

# **Annual Report of the Banking Adjudicator**

for the period from May 2003 to April 2004

Presented to the Bankers' Association of Botswana  
on 22<sup>nd</sup> June 2004

## **1. Introduction**

This was the second year of operation of the Banking Adjudicator (BA) of Botswana. Excellent working relations have been maintained with the complaint handling staff of the licensed commercial banks.

The members of the Bankers' Association of Botswana are:

African Banking Corporation of Botswana Limited  
Bank of Baroda (Botswana) Limited  
Barclays Bank of Botswana Limited  
First National Bank of Botswana Limited  
Kingdom Bank Africa Limited  
Stanbic Bank Botswana Limited  
Standard Chartered Bank Botswana Limited

During the year from May 2003 to April 2004, Investec Bank was purchased by Stanbic Bank. Kingdom Bank Africa was licensed as a bank by the Bank of Botswana and registered as an 'offshore' bank at the International Financial Services Centre in Gaborone.

## **2. Complaints against the members of the Bankers' Association during the year**

As far as complaints against the banks were concerned, there was no great increase in the number of complaints. However, some of the amounts involved were bigger than in previous years. In addition, there were two generic problems. The first was the slow speed with which some complaints were handled by the banks, even when the complaint could eventually be fully explained by the bank concerned and the bank was not at fault. It should not take two years to sort out a query from a customer as to

why he was required to continue paying additional monthly instalments, after the contract period for his car loan had expired. (See paragraph 5 below).

The second generic problem concerned a small number of insurance related complaints. See paragraph 6 below.

### **3. Debit card fraud**

Debit card frauds are not necessarily more frequent than they used to be. However, the amounts involved are getting bigger.

A junior civil servant ran out of money. He went to a Quick Loan or Micro Finance company to borrow P 400. He gave the Quick Loan company both his bank debit card and his pin number, as security for the loan. When the young man next received his monthly bank statement, it showed a debit balance of P 25,000. Through a variety of clever manoeuvres which were designed to exploit a loophole in the bank's cheque clearing arrangements, the young man had been defrauded at his bank, allegedly by an employee of the Quick Loan company. This employee had allegedly made a fraudulent deposit of P 25,000 on the junior civil servant's bank account, using a blank cheque leaf which he had allegedly stolen from a wealthy customer's cheque book. The Quick Loan company's employee then allegedly used the debit card to spend the money that had been deposited onto the bank account.

The bank said it was not responsible for the loss. The bank said that the young man had broken his contract of secrecy with the bank, by giving away his secret pin number, and referred him back to the Quick Loan company. The owner of the Quick Loan company said that the complainant should take the matter to the police, which he did. The police arrested a suspected employee of the Quick Loan company and held him for one night. The police then said there was insufficient evidence for a successful prosecution and released the employee, who then absconded. The Quick Loan company was subsequently sold. The new owner is aware of the problem but says that he is not responsible.

There is a legal argument that the Quick Loan company had a duty of care to its customer, as long as the Quick Loan company had possession of the customer's debit card and pin number. However, this argument falls outside the terms of reference of the BA, since the Quick Loan companies are not members of the Bankers' Association of Botswana.

It is clear that as long as the Quick Loan companies take the debit card and the pin number as security for a loan, the borrower is at risk from a dishonest employee of the Quick Loan company. This system of taking security by the Quick Loan companies needs to be changed. The Minister of Trade and Industry, who is responsible for Consumer Protection, is aware of the problem.

In another case, a customer went to play in a sporting event and left his debit card in his tog bag in the changing room. A thief took the card and immediately went shopping with it. The customer only told the bank two days later that his card was missing. It is clear that the merchants who accepted the card in payment of goods

supplied hadn't bothered to verify the signature on the card or to identify the thief who was in possession of the card. The bank was not responsible for the fraudulent purchases. The card would have been better safe guarded if the person presenting the card to a merchant had been required to use a pin number at the point of sale. The system of shopping with a debit card, but without requiring the pin number to be used at the point of sale, puts the customer at risk. The system whereby the bank effectively gives a guarantee of payment to the merchants without the merchant being compelled to identify the customer, may need to be changed.

There is a strong case for the Ministry of Trade and Industry to take action, in the interests of consumer protection with regard to debit card transactions in general, and those involving the Quick Loan companies in particular. The Minister has expressed his interest in trying to find a solution to the problem.

As has often been explained by the Governor of the Bank of Botswana, any fraud at a Quick Loan company is outside the jurisdiction of the Bank. The Quick Loan companies are not deposit taking financial institutions. They only lend their own money, not that of depositors.

A number of holders of debit cards have been 'helped' by strangers when their cards have apparently been swallowed by an ATM. This sometimes happens on a Sunday or on a Saturday afternoon, after the banks have closed for the day. A crook prevents a debit card from going fully into an ATM, but the card won't come out either. The customer thinks that his card has been captured by the machine. However, there is no one at the nearest bank branch who can investigate, because the branch is closed. The crook waits for the customer to leave, retrieves the card and either extracts money at the ATM (having found out the customer's pin number) or else goes shopping with the card. The security guard who should be on duty at the ATM has gone to the toilet. The banks say that they are not legally responsible because the card never fully entered the machine. Perhaps, more customer education is needed.

A number of customers have, for various reasons, applied for more than one debit card. One customer had applied for five debit cards, before the bank said that no more cards would be issued to that customer without a further investigation. A few of these customers have applied for a credit card as well. The practice of holding several cards at one time causes confusion when the customer subsequently disputes a card-generated debit on the customer's bank statement. The bank then has to establish which card was used for which transaction. This is time consuming for the bank, and causes delays in answering customer queries. The banks may wish to revisit their in-house rules on this subject.

In only one case was a customer able to prove that a bank had made an error. The bank's computer had incorrectly arranged for a second customer, the holder of an independent second debit card, to charge the debit card expenses of the second customer to the account of the first customer. This was not too difficult to sort out. The sad thing about this case, however, is that the junior bank official who was first approached was rude to the customer. The junior officer told the customer that it was 'impossible' for someone else's debit card expenses to be charged to her account, whereas that was precisely what had happened. The junior official implied that the customer's complaint was wasting the bank's time. On appeal to a higher level within

the bank, the complaint was upheld and the matter was quickly sorted out. The bank rapidly refunded the injured party and correctly debited the second customer.

#### **4. Stop orders**

It should be obvious that a beneficiary of a stop order (or standing order) has no right to argue with a bank, if the original customer issues a valid instruction to its bank to cancel the stop order. Even a shareholder, who had in the past been receiving a monthly dividend out of current profits, has no authority to countermand his company's own board of directors. The only way for a shareholder to complain is by calling a general meeting of all the shareholders. Banks have to be very careful not to give the impression that they may be overly sympathetic to the beneficiary of a cancelled stop order.

#### **5. Group or "Scheme" motor car loans**

A bank may contract with an employer to give individual car loans to the employees, with the employer collecting the monthly loan instalments on behalf of the bank. In order to compete for the business, the bank contracts with the employer to accept a low deposit from each employee who wants to buy a car. The employees are pleased to be able to buy a car with such a low deposit, e.g. only 10% of the value of the car. The employer promises to collect monthly instalments by deduction from the monthly payslips of its employees, and to promptly send the money to the bank concerned.

Minor problems arise for the employee if interest rates go up during the lifetime of the loan, or if the employer is slow to send the bulk cheque to the bank concerned and misses the deposit date that was agreed in the employer's agreement with the bank. Additional interest may then be charged, even though the employee is not at fault.

Things can go more seriously wrong if the employee is retrenched and doesn't find alternative employment quickly enough.

If there is a non-zero amount still owing on the car loan account at the end of the agreed loan period, e.g. after 60 months, the employee has to continue paying monthly instalments until the loan balance has been cleared. The employee will often be mystified when he or she is asked to continue paying additional instalments, after the completion of the originally agreed loan period. If an explanation is sent from the bank to the employer, the employer sometimes does not inform the employee. The banks apparently expect the employer to act as the bank's agent in this respect.

It would seem to me that a great deal of irritation, and a loss of good will, could be prevented if the bank were to send a copy of their letter of explanation to the actual customer. Alternatively, the employers who are running the group loan schemes may need some re-training by the banks, to make sure that they understand the explanations that they are supposed to give to their employees.

If a customer fails to keep up with the monthly instalments on a car loan contract, after being retrenched for example, the bank will usually wait for a total of about four months before the car is repossessed, valued by an independent assessor, and then sold at auction. Repossessed cars are often in a sorry state, with damaged windscreens, flat tyres, missing radios, and with the distance driven sometimes exceeding a rate of 100,000 km per year. At that point, the sale value of the repossessed car is usually quite a lot less than the outstanding balance on the customer's loan account. The bank may then have to take the customer to court, after the car has been sold, in order to recover the unpaid balance on the car loan.

The worst case I have seen involved a retrenched employee whose car was repossessed, and who was left with an unpaid loan account balance of P 28,000 and no car. The car itself had proved to be a grossly insufficient security for the balance outstanding on the car loan. In fact, throughout the lifetime of the loan the resale value of the car had been well below the declining balance on the loan account at the bank. On further investigation, the reason turned out to be the low deposit asked for by the bank, only 10%. If the bank had asked for a 20% deposit at the beginning, there would have been a much better chance of the resale value of the car and the loan account balance being close to each other. The banks are in effect giving out car loans where the car itself is not sufficient security for the loan.

These car loan schemes do work well in the majority of cases. However, the employees sometimes do not care to know just how much more expensive it is to buy a car through instalments than by paying cash, even when the bank tries to tell them. There is again a case for both the bank and the Minister of Trade and Industry to educate the members of the public who are concerned.

## **6. Insurance matters**

If a bank in Botswana is acting as an agent of a Botswana insurance company, for example to cover a personal bank loan, the customer doesn't necessarily realise that complaints against the bank on insurance matters should not come to the BA. Insurance complaints are outside the terms of reference of the BA.

The banks could however save some unhappiness by carefully checking the borrower's application form for insurance to cover a personal loan. It is hard on the customer if both the bank and the insurance company say afterwards that the customer was in fact never covered for insurance because the customer did not fill in the application form correctly. The space on the insurance company's application form which deals with a pre-existing medical condition should ideally never be left blank. It is in the banks' interest, as well as the interests of the customer, that this section of the form should either be filled in correctly, or else the customer must write "Not applicable" at that point.

If a customer of an insurance company only ever deals with his insurance company through a bank in Botswana, whether the insurance company is in Botswana or South Africa, the customer may appeal for help from the BA even though the complaint is outside the Terms of Reference of the BA.

The BA received two complaints from beneficiaries in Botswana, about the time taken by South African long term insurance companies to finally settle an agreed insurance claim. In both cases, the delay was due to the failure of the two South African long term insurance companies to obtain Exchange Control permission from the South African Reserve Bank. This was necessary in order to pay the two beneficiaries in Botswana.

On both these occasions, the rand cheques were taken to banks in Botswana by the beneficiaries, as purported payments from the insurance companies. The banks, however, returned the unpaid cheques to the insurance companies in South Africa. The customers in Botswana mistakenly thought it was the fault of their banks that their bank accounts were not credited with the pula equivalent of the rand cheques. The banks in Botswana ought perhaps to try harder to explain to their customer why the rand cheque from the South African insurance company could not be processed in Botswana.

Any claim by the South Africa insurer that it is the duty of the banks in Botswana to process the rand cheques, should be vigorously rejected. The two delays took 18 and 24 months, respectively, to be sorted out.

The BA has reported these insurance matters to the Registrar of Insurance at the Ministry of Finance and Development Planning.

## **7. Legal advice**

The BA was once again grateful for legal advice obtained from Professor John Kiggundu, professor of banking law at the University of Botswana. Broad legal principles were discussed with Honourable John Gittings, a retired High Court judge in Botswana.

## **8. The International Association of Banking Adjudicators**

The BA attended the biennial meeting of the above group in London, in March 2004. The conference was organised by the British ombudsman for complaints against providers of financial services in the UK, including complaints against both banks and insurance companies.

A large number of countries were represented at the conference. The more experienced countries, e.g. Australia, Canada, Finland, Ireland, Netherlands, New Zealand, South Africa, Sweden and UK, discussed ways to improve their already sophisticated complaint handling services. For example, the UK ombudsman handles about 1,500 complaints per day. Of these, about 600 complaints per day related to one particular home mortgage finance product which had been offered by various UK long term insurance companies.

There was a strong feeling that financial complaint handling services should be unified, with complaints about banking and insurance services being handled within a unitary institution. The distinction between banking and insurance is increasingly becoming blurred.

The less experienced banking adjudicators from the expanding European Union discussed ways to standardise their complaint handling procedures within the EU. This group included the Czech Republic, for example.

The ‘beginners’ at banking adjudication, e.g. Botswana, Jordan, Malta and Trinidad, learned how to move rapidly towards the levels of service that have already been achieved by the more experienced countries.

The Botswana BA’s attendance at the conference was kindly sponsored by the British Bankers’ Association.

Derek J. Hudson, PMS, Ph.D.  
(Banking Adjudicator)

Private Bag 00404, Gaborone, Botswana