

**OFFICE OF THE BANKING
ADJUDICATOR**

Annual Report 2005/2006

**Presented To The Bankers
Association Of Botswana**

**An Account Of Activities For The
Period From May 2005 To April 2006**

12th May 2006

(1). Banking Adjudicator's Comments

The Office Of The Banking Adjudicator (OBA) has without doubt reached maturity and found its rhythm after four years of operation. This is mainly attributed to increased levels of public awareness initiatives undertaken, though not yet at satisfactory standards.

Efforts were made in raising public awareness in terms of the use of media, that is, radio interviews, publication of articles in the newspapers and so on. Though on a small scale, efforts were rewarded, even though more needs to be done in the area should resources permit.

The time has come for the office to forge ahead with some developments in building corporate image, on a trickle basis, in terms of the development of vision; mission statements; core values and service standards which are 'universal' basic requirements for any professional entity.

(2). Introduction

This was the fourth year of operation of the Banking Adjudicator of Botswana. Excellent working relations have been maintained with the complaint handling staff of the licensed commercial banks and merchant banks.

The members of the Bankers' Association Of Botswana are:

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

African Banking Corporation and Kingdom Bank Africa are merchant banks, whilst the others are commercial banks.

This report is based on cases handled from 1st December 2005 to 30th April 2006 by the current Banking Adjudicator, which includes 14 cases received by the time the office was vacant.

(3). Overview of the complaints against the member banks during the year 2005/2006.

Similar to last year, there were no complaints against the merchant banks.

Comparative to the reporting period of May 2004 to April 2005, where 'as a rough rule of thumb' it was found that about 30% of the complaints against the commercial banks were found to have merit, this reporting period, a significant improvement is noticeable at 25%. This is a commendable effort by the banks, which has to be at least maintained or improved on. In all these cases, the Banking Adjudicator worked side by side with the complaints officers at the commercial banks to see that a compromise was reached and that suitable adjustments were made in the customers' favour.

It is in the best interest of all parties that such adjustments, be effected immediately to avoid further complaints by the aggrieved parties. Some improvements are noticeable even though on a small scale, reminders on outstanding matters have to be continuously sent to the concerned banks. The main delays experienced were attributed to lack of authority by complaints handling staff, to effect the agreed adjustments. The Banking Adjudicator complained about the delay to the banks concerned.

The Banking Adjudicator recommends at the end of this report (Item 8) certain minimum standards and timeframes that determine how banks must handle complaints from disgruntled clients to avert delays in dispute resolution.

About 75% of the complaints were found to be without legal merit, usually because the complainants didn't understand the underlying principles behind the banks' procedures. The Banking Adjudicator then explained the situation to these disappointed customers. The Adjudicator's assumption is that every bank has its own complaints procedure. Unfortunately some front line staff seem not to have the time and expertise to handle most complaints and instead of referring these to their seniors, customers are given the impression that they are the final authority in the bank.

Even this year, it appears that some banks are not of the idea of communicating through writing with their customers, possibly for the fear that such correspondence might later be used against them in litigation. In many of the cases, the complainant had written to the bank concerned but had not received a response. This remains an unsatisfactory level of service by the banks. A great deal of time and effort might have been saved if the banks concerned had responded to the customers' letters of complaints.

(4). Case Flow Statistics From December 2005- April 2006

Statistics on the flow of cases is important as it shows the level of activity in the office and indeed as a measure of public awareness on the *free service* provided by this office.

The data below pertains to the period December 2005 to April 2006. The table typically shows the various activities undertaken by the Banking Adjudicator on a daily basis.

Enquiries are received through, telephone, correspondence and walk in. In this reporting period at least 81 enquiries were received from 1st December 2005 to April 2006. This is an important measure of awareness and would be meaningful if made on a comparative basis with the previous years statistics (see comments under **Table B** below).

Application For Assistance Forms are sent to customers on request by either post, fax or e-mail and are similarly received through the same mode. 61 applications were received, where the Banking Adjudicator had to peruse through all of them with the view to determine those acceptable as per the terms of reference and jurisdiction.

Out of these, 43 cases were 'provisionally accepted', however pending the verification of the other relevant important information with the banks, for example, whether the customer has obtained a complaint registration number. This led to the acceptance and subsequent adjudication of 32 cases and rejection of 11 cases.

The counselling role of the Banking Adjudicator need not be overemphasised throughout these processes (refer to the Annual Report May 2004-April 2005).

Table A

Case Flow Analysis:

Activity	2006					
	Dec 2005	Jan	Feb	March	April	Totals
Enquiries (telephone, correspondence and walk-in)	7	12	20	17	25	81
Applications For Assistance Received	25	8	7	9	12	61
Files Opened (referred to bank to resolve-Assessment)	15	5	8	6	9	43
Files Closed (Assessment)	10	3	2	3	1	19
Files closed (mediations, provisional & final recommendations)	-	1	2	1	1	5

The number of cases reported in 2005/2006 is not necessarily indicative of the individual bank's complaints handling performance or performance in general. The banks vary considerably in size, client profile and product- mix. A comparatively high number of complaints received against a bank might in fact reflect its efforts in advertising the existence of the Banking Adjudicator's Office or the fact that it refers comparatively more of its disgruntled clients through to the office than do the other banks.

Table B

Month	No. of cases Reported	Case Status			
		Accepted	Rejected	Resolved	Pending
Pre Dec 2005	14	8	6	7	1
Dec 2005	3	3	-	3	-
Jan 2006	6	5	1	3	2
Feb 2006	5	5	-	2	3
Mar2006	8	6	2	4	2
Apr-(still within 15 days)	7	5	1	1	4
Totals	43	32	11	20	12

The case flow statistics above in **Table A and B** could cast more light on the activities in this office if there was comparison with the previous year 2004 figures, unfortunately as there was no handover, retrieval of information pertaining to the previous year would take a while. Efforts would be made in the future to address this, with the possible acquisition of a computer software package to manage the information.

Within the reporting year of 2005/2006, a total of 43 cases were received out of which 32 were accepted for adjudication in terms of the Bankers' Code Of Conduct and the Banking Adjudicator in Botswana terms of reference Appendix B. 11 cases were rejected as they were out side the Banking Adjudicator's jurisdiction. By the end of April 2006, effectively 8 cases were still outstanding, these exclude 4 new cases in April submitted to the respective banks giving them another opportunity to resolve.

Files Opened In 2005 Per Bank

Table C

Files Opened Per Bank	2005/2006	Current case status	
Name Of Bank	Cases Accepted	Resolved	Pending
African Banking Corp.	-	-	-
Barclays Bank	17	13	4
Bank of Baroda	-	-	-
First National Bank	2	2	-
Kingdom Bank	-	-	-
Stanbic Bank	1	1	-
Standard Chartered	12	8	4
Total	32	24	8

Table C above shows the total number of cases accepted for adjudication or of files opened, number of cases resolved and pending cases in the reporting year 2005/2006 per bank. This information is considered important for purposes of banks benchmarking themselves against others on handling of complaints.

Note, that resolved cases indicate additional 4 cases in Table C and 20 cases in Table B, these were resolved at the lowest levels with the concerned bank branches and a decision was taken not to include them.

Average Time Taken To Finalise Cases In 2005/2006 Per Bank

Table D

	2005/2006		
Bank			
African Banking Corp.	-		
Barclays Bank	95 days		
Bank of Baroda	-		
First National Bank	30 days		
Kingdom Bank	-		
Stanbic Bank	15 days		
Standard Chartered	65 days		
Total Average	51.25 days		

Table D above indicates the average number of days taken to finalise a case by each concerned bank, from the date it receives notification of complaint from the Banking Adjudicator's office. The target and aim of the Banking Adjudicator is to complete most investigations within 3 weeks.

The Banking Adjudicator is concerned that despite some banks been given ample opportunity, 15 working days to resolve customers' complaints, delays are common place and in most cases no valid reasons are advanced.

To this end we have developed minimum standards that will determine how banks must handle complaints within strict timeframes, which will require your endorsement.

(Items 8 A & B)

(5). Highlight On Procedures:

The Banking Adjudicator has decided to highlight important steps in our procedures for the benefit of members to enable them to 'get a feel' of the processes we follow in adjudication.

(i) Acceptance:

In terms of the laid down procedure on adjudication, when we accept a customer's complaint, provided that all the necessary information has been submitted, we ensure that Notification of Complaint is immediately submitted to the bank, giving them another 15 working days to resolve the matter with the customer. If the matter is concluded the bank should accordingly advise us together with the customer that the matter has been concluded to his/her satisfaction.

(ii) Assessment:

This stage, constitutes a summary of the matter setting out the complaint's case, the bank's response, our assessment and finally our conclusion on the matter as to liability. This process is applicable in cases where the bank's offer is found to be fair and reasonable and we suggest that the complainant accepts it, and where we believe that there is no prospect of making an award in favour of the complainant. This process calls for the complainant to make further submissions or provide additional evidence that could change our findings. Out of the 24 cases resolved at least 19 went up to this stage.

(iii) Mediations:

These are formal meetings between representatives of the bank and the complaint, with the Banking Adjudicator presiding as the mediator. The Banking Adjudicator guides the debate between the parties and facilitates an agreed settlement. At least 2 cases out of the 24 resolved were concluded at this stage.

(iv) Provisional & Final Recommendations:

The office has experienced problems where complainants in most cases would not initially give out all the evidence and would only wait to see whether the matter is concluded in their favour or not. Therefore, if further evidence or submission emerge after a provisional recommendation is made, the matter proceeds to a final recommendation. At this stage 3 cases were concluded, where 2 were in favour of the complainants and 1 in favour of the bank.

(6). Summary Of Cases Disposed Off In 2005/2006

Most cases disposed off by the Banking Adjudicator in 2005/2006 report period were settled at the middle and lower levels of the process as shown by the explanation above. Most of which details were fully covered in the previous report of 2004/2005 and therefore, it was decided not to dwell on them much except for relatively 'new' cases where recommendations would be advanced.

These cases fall under the following categories;

(i) Failure by the bank to execute customer instructions; (ii) unilateral action by banks without prior notice to the customer, for example, varying of customers' terms and conditions of loans and closure of accounts; (iii) disputed A.T.M transactions and (iii) allocation of low monthly instalment and application of wrong interest rates on loans.

(A) Failure To Execute Customer Instruction:

Some cases reported highlight situations where customers have expressly given their banks instructions in writing to take action, only to resurface later that nothing was done.

Without necessarily quoting the concerned banks and the complainants, facts of each case are spelt out with the ruling of the Banking Adjudicator stated.

Failure To Countermand Cheque:

In this case the customer had duly completed the stop payment form with the assistance of an enquiries clerk as he had had an asthma attack. From the records presented, it would appear that the instruction was duly accepted by the bank for processing in light of signatures and initials of various bank officers appended on the form and indeed the customer having been assured. It is not clear whether the instruction was executed and later overridden in the computer system. The bank officials maintain that had the amount of the cheque being written correctly as P8000.00 and not wrongly as P800.00 the countermand could have been effected, and therefore due to this difference the instruction could not be executed. Since the cheque was not stopped it was later cashed. The bank further maintains that, the bank official who assisted the customer to complete the stop payment form was in fact an agent of the customer and not of the bank and hence they are not liable.

Recommendation Ruling:

The Banking Adjudicator's ruling on the matter was that the bank official 'acted in his/her official capacity and within the scope of his/her authority' when she/he assisted the customer and therefore was a bank's representative, and owed the customer the duty of care and skill.

Again, in terms of the Bills of Exchange Act Chapter 46:02 Section 74 (ordinarily and in the course of business, when a banker receives notice from a customer to countermand payment of a cheque, the banker should be obliged to return the cheque

when presented for payment). A wrong amount on a cheque does not invalidate countermand, however, a cheque number being an important detail does if it is wrongly quoted. In this case the cheque number was quoted correctly. A provisional recommendation was made in favour of the complainant against the bank for the full payment of P8000.00 to the customer with interest. Unfortunately the bank dwelled on the reasons advanced by the complainant rather than confining themselves to the issue of why the cheque was not stopped. However, some loss can be offset by subrogation if goods have been purchased, as they can be sold.

(B) (i) Unilateral Change Of Terms and Conditions Of Loans Without Notice:

Instances of unilateral change in the terms and conditions of loans, is mostly experienced with vehicle loans. Initially, when a loan is granted, the insurance premium for the 1st year is included in the calculation of the monthly payments. For the ensuing years the customer is expected to make provision for cover, failing which the concerned bank 'reserves' the right to ensure that cover is in place as they have interest in the leased vehicle. The banks lease agreement is specific on the insurance proviso. Most customers claim they do not understand or it is not clear, however the position of the law maintains that whoever sign a document knows or ought to know and understand the contents thereof.

When the premium for the following years become due and the customer had failed to advise the bank that they have provided cover, the bank is forced to protect its assets against risk, where a charge in premium payment is made to the current balance, effectively increasing the instalments.

Customers maintain that they will only be aware when they see the increased instalments debited from their accounts or deducted from their salaries. This throws them in financial hardships as their take home salary is now reduced to low unaffordable levels.

From the various matters handled on this issue it would appear that prior notice or reminders are not made to the customers on the subject matter before changes are effected. It is appreciated that every account holder with any bank should be fully responsible for facilities granted to them and that it should not necessarily be the responsibility of the bank to remind their customers. The Banking Adjudicator had to explain to the affected customers that they were legally liable to make good the revised loan repayment.

The Banking Adjudicator's recommendation is that, at times going an extra mile in customer service by banks as it occurs when banking facilities such as overdrafts are due for renewal, for example, sending reminders at least some months in advance could avert unfavourable relationships.

(ii) Closure Of Accounts.

Several complaints have been received on the unilateral closure of customers' accounts by the banks. In most cases the reasons advanced by the complainants were completely different from the ones advanced by the banks and in the end the main issue centred around unsatisfactory operation of their accounts, for example with current accounts, the problem being frequent referrals due to lack of funds.

The Banking Adjudicator had to explain to the affected customers that legal action can be meted against any person who draws a cheque knowing that it will not be honoured due to no, or lack of, funds.

Guidelines have been recommended by the Banking Adjudicator to be used by banks in cases of unilateral account closure.

(Item 8 B)

(C) Disputed A.T. M Transactions.

The Banking Adjudicator is aware of the joint efforts, undertaken by all the banks and the Bankers' Association of Botswana with regard to public education on the safe use of Automated Teller Machines, specific guidelines displayed at almost every A.T.M machine.

Despite these efforts, complaints still arise from customers on the use of these facilities. In most cases, the blame rests with complainants, as they do not concentrate when transacting at the machines. In some instances, cases arise where cash is retracted back by the machine due to the delay of the customer to pull it out, several cases of disputed encashment are experienced.

The concern the Banking Adjudicator has is the delayed resolution of these matters, as more delay gives the customer the positive impression that a solution to their favour would be found. Our assumption is that most complaints involving cash are reported to the bank immediately where recent records would be available for use. We are happy to report that one of the banks managed to resolve one of such complaints within a week.

(D) Allocation Of Low Monthly Instalments On Loan Contracts and application Of Wrong Interest Rate.

Cases where low monthly instalments are allocated on loan contracts still persist, especially on scheme loans, both Government Guaranteed Loans Schemes and Botswana Defence Force Loans. The cause of this might be as a result of wrong input of one of the terms of the loan, such as the repayment period and interest rates. Generally, personal loans, vehicle loans and house loans have different repayments periods and interest rates. These are basically standardised per product or scheme. Where low instalments are mistakenly allocated this results in the loan not adequately reducing. The instalment being a portion of interest and the principal payments are inadequate such that when the account is corrected the customer's contract would naturally have to be extended.

The Banking Adjudicator had to explain to the affected customers that they were legally liable to make good the loan repayment, even when the bank had made the original error. This sometimes caused considerable emotional stress to a customer, who had 'altered his/ her financial position', and complied faithfully with the terms of the signed contract. The solution, that the customer should nominate a higher monthly instalment to the bank, seemed to be greatly unfair. The alternative arrangement, to extend the remaining lifetime of the contract, was equally unattractive to the customer.

A long- term solution for this problem is; to carry a mini audit of the loan portfolio on scheme loans with the view to correct any errors and to ensure that all future loans are properly classified when captured in the system coupled with perusal of monthly exception reports, which activity, it is assumed, every bank undertakes at certain intervals.

The bank concerned in most cases would be obliged to write-off undue interest because of the error and further make a modest *ex-gratia* payment to the customer, once a solution had been found.

(7). The sizes of the amounts of money complained about.

A particular complaint concerning a claim for alleged damages arising out of one of the banks foreclosure process, was a claim of P989000.00 where the customer was seeking an award for damages. The concerned bank was in no way accepting any wrong done, but offered an *ex-gratia* payment of P5000.00 ‘out of the goodness of their heart’

The Banking Adjudicator after mediation, made a ruling, that this matter involved assessment of quantum of damages claimed and that it was a ‘ matter that should more appropriately be dealt with by a court of law or other processes’.

All the remaining complaints that were dealt with, including those which are summarised here, involved amounts that were well below the BA’s limit of P250,000.00

(8). General Recommendations

(a) Minimum Standards For Handling Complaints From Customers.

The Banking Adjudicator proposes minimum standards that determine how banks must handle complaints from disgruntled clients. These could further be incorporated in the Bankers’ Code Of Conduct and simultaneously the banks Complaints Handling Procedures.

Banks should have sufficient personnel to handle complaints within specified time limits. Gone are the days when the banks can say they are ‘short staffed’ and are therefore unable to deal with a problem speedily. Equally important the personnel must be properly equipped to handle complaints. This means that they must be provided with the necessary know-how and authority to address client issues.

There should be a commitment to escalating non-routine and serious complaints to people with the requisite mandate and knowledge. These provisions help develop a culture, which regards the need for constant improvement and excellence in customer care as pivotal to success.

The following timeframes are proposed:

- (i) Acknowledgement of the complaint and issuing of a complaint reference number is done immediately(in the case of call centres or branches), or one business day where a written or electronic complaint is received.
- (ii) Feedback to the customer is provided within five business days of logging the complaint.
- (iii) If the dispute requires more time to resolve, the customer must be advised within three business days and must be given an estimated time for finalisation of the complaint.
- (iv) Once the bank decides the dispute, the customer must be advised in writing of the outcome.
- (v) If the dispute is resolved in favour of the customer, the necessary adjustments or explanations must be done within one business day of resolution and confirmation thereof must be included in correspondence to the customer.
- (vi) All disputes not resolved within 15 business days of being logged, or for a longer period by mutual agreement with the customer, must be declared in the banks' favour and the customer informed accordingly, together with details of the complaints procedure for the Banking Adjudicator.

The Banking Adjudicator is confident that these timelines will have a positive impact on the banking industry and the people it serves. By banks accepting ownership of complaints from their customers, few matters dealt with by the Banking Adjudicator will escalate to written adjudication.

(b) Time Frames For Unilateral Account Closures:

Any bank that decides to close or 'freeze' private or business accounts, for whatever reason, must afford clients sufficient notice to make alternative financial arrangements.

Firstly, the bank must formally notify the client of its intention to close the account. In terms of the law and banking practise, it is usually insufficient to warn a client that the account may be closed if certain conditions are not complied with.

The notice of such an intention should be presented in writing, informing the customer of the date the bank intends closing or 'freezing' the account.

Secondly, reasonable timeframes must be given so that people are able to make other plans for their financial needs. The Banking Adjudicator recommends that a bank give personal account holders between two to four weeks notice of its intention to shut the available facility, while business should be notified one to two months in advance.

However, the nature of the accounts and the number and type of transactions must be considered when stipulating the date on which the account will be closed.

(9). Awareness On The Services Of The Banking Adjudicator

Since the Banking Adjudicator does not have a committed budget for creating public awareness, it is recommended that the banks assist in their various activities undertaken in their establishments.

Initiatives, which could be undertaken include:

- (i) Banks leaflets or brochures about the banks' internal complaints procedures should make reference to the Office Of The Banking Adjudicator.
- (ii) The banks make reference to the office and the Application For Assistance form available electronically on its intranet/internet or the relevant link to the website.
- (iii) Bank posters referring to the Office Of The Banking Adjudicator.
- (iv) Bankers Association Of Botswana, Bankers Code Of Conduct on display in the banking halls.

(10). Annual Awards

The Banking Adjudicator recommends, the introduction of the 'Banking Adjudicator's Award for Excellence' in complaints handling for the best overall bank in dealing with customer complaints. This will encourage banks to focus their attention on providing redress to customers with legitimate grievances and to treat complaints in a fair, reasonable and professional manner. This activity could be romped with other activities of the Bankers' Association Of Botswana such as the annual dinner.

(11). International Events

The Banking Adjudicator was on attachment with the Ombudsman For Financial Services in South Africa for 3 days in the month of April 2006. This proved to be a worthwhile experience for him. Many thanks, to the former Chairman of the Association, and the Association for their invaluable support.

The International Conference of Financial Ombudsmen was held in Toronto, Canada in September 2005. The topic discussed was 'Appropriate compensation; principle and practice'. There was however, no representation from the Office Of The Banking Adjudicator In Botswana as the Banking Adjudicator's position was vacant at the time.

This year, the Banking Adjudicator has been invited to participate in the International ADR Conference in Australia- Gold Coast from 28-31 August 2006.

(12). Report To Member Banks

Specific reports have been sent to individual member banks for their information and or action.

Acknowledgement

The Banking Adjudicator has received excellent support from the staff of the Botswana Institute of Bankers, whose office he shares.

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