

The Banking Ombudsman Annual Report - 2015

April 2016



KPMG overview of the Ombudsman for Banking Services – Annual Report for 2015

The Ombudsman for Banking Services (OBS) has released its Annual Report for 2015 which provides instances of different cases that have been resolved by the Ombudsman. Analysis of the last three years' data reveal that bankers continue to keep customers informed about the existence of the Ombudsman. The percentage of clients knowing about the Ombudsman has increased from 44% in 2013, to around 49% in 2015. This seems to indicate that banks are committed to resolving customer complaints in a timely and effective manner. Furthermore, word of mouth amongst clients has also increased marginally from 45% in 2013 and 2014, to around 47% in 2015.

Key Highlights of the Report

Following are the key highlights of the report:

- The demographic profile of complainants for 2015 showed little change from 2014. A majority of the complaints pertained to ATM-related issues (44%) followed by internet banking (22%) and finally, mortgage finance (12%).
- The number of ATM complaints decreased by 7% year-on-year. The biggest increase was current account complaints, which increased by 2% year-on-year with the remaining categories were fairly stable compared to 2014. 55% of ATM complaints involved card swapping, which is 5% lower than in 2014.
- Even though the number of enquiries in 2015 decreased by almost 1,000 from 2014, the number of cases that were resolved increased by more than 500.

Additionally, the report outlined measures instituted by the Banking Ombudsman to further the 'Treating Customers Fairly' (TCF) initiative undertaken by the Financial Services Board. The report alluded to the six outcomes of the TCF initiative, which are:

- Customers know they are dealing with firms with a culture of fair treatment
- Products and services meet the needs of customers
- Customers have clear information and are kept informed
- Advice is suitable and takes account of customer circumstances
- Products perform as promised and service meets expectations
- There are no unreasonable barriers when changing a product, switching a provider, submitting a claim or making a complaint.

Finally, the 2015 annual report also provides summaries of a select number of cases resolved by the Banking Ombudsman. The following table illustrates the facts of the case, the decisions taken by the Ombudsman along with the key principle of reference to the relevant regulation, where applicable.

Theme of the complaint	Facts of the case	Verdict of the Ombudsman	Key principle
Securing personal data	The complainant noticed that her bank card was missing. On reporting the matter to the bank, she discovered fraudulent withdrawals. Furthermore, she claimed never to have disclosed her PIN to anyone, but revealed to the OBS that it was the first five digits of her identity number. The bank refuted her claim for a refund on the basis that she was negligent in choosing that PIN.	Ruled in favour of the bank.	Clause 7.7.6 of the Code of Banking Practice confirms that a customer should not use a PIN that can be easily guessed such as a birth date.
Giving incorrect advice / guidance	Before the complainant completed a transfer of R50 000, she enquired if it could be stopped. The bank advised her saying that it could be stopped within 24 hours. However, after the transaction the client contacted the bank to stop the payment. The bank rejected the claim.	The OBS listened to the recording between the client and the bank's representative, studied a copy of the account statement and ruled in favour of the client.	Banks must give accurate advice to their clients.
Following up with delay	Several days after transferring two amounts to a business, no goods had been delivered and the complainant realised she had been duped. She claimed the full transferred amount from the bank on the basis that it had not stopped the beneficiary account timeously. The fraud was, however, reported a full week after the transaction. The bank refuted the claim as it had not been party to the fraud and had placed a hold on the account as soon as alerted about the problem.	Since several days had already passed, the OBS could not rule in favour of the complainant.	Banks must act swiftly to put the brakes on a suspicious account, but cannot recoup funds once "they have flown the coop".
Maintaining documentation	A bank unilaterally cancelled a motor vehicle dealer's floor plan agreement and increased the interest rate on his overdraft. Even though it did not provide written notification of the cancellation, it offered sound reasons for the motive.	The OBS felt a distress and inconvenience award of R2 000 to the customer was justified.	It is important to notify the customer in writing, and to avoid unilateral cancellation of facilities. It is also necessary for the customers to provide the bank with full documents.
Maintaining documentation	The complainant claimed that his fixed deposit account should have attracted compound interest instead of simple interest.	The OBS asked to see the document, which both the bank and the client were unable to produce. Therefore, the OBS could not make a finding against the bank.	In the absence of documentation, it is presumed that interest is always simple unless otherwise stated.
Understanding the product features accurately	The complainant opened an account and then questioned the lack of interest payments, as he had deposited almost R2 million. He said he had asked for an interest-bearing account, but that the wrong account had been opened. He had not monitored the account, but reasoned that the bank should have transferred his funds into an account with interest. He demanded compensation for interest he would have earned.	The OBS found that the customer sought an account on which he could transact daily, rather than one that earned interest. Statements had been sent, but not queried. There was no evidence that the bank had opened an incorrect account. Hence, the OBS could not make a case against the bank.	The onus falls on the customer to clearly state his needs, and it is the customer's responsibility to read account statements carefully.
Communicating with delay	The bank decided to discontinue standalone credit card accounts for individuals whose business accounts were not held with the bank. The complainant, who had not used his credit card account for several years, was informed that failure to use it within 30 days would result in its closure. The bank received no response and the account was closed. The client took the matter to the OBS alleging that the closure was prejudicial and impacted his credit facility.	The OBS held that since the bank was unable to prove that the customer had been informed – the bank was asked to pay distress and inconvenience award to the consumer.	The banks need to ensure that the communication to their consumers is always timely and ensure records are maintained of all forms of communication.
Disclosing confidential details	The complainant disclosed his username and password to a bank employee, to enable the employee to make legitimate transfers and payments on his behalf. The employee then stole thousands of Rands from his account over five months. The customer held the bank liable for the losses.	The OBS held that banks need to educate their customers about the need to keep their pin, password, etc. confidential. In this case they ruled that the bank cannot be held vicariously liable as the employee was not acting within the scope of his employment.	Details such as PIN, login credentials, etc. are extremely confidential and should remain as such.

Theme of the complaint	Facts of the case	Verdict of the Ombudsman	Key principle
Putting in place risk control mechanisms	The complainant's overdraft limit was R10 000, but due to a system error, he accessed more than R100 000, mainly through cash withdrawals and point-of-sale transactions. As any credit limit increase has to be assessed for affordability, the increase amounted to credit granted recklessly.	The OBS decreed that the complainant should repay the capital used in excess of the agreed limit, and that the bank should write off associated fees and interest, to which it agreed.	Consumers should not use credit without having applied for it and banks need to have sound systems in place to prevent such errors.
Giving incorrect advice / guidance	The complainant's family arranged and paid for a trip for her and her sister to travel to Mauritius. Before the trip, a consultant at her bank confirmed that her card could be used in Mauritius. The family deposited R5 000 into her card account. On arrival, she found that the card did not work. When she contacted the bank, it advised that her particular type of card would not work overseas and that she had been given the incorrect information. She demanded the value of flights and accommodation as compensation for distress and inconvenience. The bank offered R5 000. She lodged a claim with the OBS.	The adjudicator noted that the accommodation and food had been paid in advance, and her claim for reimbursement of the entire cost of the trip was unfounded. Hence the R5 000 offer was reinstated.	The quantum of compensation should be commensurate with the facts of the case.
Failing to provide recent documents	The complainant suffered financial and reputational loss when his trust account was frozen despite providing all the relevant documentation at the time of opening the account. However, banks are required to comply with Financial Intelligence Centre Act (FICA) and the documents were not FICA compliant.	The OBS noted that while the client had submitted documentation, FICA requires new documentation which had to be furnished.	The account was frozen as the client did not provide the most recent documentation as required by FICA. It is important to ensure that all the documents that are provided reflect the most recent regulation.
Failing to keep track of transactions	A complainant tried to withdraw cash and realised that there were no funds in his account. By the time he could report the matter to the bank, R21 000 had been withdrawn by fraudsters. The fact of the matter was that the complainant's card had been cloned and the bank was unable to show that he had compromised his PIN. However, the bank produced a copy of SMS logs confirming that notices of the withdrawals had been sent to the complainant's phone. To mitigate the loss, the bank offered to reimburse him for the first fraudulent transaction, being R1 500.	The OBS supported the bank's assertion that communication had been sent to the customer.	Emphasises that customers need to be diligent when it comes to monitoring their banking transactions.
Violating the provisions of another law	The complainant bought a vehicle, entering into an instalment sale agreement with the bank. The vehicle proved faulty and was returned to the dealer the following month. A new instalment sale agreement was drawn up, which the complainant assumed was a replacement of the agreement of the previous month. However, the bank advised that the complainant now had two vehicle finance accounts and that he was liable to pay for both. The complainant asked the bank to close the first account and refund the instalments paid.	The OBS requested that the bank close the first finance account and refund the instalments paid.	By refusing to cancel the first agreement, the bank had acted in contravention with the provisions of Section 56 of the Consumer Protection Act (CPA).

Conclusion

From the Annual Report it appears that the trend is very similar to what was observed in the earlier years. There has been an increased focus on 'Treating Customers Fairly' where the OBS is consciously furthering the attempts undertaken by the Financial Services Board to ensure that clients are being treated fairly. In the context of cases finalised by the OBS, most pertain to themes such as:

- Inadequate communication on the part of the bank and the client
- Improper documentation
- Incorrect advice given by the bank

However, there have not been many instances of banks paying compensation for wilfully duping / defrauding the customer.