

**OFFICE OF THE
BANKING SERVICES OMBUDSMAN**

(An agency created under the auspices of the
Central Bank of Trinidad and Tobago)



**INAUGURAL
REPORT**

**FOR THE EIGHT MONTH PERIOD
ENDED DECEMBER 31, 2003**

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GOVERNOR'S FOREWORD

In today's environment, competition and the increased use of information technology have made customers increasingly aware of their rights. As a consequence, they demand a higher level of service and greater transparency from our financial institutions. They are also more disposed to seeking redress for perceived injustices.

These factors were the principal considerations behind the establishment of the Office of the Banking Services Ombudsman (OBSO) approximately one year ago. The experience of several countries (including Australia, Canada, India, South Africa), was another important consideration. It was noted that Ombudsman schemes could contribute greatly to increasing confidence in the financial system. The strengthened regulatory system, the Automated Credit Bureau and the Credit Rating Agency, which are soon to be established, along with the Ombudsman's office, can be seen as essential pillars of the financial sector infrastructure of Trinidad and Tobago. Indeed, it is increasingly being recognised that the financial sector of Trinidad and Tobago has emerged as the major financial centre in the Caribbean.

The main purpose of the OBSO is to receive and seek to resolve complaints by small businesses and individual consumers concerning the provision of banking services. The mandate of the OBSO initially focuses on the commercial banks and other licensed affiliates. However, it is our intention to expand this firstly, to other institutions licensed under the Financial Institutions Act 1993 and ultimately, to the wider financial services sector.

At present, the Ombudsman's Scheme is voluntary. However, the intention is to enact legislation to give the Ombudsman statutory powers with respect to the resolution of disputes.

We have emphasized that the Ombudsman's Office is but one element of the dispute resolution mechanism in the financial sector. In fact, the primary recourse for customers in the financial services industry is the internal complaints-handling mechanism of the financial institutions. In this context, I am very pleased at the efforts



that some commercial banks have made recently in strengthening and publicising their internal dispute resolution procedures. The introduction of the Office of the Ombudsman provides an additional avenue that allows the public to seek redress about their concerns.

It is my view that the first year of operation of the OBSO has been a valuable learning experience. Over the next several months, we are planning to increase the public awareness of the Ombudsman's role, by intensifying our education and our outreach programmes through direct contact with the public and through the establishment of an Ombudsman website.

I take this opportunity to thank the banking community for their co-operation in making this initiative a reality and compliment the leadership and staff of the OBSO for their dedication during the start-up period.



Ewart S. Williams
Governor
Central Bank of Trinidad and Tobago

PREFACE BY THE BANKING SERVICES OMBUDSMAN

The first year for the Office of the Banking Services Ombudsman was not only challenging but also constructive and fulfilling.

Our main focus has been to provide fair, sound advice to those who are not as familiar with the banking system and to mediate on behalf of those who have a complaint with their bankers. We conducted frank and open discussions with the service providers and developed a mutual understanding between both parties.

The formation of the Office generated significant interest and expectations amongst the various stakeholders and interested parties. On a daily basis we responded to numerous enquiries about our dispute resolution procedures.

Our Office was privileged to hold a number of sessions with certain key interest groups as well as a wide cross-section of managers from the banking services industry. We also paid a visit to Tobago to meet with the banking customers of our sister isle.

We look forward to intensifying our outreach programme in our ongoing effort to communicate our role in the dispute resolution process and to make the general public become more aware of the implications when transacting financial matters.

We anticipate that our involvement would serve as a catalyst for improved customer service, deeper public awareness and a stronger more efficient financial services sector. These elements will become increasingly important as our nation seeks to accelerate its own agenda for development.

I have enjoyed serving as the Banking Services Ombudsman during the past year and look forward to a productive and fulfilling 2004.

I wish to extend my heartfelt thanks to my dedicated and enthusiastic staff and to the Office of the Governor for the support provided in this formative period. I also wish to express my appreciation to the commercial banks without whose co-operation, this much needed initiative could not have been possible.



Judy Y. Chang
Banking Services Ombudsman



1. ESTABLISHMENT AND OBJECTIVES OF THE OBSO

The Office of the Banking Services Ombudsman (OBSO) opened its doors to the general public in Trinidad and Tobago on May 19, 2003. The Office was established as a result of an agreement between the Central Bank of Trinidad and Tobago and the six members of the Bankers' Association, namely:

- Citibank (Trinidad and Tobago) Limited
- First Citizens Bank
- Intercommercial Bank Limited
- RBTT Bank Limited
- Republic Bank Limited and
- Scotiabank Trinidad and Tobago Limited

The main objectives of the OBSO are:

- (a) to receive complaints arising from the provision of financial services to individuals and small businesses; and
- (b) to facilitate the settlement of these complaints.

The Office provides a legitimate and independent channel through which customers can seek redress if necessary in their dealings with the financial institutions.

The Scheme adopted in Trinidad and Tobago is patterned after the Canadian system which has been in existence since 1996. Under this system, customers must first seek resolution at the financial institution where the problem arose. If the matter is not resolved satisfactorily at that level, the customer can then lodge a complaint with the Ombudsman.

In May 2003, the staff of the OBSO launched a communications campaign to inform the public of the services of the Banking Services Ombudsman. The campaign included newspaper interviews and paid advertisements published in the print media. The Ombudsman, accompanied by a Resolution Officer, also paid a visit to Tobago to apprise the general public there of the services which were being offered by the OBSO, and of the process for lodging complaints against a financial institution.

During this initial period, numerous calls were received seeking information about the process for registering a complaint or for explanations about banking transactions. Many of the issues, to which the complaints referred, had occurred prior to January 1, 2003. Some had occurred in the 1990s, 1980s and even as far back as the 1970s. However, the terms of reference for establishing the OBSO clearly state that complaints occurring prior to this date would not qualify as cases to be handled by the Ombudsman. Nonetheless, certain cases that occurred before January 1, 2003 that were well documented and considered worthy of consideration, were taken by the Ombudsman to the banks for review. Some were resolved to the satisfaction of the customers.

During the period under review, the majority of the enquiries and complaints were redirected to the banks to allow them the opportunity to resolve the

matters: hence the rather small number of qualifying complaints recorded. Within the year, it is expected that a greater number of complaints will qualify for investigation.

As all the parties involved – customers, personnel in the financial sector and the OBSO – gain more experience with the programme, it is expected that the process will be refined and complaints will be handled within a shorter period of time.

Analysis of the complaints lodged with the OBSO indicates that there is a need for more public awareness about financial transactions that are offered by the banks. The management of the financial institutions must therefore, ensure that their staff are adequately trained in their respective fields in order to provide the relevant information on the products and services being offered and to advise customers of all the implications of transactions undertaken.

2. FIRST PERIOD OF REVIEW: REPORT ON ACTIVITIES, MAY 19 - DECEMBER 31, 2003

2.1 Distribution of complaints by type of enquiry

During the eight month period to December 31, 2003, 154 complaints and enquiries were received by the OBSO. The breakdown of total complaints received by categories is as follows: accounts and transactions (28%); loans (24%); card services (16%); service and advice (12%); fees and charges (7%); credit policies and decisions (5%); privacy and confidentiality issues (1%); general interest rate (1%); and other (6%).

Only 25 of the 154 complaints fulfilled all the conditions set out under the terms of reference. Card services (48%) and accounts and transactions (36%) were the most significant categories of qualifying complaints. Qualifying complaints received with respect to loans, privacy and confidentiality issues and service and advice amounted to 8%, 4% and 4%, respectively. Seventeen (17) of the 25 qualifying complaints were resolved during the period. The others were still under consideration at the end of the

period.

The non-qualifying complaints were those that did not meet all the conditions set out in the terms of reference of the agreement. Of the 129 non-qualifying complaints received, 124 were either resolved or sent back to the banks or not considered justified. Five (5) complaints were still in the process of receiving consideration by the banks at the end of the period.

The majority of complaints received came from the four largest commercial banks.

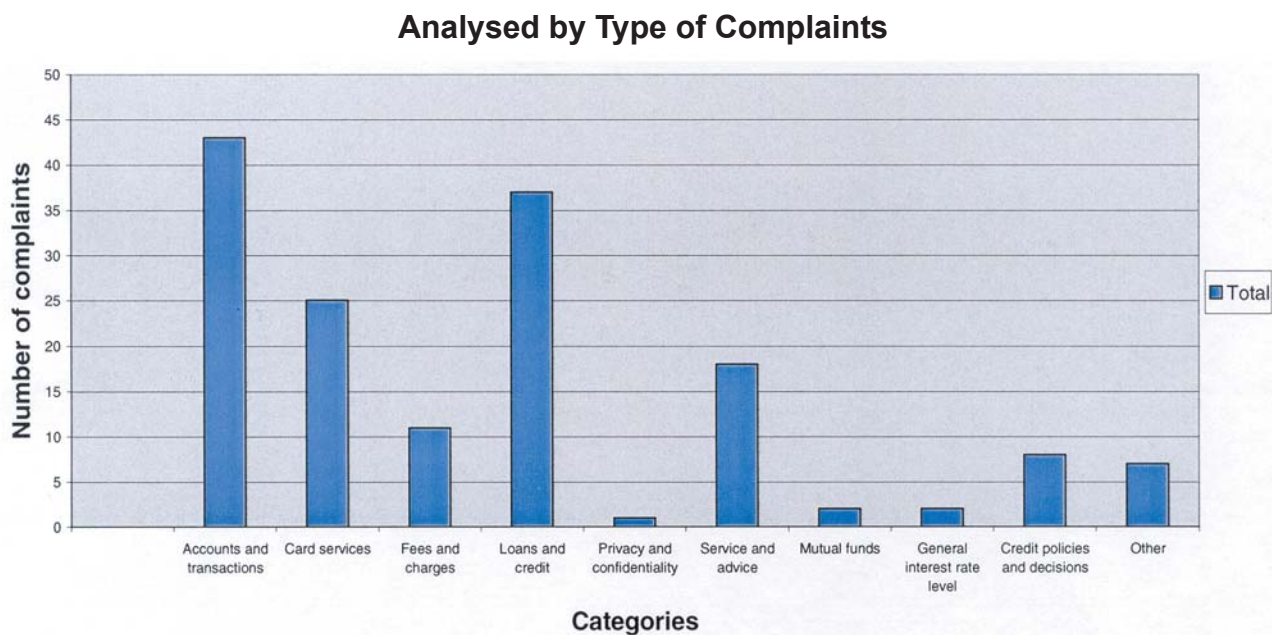
2.2 Funding of the Office of the Banking Services Ombudsman

The remuneration of the Banking Services Ombudsman (BSO) is funded fully by the Central Bank of Trinidad and Tobago. The day to day operating costs, including the remuneration of the members of staff of the Office, are funded by the six commercial banks in proportion to the number of deposit and loan accounts held by the banks.

Statistical Overview of the Complaints to December 31, 2003

Analysed by Type of Complaints						
	Qualifying	%	Non-Qualifying	%	Total	%
Accounts and transactions	9	36	34	26	43	28
Card services	12	48	13	10	25	16
Fees and charges	0	0	11	9	11	7
Loans and credit	2	8	35	27	37	24
Privacy and confidentiality	1	4	0	0	1	1
Service and advice	1	4	17	13	18	12
Mutual funds			2	2	2	1
General interest rate level			2	2	2	1
Credit policies and decisions			8	6	8	5
Other			7	5	7	5
Total	25	100	129	100	154	100
Closed during the period	17	68	124	96	141	92
Under review at end of period	8	32	5	4	13	8

Chart of the Above Figures



3. HOW THE PROCESS WORKS

Individuals and small businesses not satisfied with the treatment received from any of the six participating financial institutions concerning any financial service or product, may file complaints and seek redress. A small business is defined as any business with assets (excluding land and building) not exceeding TT\$1.5 million.

3.1 The Complaints Process at the Financial Institution

The process of registering a complaint starts at the local branch or office of the financial services provider where the transaction occurred. The complaint should be submitted in writing and accompanied by all appropriate documentation, including brochures, statements and copies of contracts or agreements.

If a complaint is not settled at the level of the branch, the customer may then seek further redress with the dispute resolution centre of the banks. Under the Code of Banking Practice dated February 12, 2001 to which all members of the Bankers' Association of Trinidad and Tobago subscribe,

all banks are obliged to set up a dispute resolution centre to handle customer complaints. The dispute resolution centre at each bank is usually staffed with a senior officer to liaise with customers as well as the OBSO. To date, the centres have all been very co-operative and willing to exchange information with the intent to bring closure to the complaints.

If complaints are not satisfactorily resolved using the internal process provided by the bank, the bank should advise the customer that he is entitled to take the case to the OBSO. All complaints must be lodged with the OBSO within six months of having exhausted all appeals at the bank.

There is no charge for the services provided by the OSBO. The terms of reference enable the Office to investigate a wide range of issues relating to the products and services offered by the banks and their licensed financial subsidiaries.

3.2 The Complaints Process at the OBSO

Complaints should be submitted to the OBSO in

writing. The document should summarise the nature of the complaint. If it is determined that the case falls within the terms of reference, the customer is requested to complete and sign a complaint form. Copies of all correspondence as well as copies of all related documents and notes of conversations should be included with the complaint form.

The complaint form explains the process and authorizes the bank to exchange information with the OBSO. If the customer is disabled or requires the assistance of a representative – a family member, friend or other person - the representative will be required to co-sign the form as an indication that confidential matters may be discussed with the third party.

The OBSO stipulates that all documentation and any other material related to the dispute resolution process must not be used in any subsequent legal or regulatory proceedings. In addition, the parties concerned must agree that the Ombudsman and staff of the OBSO and its advisors will not be called upon to testify in any legal proceedings.

Most qualifying cases are formally investigated and documented by the OBSO.

Conclusions are based on the following criteria:

- overall fairness and equity
- best practice in the industry
- the accepted industry standards and practice
- standards established by industry regulatory bodies, professional associations or the individual financial institution where the customer does business, and
- due regard to the law

The process is not binding on the customer who may exercise the option of taking the case to the courts at any time during the process. The OBSO will consider the matter closed at that stage. However, if a bank does not comply with an award made by the Ombudsman, the Ombudsman is obliged to report the noncompliance to the Governor of the Central Bank. To date, no such award has been made.

3.3 Complaints outside of the Jurisdiction of the Ombudsman

Certain complaints are not investigated since they are specifically excluded under the terms of reference. These are:

- (i) Competitive issues which are better left to the dictates of market forces, namely:
 - General pricing of products and services
 - General interest rate policies
 - Credit-granting policies and risk management policies and procedures
 - General industry policies and procedures
- (ii) Matters that are currently or have been before the courts or an arbitration body or other dispute resolution process.
- (iii) Matters that have occurred before January 1, 2003. If however, the matter occurred prior to January 1, 2003 and the complainant only became aware of the

matter after January 1, 2003, the complaint qualifies for consideration by the OBSO.

Even though matters that have occurred before January 1, 2003 are not included under the terms of reference, the OBSO has taken some matters to the banks if they were deemed worthy of consideration and most have been favourably considered. It was felt that even though the OBSO has no jurisdiction over such matters, the banks, on the other hand, are not constrained by the same time limitations as those stated in the terms of reference of the OBSO.

Customers retain their legal rights and are free to pursue the matter in court if they are not satisfied with the decision of the OBSO. However, if the customer decides to go to the court or arbitration body first, the option of bringing the matter to the OBSO is not available since both of these processes are final and binding.

4. SETTLEMENT OPTIONS AVAILABLE TO THE OMBUDSMAN

The options available for resolving financial complaints at the OBSO are as follows:

1. Settlement by agreement
2. Recommendation by the Ombudsman and
3. Award by the Ombudsman

4.1 Settlement by agreement

This involves mediation between the bank and its customer to arrive at an agreed position.

4.2 Recommendation by the Ombudsman

If no agreement is reached between the bank and the customer, either party may request the Ombudsman to make a recommendation for settlement or withdrawal of the complaint. Once the recommendation is accepted by

the customer and the bank and full and final settlement has been agreed to, then the matter is resolved.

4.3 Award by the Ombudsman

If the complaint is not settled by agreement or recommendation, the Ombudsman may make an award. The award is limited to \$500,000 and must not be greater than the amount required to compensate the customer for direct loss or damage suffered by reason of acts or omissions of the bank. The award is binding on the bank. If not accepted by the bank, the Ombudsman is obligated to report the noncompliance to the Governor of the Central Bank.

Although the Ombudsman has the power to make recommendations and awards, the preferred route is that of reaching agreement via mediation to find a solution acceptable to all parties and this has been the case thus far.

CASE STUDIES

5. CASE STUDIES

The following cases represent samples of matters that have been successfully resolved by the Office of the Banking Services Ombudsman.

CASE 1 - UNDERSTANDING LOAN GUARANTEES

This case illustrates the need for staff of commercial banks to explain transactions more clearly to customers so that they may better understand their financial obligations. It also demonstrates that guarantors of bank loans need to be specific as to the amount of the guarantee and the particular loan account to be guaranteed.

CASE

Customer A alleges that on December 1, 1998, she signed a Memorandum of Deposit of Stocks and Shares and other Marketable Securities as guarantor for a loan taken out by Customer B. She also deposited as security, certain units of the Money Market Fund of the Trinidad and Tobago Unit Trust Corporation registered in her name.

The loan, Customer A alleges, was paid off in full in July 2002 but the bank refused to release the security. Instead, the bank indicated to Customer A that the security would be used against a loan for another account transacted by Customer B in respect of Customer B's business venture.

After negotiations with the bank to liquidate the second loan, and having arrived at an agreed settlement, the bank still refused to release Customer A's security, indicating that the security would be switched to secure an overdraft facility incurred by Customer B.

In her letters to the bank in July 2003, Customer A requested that the bank provide her with details of the amounts for which she was liable as guarantor so that she might make arrangements to settle. However, no details were provided by the Bank. The customer stated that she was under the impression when she tendered her shares as security for Customer B's loan, that they would be taken as guarantee for the particular loan and not be utilised for any and all other debts of Customer B. When she requested a copy of

the document from the bank, she was only provided with the front page which, did not state that she was responsible for all debts of Customer B.

The Office of the Banking Services Ombudsman subsequently wrote to the bank requesting that Customer A be assisted by providing the details of the information requested in her letters of July 2003. This information was necessary so that she might understand her obligations and arrive at a settlement in order to obtain the release of her security.

The bank responded to the Ombudsman stating that Customer A's matter had been amicably resolved and that the security had been returned to the customer without further consideration.

The Office of the Banking Services Ombudsman acknowledged its gratitude for the kind consideration given by the bank to Customer A's matter which led to resolution of the case even though it fell outside the time-frame stated in the terms of reference for the Office.

CASE 2 - ATM TRANSACTIONS

This case demonstrates the importance for customers to keep their PIN information confidential at all times, to monitor closely their accounts and to report any problems to their banks in a timely manner.

CASE

The customer alleges that in March, 2003 he attempted to withdraw monies from an ATM machine. The card became stuck and was eventually captured by the machine. The machine thereafter issued a notice that read: "Temporarily Out of Service". The customer visited the bank the following day and informed a bank officer of what had transpired. Internal checks were made and the customer was informed that his card was not at the branch in question.

The customer was asked to return after working hours so that a further check could be made but decided to return to his home branch to explain the situation and obtain cash over the counter. On arriving at his

CASE STUDIES

CASE STUDIES

branch, he was informed that his card was used twice on the said morning that he made the report at the branch where the card was first captured. This resulted in unauthorized withdrawals of over \$2,000.

After investigations, the bank reimbursed the customer for the monies withdrawn by the unlawful party, less \$500. The bank invoked Section 19(2) of the Electronic Transfer of Funds Crime Act No. 87 of 2000 as the basis for its decision. This Sub-Section gives the card issuer the authority to levy a charge of \$500 in certain circumstances concerning the use of ATM machines. The bank held the view that the customer did not exercise the necessary precaution at the machine when he realized that his ATM card was stuck thereby causing a perpetrator to become privy to his PIN when he was attempting to retrieve his card.

The customer however remained dissatisfied and believed that he was entitled to be reimbursed for the full amount that was withdrawn by the perpetrator of the fraud.

The Ombudsman wrote to the bank on the matter and pointed out that the customer had met all the conditions that allowed for a full refund under the said Act. The bank agreed to refund

the customer the sum of \$500 that was withheld since the customer had made his initial report within the time stipulated in the Act.

CASE 3 - CLARIFYING LOAN CONDITIONS

This case demonstrates the need for customers to have offers documented and to be wary of offers which seem too good to be true; and for banks to explain fully to their customers all the implications of the products they are offering to their customers.

CASE

The customer alleges that he had a mortgage loan with a bank, which was scheduled to be fully liquidated in 2004. In December 2002, however, an officer of the bank contacted the customer and offered him a waiver for the Christmas season without penalty. The customer agreed to this arrangement.

The customer further states, however, that on checking to reconfirm the end-date for his loan, he was informed that penalty interest had accrued as a result of the waiver obtained over the Christmas season. In fact, the loan was extended by

a further six months as a result of the penalty interest. He was told then that he should not have qualified for such a facility. The customer claimed that he was not informed of the additional charges as a result of the waiver.

The customer was advised by the Office to lodge a formal complaint with the bank and, if not satisfied, to return to the OBSO. The customer subsequently returned to the Office to report that as a result of making a formal complaint to the bank, the bank agreed to waive the interest payments enabling the loan to be liquidated according to the original schedule. The Office however further suggested to the customer that he should obtain the waiver from the bank in writing.

CASE 4 - FEES AND CHARGES

This case illustrates the willingness demonstrated by commercial banks to consider a case that does not necessarily fall within the jurisdiction of the scheme and highlights the assistance rendered to customers in hardship circumstances caused by a third party.

CASE

The Office was approached by representatives of an association concerning the charges of late penalty fees imposed by the banks on its members. The members of the association were not paid by the company (employer) for two months and as a result were not able to meet the monthly instalments related to their loan commitments.

Even though the problem stemmed from the non-payment by the employer, the Office made an appeal to the banks, which responded positively and reversed the penalty charges.

The Office acknowledges the consideration shown by the banks in genuine hardship cases where the problem was caused by circumstances beyond the control of the customers.

CASE STUDIES

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**Office of the
Banking Services Ombudsman**



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