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Nicola Sladden
Banking Ombudsman Scheme
Wellington
By email: Nicola.Sladden@bankomb.org.nz

SUBMISSION on proposed changes to the Banking Ombudsman Scheme's Terms of Reference

1. Introduction

Thank you for the opportunity to make a submission on the proposed changes to the Banking Ombudsman Scheme's Terms of Reference (the Consultation). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

Contact: Aneleise Gawn
Consumer NZ
Private Bag 6996
Wellington 6141
Phone: 04 384 7963
Email: aneleise@consumer.org.nz

2. Comments on the Consultation

We support the proposed changes to the Banking Ombudsman Scheme's Terms of Reference ("Rules"). Our comments on each of the proposed Rule changes are attached in the Appendix below.

Thank you for the opportunity to provide comment.

Appendix: Your comments on the recommendations and options

Review recommendation 1

BOS should amend its terms of reference so it can deal with complaints against recipient banks, provided banks amend the Code of Banking Practice to institute rules relating to recipient banks, which BOS should encourage them to do.

Options

One: Keep the current rule that a complaint must be brought by, or on behalf of, the person who received the banking service.

Two: Change the rule to allow complaints to be brought about a recipient bank by the sender of a payment.

Your comments

We strongly support option two. Consumers rely on all banks to exercise reasonable care and skill, whether they have a direct relationship with the bank or not. However, if a recipient bank fails to exercise the required level of care and skill, under the current rules, a consumer is unable to seek redress against it at BOS.

We have received complaints from consumers who have been impacted by this rule. In one case, BOS awarded the complainant compensation from her bank for breaching its obligation to act when it knew or ought to have known there was a real possibility of being defrauded. However, BOS was unable to consider her complaint against the recipient bank as it fell outside the scheme's rules.

We consider this needs to be remedied. Implementing this change will result in fairer outcomes for consumers who are unwittingly scammed or have mistakenly made a payment to the wrong account.

Review recommendation 4

BOS should consider a rule change to enable claimants to waive the amount of their claims in excess of the jurisdictional limit.

Options

One: Keep the compensation limit at \$500,000 and allow larger claims where both sides agree.

Two: Keep the compensation limit at \$500,000 but allow larger claims if the complainant agrees to limit their claim to the maximum.

Your comments

We strongly support option two. Given the Disputes Tribunal and Financial Dispute Resolution Service allow claims of any amount but limit how much compensation can be awarded, we think BOS should do the same.

Also, taking court action is very expensive and time-consuming and isn't a viable option for many consumers, particularly those who have been scammed and may have lost a lot of money. Therefore, we consider consumers should have the option of limiting their claims to a maximum of \$500,000.

Although this is unlikely to assist many consumers, it could potentially have a significant impact for a small number of consumers who have a claim for more than \$500,000 and may not otherwise have the time, money or energy to take their case through the courts.

Review recommendation 7

BOS should amend its rules and operational guidance to reflect that BOS may seek expert advice from a range of experts as it thinks fit.

Options

One: Keep the terms of reference and operational guidelines the same.

Two: Amend the terms of reference and operational guidelines to remove the requirement to consult with the industry and introduce a discretion for the scheme to consult with experts as it thinks appropriate.

Your comments

We strongly support option two. The Banking Ombudsman Scheme should be able to consult with a range of bodies, including consumer advocates, to ensure it receives a balanced view and is not just considering industry perspectives when making decisions. This, along with other changes, will also help to avoid the perception that BOS favours industry views over consumer views.

Review recommendation 8

BOS should amend its rules to change “principles of good banking practice” to “principles of good industry practice”.

Options

One: Keep the current wording “principles of good banking practice”.

Two: Amend the wording in rules 2.3 and 9 to “principles of good industry practice”.

Your comments

We support option two. We agree it makes sense to widen this terminology to refer to ‘industry’ rather than ‘banking’.