	12,351	219,430
Prepayments	10	7,089	13,697
Tax refundable		-	10,410
GST receivable		38,959	8,770
		253,640	290,499
Non-current assets			
Property, plant and equipment	5	134,570	116,362
Intangibles	6	26,949	34,878
Total assets		**$415,159**	**$441,739**
Current liabilities			
Sundry payables and accruals	8	339,110	316,160
Levies in advance		6,000	883
Provision for tax		49,147	-
Banking Ombudsman Commission		-	196,815
Total liabilities		**$394,257**	**$513,858**
Net assets/(Liabilities)		**$20,902**	**$(72,119)**
Equity			
Contributed equity		1	1
Accumulated profits/(Losses)		20,901	(72,120)
Shareholder's surplus/deficit		**$20,902**	**$(72,119)**

For and on behalf of the Banking Ombudsman Scheme Limited which approved the issue of these financial statements on 19 September 2011



Chair Prof Ron Paterson
Date 19 September 2011

Director Andrew Thorburn
Date 19 September 2011

THE BANKING OMBUDSMAN SCHEME LIMITED

Statement of Comprehensive Income

For the year ended 30 June 2011

The accompanying notes form part of and should be read in conjunction with these financial statements.

	NOTE	10/11	09/10
Income			
Levies		2,450,000	2,697,000
Interest		20,082	12,719
Other income	16	60,000	-
Total operating income		**$ 2,530,082**	$ 2,709,719
Expenses			
Audit fees		15,175	14,445
Board expenses	17	61,371	31,472
Contractors and external advice		126,248	258,022
Depreciation	5	45,570	34,993
Amortisation of intangibles	6	19,030	25,424
Directors' remuneration	12	98,000	92,240
Entertainment		6,289	5,678
Loss on disposals		-	35,765
Office costs		94,160	92,728
Office relocation		-	81,234
Publications and promotions		112,206	112,766
Rent		180,099	184,507
Scheme compliance		6,852	4,839
Scheme expansion		17,757	36,502
Staff salaries and superannuation		1,394,463	1,559,026
Staff costs – other		90,203	69,185
Staff cost – recruitment		39,819	1,780
Technology and website costs		47,568	38,466
Travel and conferences		26,403	40,260
Total expenses		**$2,381,213**	$2,719,332
Profit/(Loss) before taxation		**148,869**	(9,613)
Taxation expense	11	55,848	680
Net profit/(loss) after taxation		**$93,021**	$ (10,293)
Total comprehensive income for the year is wholly attributable to owners of the company		**$93,021**	$(10,293)

Statement of Movements in Equity

For the year ended 30 June 2011

The accompanying notes form part of and should be read in conjunction with these financial statements.

	Shareholders Capital	Accumulated Profit/ (Losses)	Total
As at 1 July 2009	1	(61,827)	(61,826)
Loss for the year	-	(10,293)	(10,293)
As at 30 June 2010	**1**	**$(72,120)**	**$(72,119)**
As at 1 July 2010	1	(72,120)	(72,119)
Profit for the year	-	93,021	93,021
As at 30 June 2011	**1**	**$20,901**	**$20,902**

Notes to the Financial Statements

For the year ended 30 June 2011

1. Corporate information

The financial statements of the Company for the year ended 30 June 2011 were authorised for issue in accordance with a resolution of the directors on 19 September 2011.

The Company was incorporated on 19 June 2007 and is incorporated and domiciled in New Zealand.

The Company provides a free, independent and impartial dispute mechanism for those receiving “banking services” from the participating banks in New Zealand.

2. Summary of significant accounting policies

(a) Basis of preparation

The financial statements have been prepared in accordance with generally accepted accounting practice in New Zealand and the requirements of the Companies Act 1993 and the Financial Reporting Act 1993.

The financial statements are presented in New Zealand dollars ($).

Differential reporting

The Company qualifies for Differential Reporting exemptions as it has no public accountability, and its shareholder is a director of the Company. All available reporting exemptions allowed under the framework for Differential Reporting have been adopted.

(b) Statement of compliance

The financial statements have been prepared in accordance with generally accepted accounting practice in New Zealand (NZ GAAP). They comply with the New Zealand equivalents to International Financial Reporting Standards, and other applicable Financial Reporting Standards, as appropriate for profit oriented entities that qualify for and apply differential reporting concessions.

(c) Basis of measurement

The accounting principles recognised as appropriate for the measurement and reporting of earnings and financial position on a historical cost basis are followed by the Company.

3. Accounting policies

The following specific accounting policies which materially affect the measurement of financial performance and financial position have been applied;

(a) Cash and cash equivalents in the statement of financial position comprise cash at the bank and in hand.

(b) Loans and receivables are non derivative financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are carried at amortised cost. Gains or losses are recognised in profit or loss when the receivables are derecognised or impaired. They are included in current assets, except for those with maturities greater than 12 months after balance date, which are classified as non-current.

(c) Property, plant and equipment are stated at cost less accumulated depreciation. Such cost includes the cost of replacing parts that are eligible for capitalisation when the cost of replacing the parts is incurred. Similarly, when each major inspection is performed, its cost is recognised in the carrying amount of the plant and equipment as a replacement only if it is eligible for capitalisation. All other repairs and maintenance are recognised in profit or loss as incurred.

Depreciation has been calculated on plant, property and equipment on a diminishing value basis using the rates permitted for income tax purposes. Depreciation rates are as follows:

Furniture, fixtures and fittings	7.5% – 28.0%
Office equipment	18.0% – 60.0%
Hardware	33.0% – 48.0%
Other property, plant and equipment	9.5% – 48.0%

Gains and losses on disposals are determined by comparing proceeds with the carrying amount. These are included in the statement of comprehensive income.

(d) Intangibles –

(1) Computer Software

Computer software licences are capitalised on the basis of the costs incurred to acquire and bring into use the specific software. Amortisation rates for software are 40% to 48%.

(2) Website

Following initial recognition website developments costs are carried at cost less accumulated amortisation. Amortisation rates for the website are 40%.

(e) Sundry payables and accruals are carried at amortised cost and due to their short term nature they are not discounted. They represent liabilities for goods and services provided to the company prior to the end of the financial year that are unpaid and arise when the Company becomes obliged to make future payments in respect of the purchase of these goods and services. The amounts are unsecured and are usually paid within 30 days of recognition.

(f) Leases

The Company leases its office premises. Operating lease payments are recognised as an expense in the statement of comprehensive income on a straight line basis over the lease term.

(g) The financial statements have been prepared on a GST exclusive basis except for receivables and payables which are shown gross when billed.

(h) Provisions and employee benefits

Provisions are recognised when the Company has a present obligation (legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

(1) Wages, salaries, annual leave and sick leave

Liabilities for wages and salaries, including non monetary benefits, annual leave and accumulated sick leave expected to be settled within 12 months of the reporting date are recognised in respect of the employees' service up to the reporting date. They are measured at the amounts expected to be paid when the liabilities are settled. Expenses for non accumulating sick leave are recognised when the leave is taken and are measured at the rates paid or payable.

(2) Defined contribution pension plans

Obligations for contributions to defined contribution pension plans are recognised as an expense in the Income Statement when they are due.

(i) Revenue recognition

(1) Levy revenue

Revenue from members of the Scheme is recognised on an accrual basis. Levies are paid on a quarterly basis.

(2) Interest revenue

Revenue is recognised as interest accrues during the life of the investment.

(j) Income tax and other taxes

Income tax is accounted for using the taxes payable method. The income tax expense recorded in the statement of comprehensive income for the year represents the income tax payable for the year.

The current income tax asset or liability recognised in the balance sheet represents the current income tax balance due from or obligation to the Inland Revenue Department at balance date.

(k) Other taxes

Revenues, expenses and assets are recognised net of the amount GST except:

When the GST incurred on the purchases of goods and services is not recoverable from the taxation authority, in which case the GST is recognised as part of the acquisition of the asset or part of the expense item as applicable; and

Receivables and Payables, which are stated with the amount of GST inclusive.

The net amount of GST recoverable from, or payable to, the taxation authority is included as part of the receivables or payables in the balance sheet.

Commitments and contingencies are disclosed net of the amount of GST recoverable from, or payable to, the taxation authority.

4. Changes in accounting policies

The accounting policies adopted are consistent with those of the previous financial year except as follows:

The company adopted the following new and amended New Zealand Equivalents to International Financial Reporting Standards and IFRIC interpretations as of 1 January 2010.
• Improvements to NZ IFRSs effective 1 January 2010

The adoption of the above amendments did not have any impact on the financial position or performance of the Company.

5. Property, plant and equipment

2011	Cost	Accumulated Depreciation	Book Value
Fittings	6,545	1,622	4,923
Furniture	22,225	6,363	15,862
Office equipment	80,598	40,463	40,135
Hardware	73,421	42,075	31,346
Other property, plant and equipment	52,008	9,704	42,304
	$234,797	**$100,227**	**$134,570**

2010	Cost	Accumulated Depreciation	Book Value
Fittings	5,554	1,125	4,429
Furniture	22,225	2,758	19,467
Office equipment	57,961	26,336	31,625
Hardware	33,271	20,606	12,665
Other property, plant and equipment	52,008	3,832	48,176
	$171,019	**$54,657**	**$116,362**

	2011 Depreciation
Fittings	497
Furniture	3,605
Office equipment	14,127
Hardware	21,469
Other property, plant and equipment	5,872
	$45,570

	2010 Depreciation
Fittings	442
Furniture	2,062
Office equipment	13,526
Hardware	15,569
Other property, plant and equipment	3,394
	$34,993

6. Intangibles

2011	Cost	Accumulated Amortisation	Book Value
Computer software	56,444	47,223	9,221
Website	52,242	34,514	17,728
	$108,686	**$81,737**	**$26,949**

	2011 Amortisation
Computer software	7,212
Website	11,818
	$19,030

2010	Cost	Accumulated Amortisation	Book Value
Computer software	45,343	40,011	5,322
Website	52,242	22,696	29,546
	$97,585	**$62,707**	**$34,878**

	2010 Amortisation
Computer software	5,859
Website	19,565
	$25,424

7. Lease commitments

Lease commitments under non-cancellable operating leases:

	2011	2010
Not later than one year	180,100	180,100
Later than one year, not later than five years	615,339	720,398
Later than five years	-	75,041
	$795,439	**$975,539**

8. Sundry payables and accruals

	2011	2010
Sundry payables	78,050	83,872
Accruals	182,861	136,785
Provision for holiday pay	78,199	95,503
	$339,110	**$316,160**

9. Accounts Receivable

	2011	2010
Levy funding receivable	$12,351	$219,430

10. Prepayments

	2011	2010
Travel expenses	-	1,154
Conference expenses	3,450	9,068
Healthcare	2,077	3,363
Professional subscriptions	1,390	-
Other	172	112
	$7,089	**$13,697**

11. Income tax expense

	2011	2010
Profit/loss before tax	148,869	(9,613)
Tax at statutory income tax rate of 30% (2010: 30%)	44,661	(2,884)
Add tax effect of non-deductible expenditure	11,187	3,564
Current year taxation as per income statement	**$55,848**	**$680**

12. Directors' remuneration

The directors had remuneration due or paid during the year of $98,000 (2010: $92,240).

13. Contingent assets and liabilities

There are no contingent assets or liabilities at year end.

14. Transactions with related parties

There have been no transactions other than those disclosed in the financial statements with related parties during the year.

15. Financial instruments

The carrying amounts of categories of financial assets and liabilities are as follows:-

Loans and receivables

	2011	2010
Accounts receivables	12,351	219,430
Bank	195,241	38,192
	$207,592	**$257,622**

Financial liabilities measured at amortised cost

	2011	2010
Sundry payables	78,050	83,872
Banking Ombudsman Commission payable	-	196,815
	$78,050	**$280,687**

16. Other income

	2011	2010
New participants' joining fees	$60,000	-

17. Board expenses

	2011	2010
Board expenses	26,371	31,472
Process review	35,000	-
	$61,371	**$31,472**

Directory

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Prof Ron Paterson
Suzanne Chetwin
George Frazis
Mary Holm
Andrew Thorburn

Banking Ombudsman
Deborah Battell

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Banker
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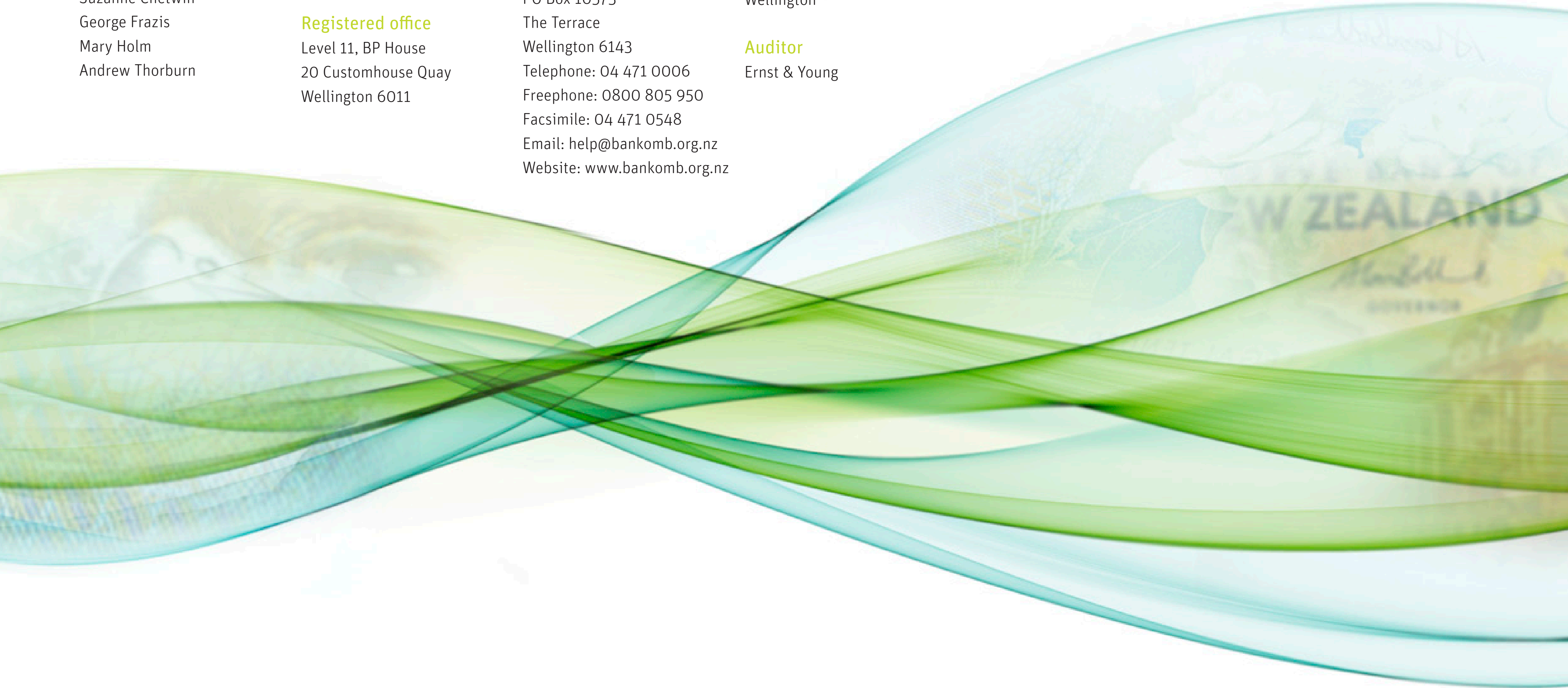
Wellington

Auditor
Ernst & Young



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