

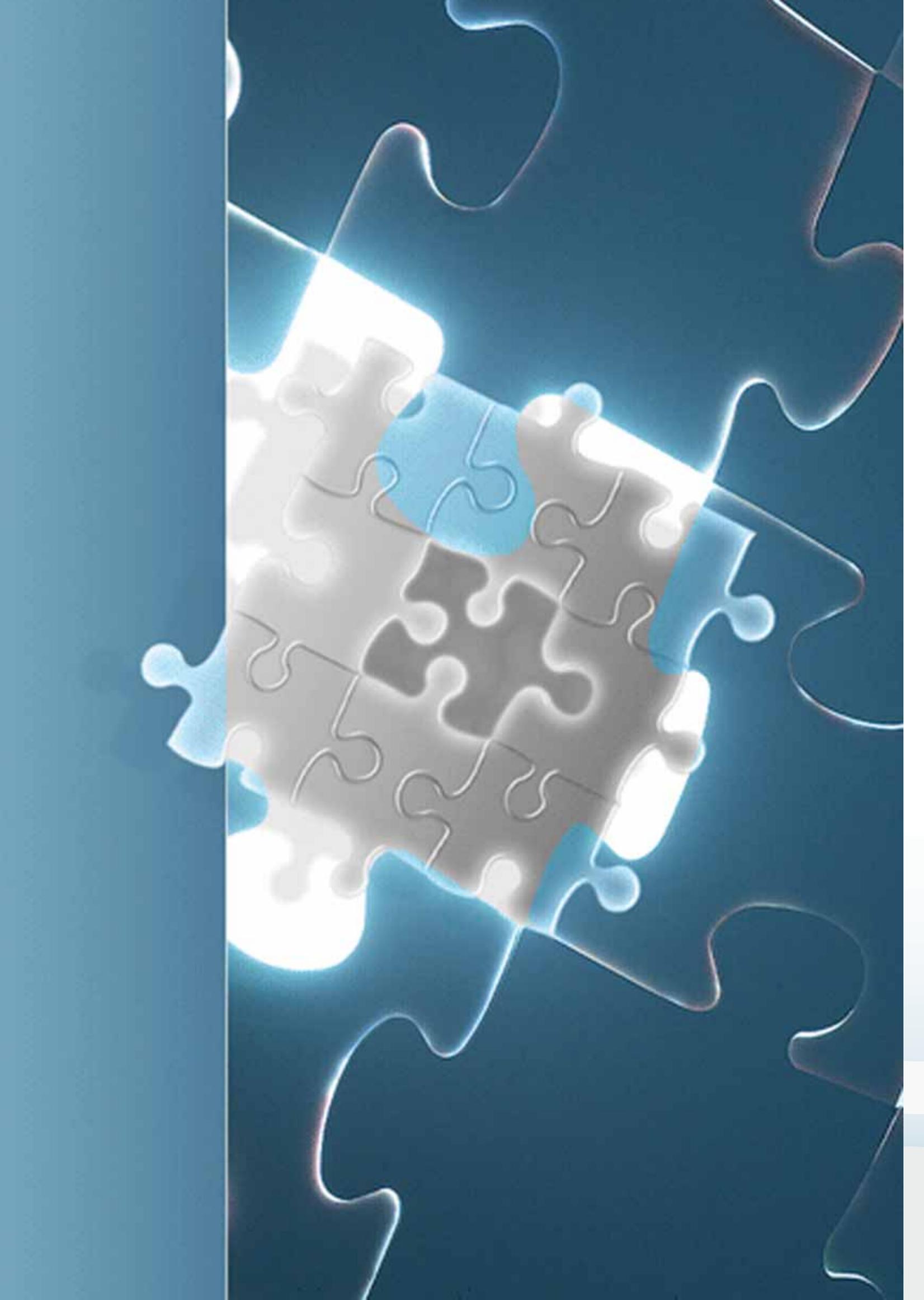


Office of the Banking Adjudicator

An Account of Activities for May 2006 - April 2007

Annual Report 2006/2007





 **VISION**

The Office of The Banking Adjudicator will be the mediator in disputes between banks and their customers, through informed and well thought resolutions and decisions.

 **mission**

The Office of The Banking Adjudicator is committed to providing banks and their customers with a free, accessible and efficient dispute resolution service. The main aim is to carry out this in an effective, independent and professional way, striving to improve service in the banking fraternity.

 **Values**

The Office of The Banking Adjudicator subscribe to the following values: Independence, Impartiality, Confidentiality, Accessibility, Integrity and Timeliness.

Service Standards

Target - At least, 60% of files within 45 days.
- All files within 60 days.

Process 1 - Same day response and referral to bank.

Process 2 and Process 3 - within a maximum period of 60 days.

Overall

Our aim is to finalize All FILES within two months of opening the file.

We aim for a minimum average of 30 days from the date of opening to date of closure of the file.

Process 1- Telephonic or written enquiry received, complainant advised to take up the complaint with the bank first.

Process 2 – Complaint considered, file opened, complaint referred to bank to attempt to resolve, settled or escalated to **Process 3**.

Process 3- Bank's response is considered and assessment made or dispute mediated or investigated and adjudicated upon.

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Banking Adjudicator- Gabriel A.K Maotwanyane

The year 2006/2007 was indeed a busy period compared to the 2005/2006 period. This was attributed to by, increased levels of public awareness campaigns undertaken through interviews, press statements and publications in business magazines.

Our Application for Assistance form has a section where customers are requested to indicate how they got to know of the Office of The Banking Adjudicator. From the statistics obtained from this data at least 52% of customers were referred to us by legal firms, legal aid companies, government departments (Consumer Affairs), Banking Division of the Ministry of Finance) and the Central Bank, 19% by word of mouth, and 10% by banks. Majority of complaints received are within Gaborone, and the periphery and Francistown.

This is an indication that with cost effective outreach initiatives undertaken to cover the other parts of the country, the public awareness of the existence of the office would be improved significantly. Similarly, a link within each bank's complaints handling procedure in its inter and intra net would serve a similar purpose. There is an increase of 22% in the number of cases reported this reporting period 2006/2007 than in 2005/2006.

In its fifth year of operation, the office welcomes Bank Gaborone to its fold as the 8th member of the Banker's Association of Botswana. The establishment of another financial regulatory body, the Non-Bank Financial Institutions Regulatory Authority (NBFIRA) is an important development in the financial services fraternity in Botswana. Probably a need would be identified of a counter part in dispute resolution in the new authority to assist those customers whom the office does not have jurisdiction on, to assist.

It is imperative that a receptionist be engaged at the office to assist in the absence of the Banking Adjudicator who is engaged on part time basis. The current arrangement where an officer with the Botswana Institute

of Bankers is engaged is not effective as their work volumes have increased and therefore with shared attention commitment is not guaranteed.

The office is pleased to announce that, customers who used to consider banks charges as unaffordable are now happy that most banks if not all have now introduced a once-off charge in account maintenance and scaled down other service charges to affordable levels.

The financial services sector landscape in Botswana is undergoing tremendous change and therefore necessitates the overhauling of the current Banker's Code of Conduct which was published in July 2002, in line with international banking practice. This is imperative as the document spells out the duties, rights, obligations and the relationship inter-se customers and banks. The replica effect of this will be that customers would better know what they are required to do in order to maintain the highest standards of conduct.

OVERVIEW OF THE COMPLAINTS

The number of files opened per bank in 2006/07 is not necessarily indicative of the individual bank’s complaint handling performance or performance in general. The banks vary considerably in size, client profile, distribution networks and product mix. In fact a comparatively high number of complaints received against a bank might reflect its efforts in advertising the existence of the Office of the Banking Adjudicator or it refers comparatively more of its disgruntled clients through to the office than do the other banks.

Main Causes for Complaints in 2006/07 Files

The main causes for the complaints in 2006/2007 can be classified into the following categories:

Table 1

Causes	%
1. Unfair Treatment	40%
2. Negligence	20%
3. Transaction error	15%
4. Breach of contract	10%
5. ATM	5%
6. Cards swapping	3%
7. Card loss	2.5%
8. Other	0.5%

Table 1 and figure 1, shows the main causes of complaints in the 2006/2007 report period. Complaints based on unfair treatment rank the highest for complaints, with negligence close behind followed by transaction error. The cause for unfair treatment, negligence and transaction error complaints are generally allegations made by the complainant at the time when the files are opened.

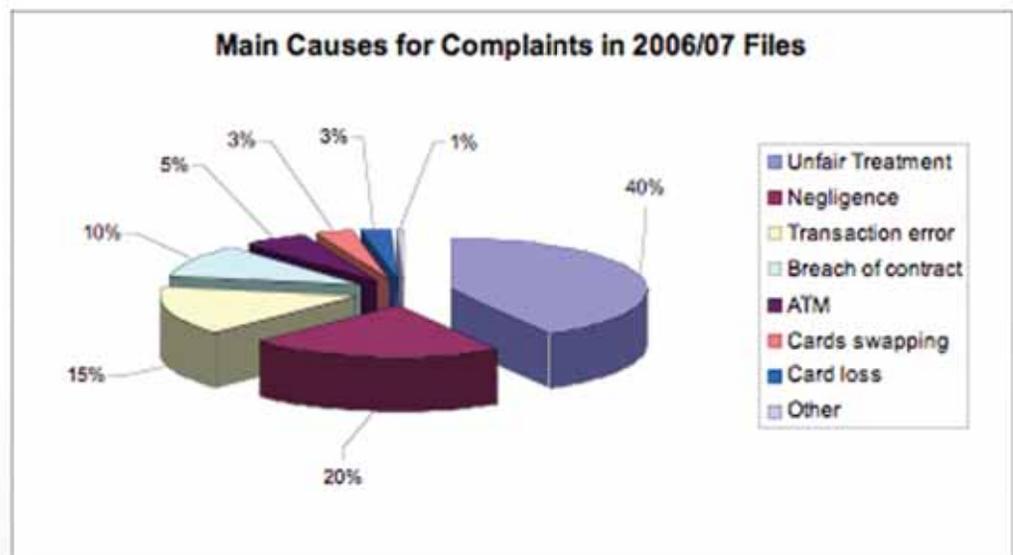


Figure 1

Unfair treatment, arise out of the perception on “unsatisfactory service” which the customer has received from the bank. Negligence arise when there is perception by the customer that a bank official did not followed the general banking practice and procedure and in the process prejudiced him/her, whilst transaction error arise in the course of execution of transaction, for example, wrong calculations on interest.

This reporting period, complaints on Automated Teller Machines (ATM) have declined substantially, which is a positive development. This is attributed to by numerous education campaigns embarked upon by the banks.

Classification of Complaints by Demographics

Complaint Type	
Companies	7%
Individuals	93%

Most complaints are usually brought by individuals, and this reporting period at least 93%, while the rest 7% came from companies, usually small and medium enterprises.

Gender

Male	79%
Female	21%

Analyzing complaints by gender, we find that at least 79% of complainants are by male customers, whilst 21% are by female. This is however, not an indication that female counterparts do not have complaints, there may be various underlying factors.

How did Complainants learn of the Banking Adjudicator's Service?

Table 1

Measure	%
Newspaper	23%
Word of mouth	19%
Referrals	52%
Radio	5%
Television	-
My Bank	10%
Magazine	2%
Other	1%

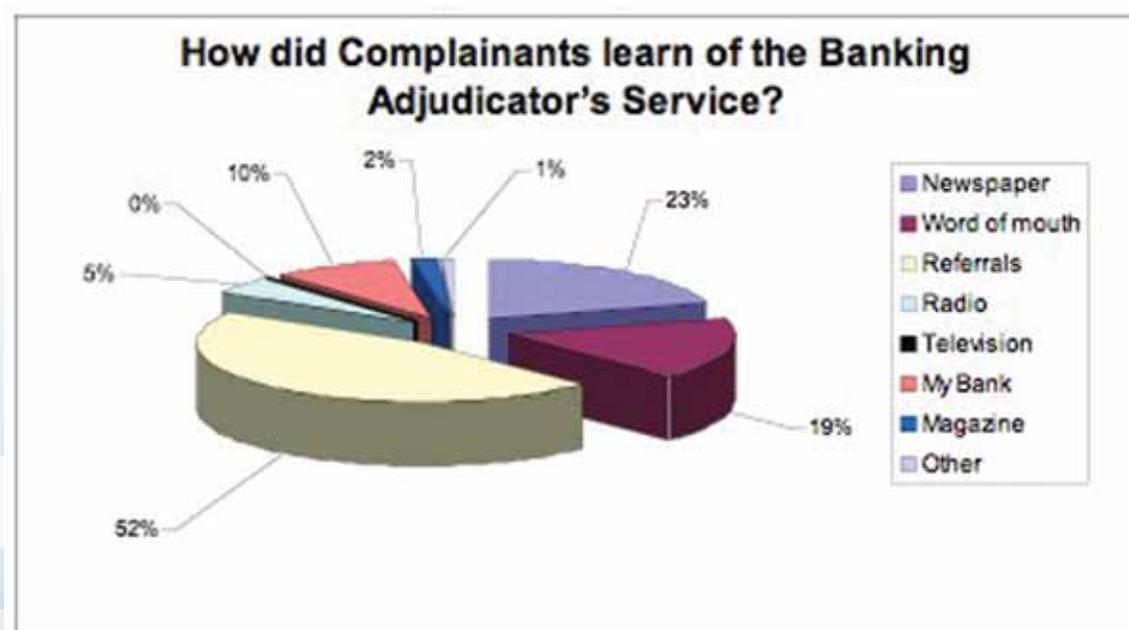


Figure 2

CASE FLOW STATISTICS

Our Application for Assistance form has a provision to indicate (an initiative to measure awareness) how the customers get to know about the services of the Banking Adjudicator. Table 2 and figure 2 shows that referrals at 52% and newspapers at 23% seem to play a major role in enhancing awareness of the office. Unfortunately there seems to be less reference by the banks at 10% to the office. Hopefully, with the recommendations contained in the Annual Report 2005/2006 implemented, the situation will improve.

Case Flow Statistics

Case Flow Analysis May 2006- February 2007

Table 3

Months	2006							2007				Total	
	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar		Apr
Enquiries	12	18	12	21	17	24	30	15	22	45	53	49	318
Application Forms Received	8	6	5	7	11	7	12	4	8	11	10	7	96
Applications Accepted	6	5	5	6	7	6	7	4	6	9	8	5	74
Cases Resolved	4	2	4	5	3	1	5	2	4	5	9	8	52
Rejected	2	1	-	1	4	1	5	-	2	2	2	2	22
Pending	1	2	1	3	1	1	3	5	8	12	4	11	

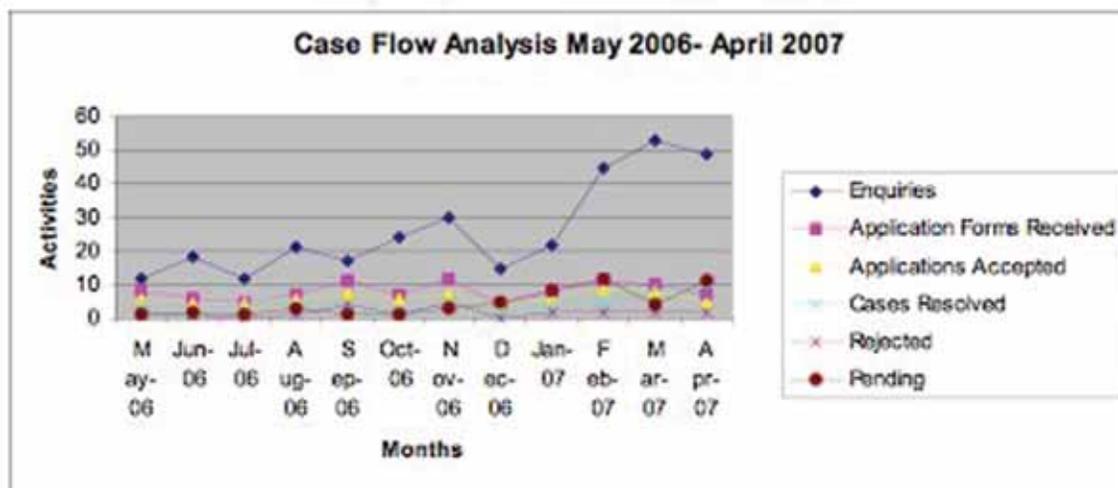


Figure 3

Table 3 and figure 3, above indicate the statistics in case flow for 2006/2007, whilst Table 4 below shows a comparison with the period 2005/2006. Information on 2005/2006 only pertain to 5 months (December, 2005 – April, 2006) and the period 2006/2007 to a full year. This is because the Banking Adjudicator's engagement only began from December 2005.

In 2005/2006, there were 81 enquiries, whilst in 2006/2007 there were 318, an increase of 60%. 61 applications (mostly back log of cases of between May 2005- November 2005, when the position was vacant) were received and in 2006/2007, 96 applications were received an increase of 22%. 43 files were opened, 24 resolved and 18 were rejected an increase of 26%, 37% and 10% respectively compared to 2006/2007 where 96 applications were received out of which 74 files were opened, 52 cases resolved and 22 applications were rejected (*see reasons for case rejection below*).

At least there were 11 cases pending at the end of April 2007, most of which banks have been given an opportunity to address these with customers. This is a cumulative figure which would usually increase when new cases are received or decrease when existing cases are resolved.

Below is Table 4 and figure 4 below, is a further analysis of cases by processes 1 - 3, which basically depicts on a comparative basis the activities for 2005/2006 and 2006/2007.

Analysis Of Activities By Process (Files opened and closed)

Table 4

Activity	2005/2006	%	2006/2007	%	Difference (Increase/Decrease)	%
Enquiries(Telephone, Correspondence & walk in)	81	20	318	80	237	60
Applications Received	61	39	96	61	35	22
Files Opened	43	37	74	63	31	26
Files closed (process 2)	19	79	40	77	21	32
Files closed (process 3)	5	21	12	23	7	29
Total Files Closed	24	32	52	68	28	37

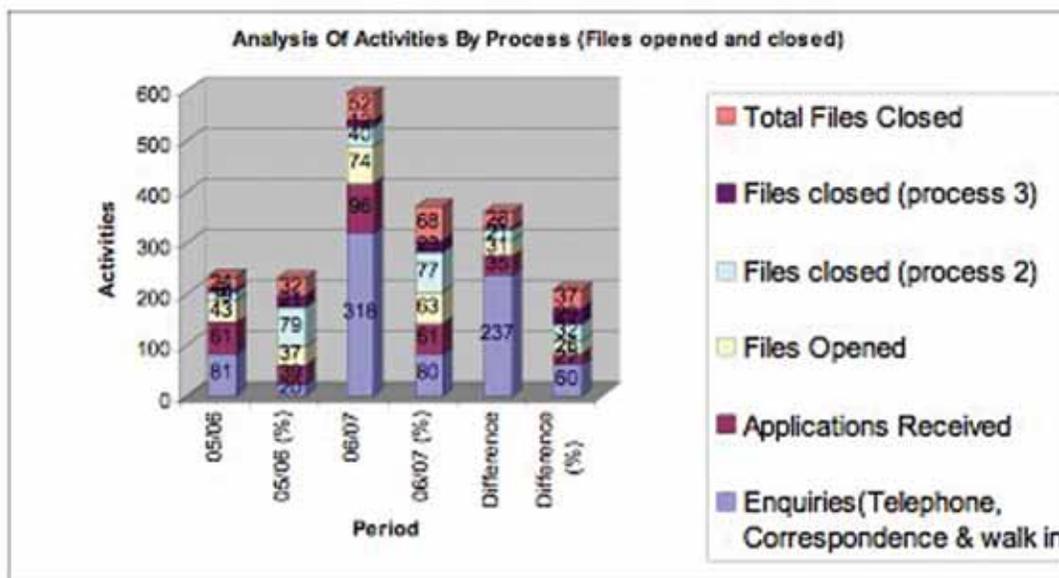


Figure 4

Reasons For Rejection

These are various reasons why some applications get rejected:

- . Applications outside our jurisdiction
- . Complaints against non members
- . Complaints unrelated to the provision of banking services.
- . Complaints a subject of legal proceedings
- . Complaint in respect of “dispute of fact”

The office is not a court of law and therefore can not assess conflicting evidence or conduct cross examination, therefore no recommendation may be made on any complaint in which a material fact can not be established, or in which a material fact can not be resolved on a balance of probabilities.

Cases Flow Comparison Per Bank For May 2006 – April 2007

Note: Cases Accepted (C/A) ; Cases Resolved(C/R) ; Cases Pending(C/P)

Table 5

Bank	C/A	C/R	C/P									
A B Corporation	1	-	1	-	-	-	1	-	1	-	-	-
Bank Gaborone	-	-	-	-	-	-	-	-	-	-	-	-
Barclays Bank	7	4	3	8	4	4	12	6	6	4	6	3
Bank Of Baroda	-	-	-	1	-	1	-	-	-	-	-	-
First National	3	3	-	-	-	-	3	3	-	2	2	-
Kingdom	-	-	-	-	-	-	-	-	-	-	-	-
Stanbic	3	2	1	2	-	2	4	1	3	4	4	4
Standard Chartered	8	6	2	2	-	2	6	4	2	3	5	4
Totals	22	15	7	13	4	9	26	14	12	13	17	11

Table 5 above, show the flow and further analysis of cases relating to the various banks, quarterly in terms of activities, that is , cases accepted ; resolved; and pending. As stated above, there are 11 cases pending as at end of April 2007, where banks have been given the opportunity to address these issues with their customers.

Cases determined in Favour of Banks or Complainants

In terms of table 6 and figure 6 below, out of the 25 cases on consumer finance, which comprise of scheme, personal and lease loans, at least 9 cases were decided in favour of the banks whilst 16 in favour of the complainants, whilst with mortgage finance 7 cases were found in favour of the bank and 11 in favour of complainants.

The main issue here pertains to, inaccurate calculation of interest on loans or assignment of low installments on loans which have existed for the last 3-4 years (consumer finance) and in mortgage finance 10-20 years. These errors are only realized when customers either come to ask for top-up on loans or when they want to fully settle them. Fortunately, the errors in question do not relate to loans granted within the last 3 years. The banks have since revamped their processes.

Table 6

Classification	Bank's favour	Complainant's favour	Total
Consumer finance	9	16	25
Mortgage finance	7	11	18
ATM	5	3	8
Credit and debit cards	6	4	10
Cheques	2	1	3
Debit orders	3	4	7
Foreign exchange	2	1	3
Total	34	40	74

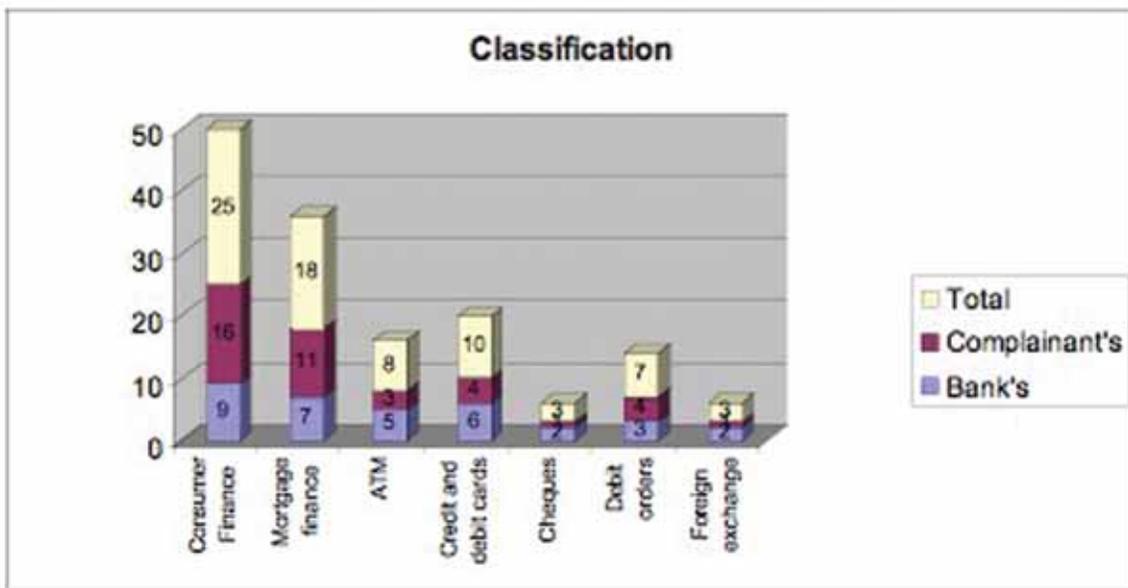


Figure 4

Analysis of Cases Further in Terms of the Form of Action Taken

In **6 cases**, the complainant advised us to withdraw the case.

In **5 cases**, the complainant failed to indicate the desire to continue.

In **11 cases**, the complaint was rejected.

In **12 cases**, the banking Adjudicated recommended *ex-gratia* payments.

In **31 cases**, only a portion of the complaint was accepted.

In **9 cases**, complaint's claim fully accepted and full amount paid.

Total 74 cases

Manner in Which Matters Were Closed

Assessment	39
Mediation	10
Provisional Recommendation	3
Final Recommendation	-
Determination	-
Total	52

CASE FLOW STATISTICS

Assessment:

Constitute a summary of the matter setting out the complainant'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 accept 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.

Mediations:

These are face-to-face 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.

Provisional Recommendation

These are detailed reports incorporating new evidence and submissions tendered after assessment. If further evidence or submissions are presented, the matter proceeds to a final recommendation.

Determination:

This is a binding written ruling delivered by the Banking Adjudicator.

In most cases it is the complainants who are unwilling to accept the provisional recommendations, which are either against them or only partly in their favour, making it necessary to proceed to a final recommendation. The banks usually accept the provisional recommendations.

Average Time Taken To Finalize Cases In 2006/07 Per Bank

	2005/2006	2006/2007
Bank Days	Days	Days
African Banking Corp.	-	-
Barclays Bank	95 days	65 days
Bank of Baroda	-	-
Bank Gaborone	-	-
First National Bank	30 days	21 days
Kingdom Bank	-	-
Stanbic Bank	15 days	45 days
Standard Chartered	65 days	35 days
Total Average	51.25 days	41 days

The average time taken to close a file is a measure used to indicate to the concerned bank that on average it takes such number of days to close a file after having referred the matter to it (this include the 15 working days initially given to the bank in terms of our procedures) . Obviously there are other factors, which can delay the banks turnaround time, for example, customer delays, operational impediments.

Comparative to the year 2005/2006 there is great improvement on the part of the banks, as last year on average the total average was 51.25 days and this year is 41 days. The turn around time is expected to improve as the procedures have been amended, giving the Banking Adjudicator the liberty to refer directly to the Chief Executive of any bank on a matter that remains pending after 30 days.

Amount paid to banks

The total amount of money recovered and refunded to customers amounted to P73510.17. These refunds mostly pertain to adjustments in interest calculations in consumer finance (vehicle leases and personal loans) and mortgage finance. Others consist of ex-gratia payments, recommended by the Banking Adjudicator to be paid to some customers on cases of unfair treatment.

Summary of Cases in 2006/2007

The majority of all cases reported in 2006/2007, are resolved by the banks themselves. This reporting period at least **39** cases were settled at the assessment stage. 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 accept it.

10 of the cases were settled at the mediation stage. These are face-to-face formal meetings between representatives of the bank and the complaint, with the Banking Adjudicator presiding as the mediator and 3 through a provisional recommendation. This stage constitute, detailed reports incorporating new evidence and submissions tendered after assessment.

Consumer Finance

Case 1

Complainant had acquired a loan under the Botswana Defence Force Scheme. Later during the contract period, he approached the bank to clear the balance in order to apply for a new loan of a higher amount. The balance furnished was much higher than what was expected by the customer. Took up this issue with his bankers, and for at least 2 years the matter still remained unresolved.

Complainant vehemently disputed the balance, because even taking into consideration interest rates fluctuations, still the loan balance did not add up. He even showed as evidence that at the time he acquired the loan a friend of his was also granted a loan on similar terms and conditions and prospects of default were non-existent as the deduction were made at source.

Investigations revealed that the loan repayment amount was understated by P98.00, and therefore monthly payments for the period of the loan were underpaid by the same amount, and this amount attracted default interest.

Bank offered to refund the customer excess repayments, interest caused by underpayment, however, the customer had to pay the capital amount (without interest). The Banking Adjudicator further recommended an ex-gratia payment of P500.00 by the bank to the customer for having suffered distress

and inconvenience within the two years as the matter could have been resolved within a shorter period.

Case 2

Complaint had a personal loan of P20,000.00 sanctioned and payable over a period of 36 months, unfortunately at an understated installment. The Customer realized that there was something amiss on her loan account, when the bank continued deducting repayments long after the expiry date as per the loan contract.

The bank realized that it had incorrectly calculated a low installment for the loan and therefore a portion of the capital amount remained unpaid with default interest charges.

The customer was advised that she will only be liable for the capital shortfall on the loan repayment, free of interest. The bank refunded the excess repayments and unduly charged interest. Customer was advised to accept the bank's outcome as reasonable.

Case 3

The claimant is the mother to the deceased, who was an account holder with one of the commercial banks. When she called on the bank enquiring of the status of her deceased son's accounts, she was advised by the bank that her son had a loan balance which she was required to clear to avoid further interest charges, whilst awaiting a claim from the insurance on a credit life policy. She accordingly settled the loan as advised at P3522.40 plus accumulated interest to date.

After some months she approached the bank enquiring on the status of the claim, and was advised that the insurers did not pay and no reasons were advanced.

Investigations revealed that, no claim had ever been lodged with the insurance company and the time to lodge a claim was prescribed.

There was no evidence to show that a claim has been lodged with the insurance company and that such a claim has been refused. The bank offered to pay the customer the sum of P3522.40 (interest at the time of settlement) inclusive of interest from the date the loan was settled.

Case 4

Complainant is the wife of a deceased former staff member of a bank and a heir to the deceased estate. Initially, the question the Banking Adjudicator was faced with was to consider whether, we have jurisdiction over this matter, that is, whether as a staff matter and in that case “Staff Conditions of Service prevail. And if not the Banker’s Code of Conduct prevail. If the deceased accounts were converted to commercial rates, then the wife becomes a customer of the bank and not staff. The matter was pursued on discretionary basis by the Banking Adjudicator.

In the process of winding the deceased estate, she got to learn that credit life insurance had not been perfected on the deceased car which was relatively new and therefore the bank required her to settle the lease loan, and she utilised proceeds from the pension of the deceased estate to settle the loan.

It was revealed by the bank that there was an initial requirement by the bank even though not compulsory to have all staff loans covered through credit life. This was held in abeyance because negotiations were still ongoing with the Staff Union as most staff were reluctant to take cover. It was established that the deceased completed and lodged the application forms, with the exception of one which required applicants to confirm that they are “active at work” with the department responsible for processing cover in the bank. It was also discovered that persistent reminders were sent to the deceased to lodge the forms, but later verbally informed officials that he had decided to cancel the cover.

Complainant produced a copy of the ‘active at work’ from the deceased records from home, maintaining that her husband has never told her that he had since decided to cancel the insurance. The bank insisted

that the deceased never submitted the form and that “the submission of the insurance documents is not necessarily conclusive evidence that the insurance cover would be approved, by the insurance company even if they were properly completed”. The Banking Adjudicator concluded that he can not assess conflicting evidence or conduct cross examination, and therefore no recommendation may be made on any complaint in which a material fact can not be established, and therefore, this was a dispute of fact case .

Case 5

Complainant was granted a loan of P75000.00 approved at one of the banks branches. The customer had another loan facility, a mortgage loan at the banks head office, and since the complainant had failed to service the mortgage loan the bank had obtained a warrant of execution against him on the property. When the personal loan was granted the Loans Officer at the branch who was processing the loan was not aware of this, neither had the information been relayed to the credit bureau according to the bank’s credit procedures.

Investigations revealed that the complainant was granted the loan which was credited into his account and had started drawing on the facility. An officer at head office of the bank who was responsible for monitoring the account realized a huge deposit in the customer’s account and on enquiry with the branch was advised that the customer had been granted the loan. Immediately the officer reversed the credit and requested the branch to cancel the loan forthwith, without reference or notice to the customer. The complainant only got to know about it when he was trying to make a withdrawal at one of the bank branches.

Findings revealed that the banks systems and processes were not “online real time” and therefore could not adequately inform or make other parties in the branches aware of various activities performed on various accounts simultaneously which, was a cause for this error. The Banking Adjudicator submitted that the bank knew or ought to have known of the dangers such a deficient system without interface can cause and the delay in sharing information within the bank and the credit bureaus.

The bank sought to rely on some provisions of the loan agreement on set-off and default, which unfortunately are not applicable to the new contract. The new contract should be upheld and therefore considered valid. The bank was given two options to consider:

- a) Reinstatement of the loan
- b) Compensate the customer for the charges incurred in the processing of the loan and offer an amount for substantial distress and damages.

Amount determined to be discussed and agreed with the customer and if a dispute arises reference to be made to the Banking Adjudicator, whose determination would be binding on the parties.

Alleged Mal-administration

A department of a local authority had deposited a cheque for P385000.00 with one of the banks and in the process the officer who went to deposit the cheque incorrectly missed one digit and instead of writing a digit 8 she/he wrote digit 9, in the deposit slip, however on close scrutiny the digit appears as 8. The teller at the bank was not able to realize this when processing the deposit as she/he could have seen the variance in the name of the account credited. The account the cheque was credited into had all its digits the same as of the complainant except for the digit incorrectly written.

The Officer of the Local Authority inadvertently, inserted the digit 9 which on close scrutiny appears so and not as 8. However, they argued that the bank could have reasonably realized the mistake as the name of the account should have been verified before the transaction was authorized in the system.

Such errors are common especially at peak times this does not however give the banks the leeway not to thoroughly check transactions after posting. The bank offered to refund the customer interest which the customer had lost and apologized for the error. The Local Authority suspecting maladministration on the part of the bank had requested the following information: whose account was initially credited, did they benefit from this transaction error in interest. For purposes of confidentiality this information was only confirmed to the Banking Adjudicator who confirmed to the customer that he is satisfied in the manner in which the matter was concluded without necessarily disclosing the details.

Alleged Breach of Contract

Complainant was an employee of the Botswana Government, a Medical Practitioner and an expatriate on contract terms. When his contract ended he was paid his gratuity which was deposited into his account. He had a loan contract, which was not properly being serviced, and the bank decided to put hold on his account under advice to him as he had previously ignored the banks call to discuss various issues relating to his loan. The intention of the bank was to discuss with him how to settle the arrears and the loan as his contract had expired. Within the same period his contract was renewed for another term. During pay-day he could not access any funds from his account as his account was blocked and hence approached the Banking Adjudicator.

His claims were that the bank has breach his contract as follows:

- a) The bank knew that he was on contract and failed to link his repayment period with his contract as is usually bank procedure.
- b) The bank should not have granted him the loan at the first instance since the banks assessment of income to repayment ratio was above the 40% prescribed limit.

The Banking Adjudicator held that there was no breach on the part of the bank as this was purely a banks commercial decision and that banks procedures should not be made to be seen to be 'hard and fast rules' and in the process prejudice law abiding customers. The customer agreed with the terms and conditions of the loan and signed for the same without any cohesion or influence from anybody and this was a valid contract.

The bank was advised to consider two options in assisting the complainant:

- a) Since a new contract is now in place, they could consider allowing him to continue with the contract, having considered its credit risk assessment procedures, mandating the salary to the bank.
- b) Settle the current loan with the gratuity and have the customer enter into a new contract, again based on the banks credit risk assessment procedures.
- c) And remove hold on the account.

Foreign Exchange

Complainant approached the bank to open a Euro denominated account, with the aim of remitting/transferring an amount of GBP78,000.00 into the account. The bank processed the remittance of GBP 78,000.00 and credited the customer's account. According to the bank's procedure the funds are initially converted to Botswana Pula (BWP) and subsequently to Euros. The customer had expected a straight conversion to Euro from Pounds and that the bank had to use the middle rate in its conversion. He therefore maintained that by having two conversions the bank had profited twice from a single transaction.

The bank response was quick in this matter as it offered the customer an adjustment using the market (inter-bank) rate, which rate is only applied by banks when transacting foreign exchange between themselves and not with customers. The bank's action did not constitute acceptance of liability but a gesture of goodwill and good customer relationship. The Banking Adjudicator advised the customer to accept the Banks offer.

Unfair treatment

Case 1

The deceased had maintained a current account with one of the banks. During preparations for the funeral one of his uncle was appointed by parents temporarily to request for funeral expenses from the employers of the deceased. After the funeral the said uncle refused to have his mandate withdrawn as he maintained he also had a say in the way his brother's assets had to be apportioned.

On enquiry with the deceased former employer there was no will, nor any document available to confirm the heir to the deceased estate. The bank on the advise of its attorneys could neither allow the uncle whose mandate was cancelled by the deceased parents' resolution confirmed by the District commissioner nor allow the rightful heir, a son who also had papers confirmed and attested to by the local authorities and District Commissioners' office, to close the account and draw the money.

The Banking Adjudicator recommended to the bank to facilitate payment, and that the cheque be drawn in favour of the "Legal Representative of the late XYZ". This way the bank would have done its part, as it would be making payment to the legal representative of the deceased in good faith, and the duty of care on the part of the bank would have been discharged. The bank only paid after receiving another letter similar to the previous one made out by the District Commissioner but made in Gaborone. By the time this matter was concluded the beneficiaries to the deceased estate had incurred increased legal expenses as they had to borrow money to defend an action of rental default for the house the deceased stayed in.

Case 2

Complainant submitted the relevant forms for opening a business account. On enquiring after some days as to how far the account opening was, he was advised that he has not submitted the Memorandum and Articles of Association documents. He tried to explain to the bank that he has indeed submitted all the required documentation and even referred the officer to the checklist they were using to cross check all the documents before submission. After 5-10 days he was called by the bank and advised that his documents have been found.

The bank confirmed that indeed the documents were submitted, and that the office who assisted the customer had misplaced them in the office. The account was opened and the customer requested that the bank apologize for their mistake and further wanted to know what action was taken against the concerned bank official. The bank did not respond until after two years.

After investigations were completed on the matter, the Banking Adjudicator recommended that the customer be paid an amount of a P1000.00 for distress and inconvenience. The bank maintained that it was not in a position to pay the recommended amount since the customer did not incur any financial loss. Finally the Banking Adjudicator settled for P500.00 as a determination.

Fraud

Case 1

The complainant reported to the bank that he had lost her A.T.M. Card and there were various unauthorized transactions in her account. The bank had recently credited her account with proceeds of a loan amounting to P18,000.00 which had also been withdrawn. She alleged that the card was reported stolen to the bank's call centre before and it was confirmed to her that the card was blocked.

The investigations were concluded and the following issues were discovered:

- (a) That there was no prove that she had contacted the bank to block her card. Either through confirming the name of the bank officer who assisted her and the time. The bank could not locate her message in their telephone system.
- (b) The customer maintained that she only realized after a month when she was making a cheque encashment inside the bank that there were unauthorised withdrawals.
- (c) The bank realized through a video clip, which was run in the presence of the customer that the culprit identified was the customer's former boyfriend.

The bank maintained that the customer had breach its contract by giving PIN card access to a third party not covered in the contract. The customer disputed having given the culprit access. The Banking adjudicator advised the customer to report the matter to the Police as this was a case of fraud and that if she still strongly feel that the bank was negligent she could still approach the courts for redress.

Case 2

Complainant maintained that whilst she was outside the country, the sum of P38,000.00 was withdrawn from her business account and two personal accounts through an inter -account transfer into his husband's personal account.

When the transfer was executed the complainants husband was the one who presented the inter account transfer forms and probably set up the person who answered the bank's call seeking to confirm the transaction. Transfer documents had "identical /similar' signatures of the account holder in terms of the customer's mandate.

Investigations revealed that proper documents to effect an account transfer were presented with positive identification indicating the complainant's husband as the one who enchased the money and skipped the country.

The Banking Adjudicator would want to acknowledge that this matter was complicated and took a long time to be concluded as initially the bank needed to establish the implications of releasing the forensic report it had undertaken on the matter. A resolution by the Banker's Association of Botswana as to whether this was privileged information or not and whether the Banking Adjudicator could not have access to was a break through on the matter.

From the onset the complainant had been advised to report the matter to the police to avoid prescription seeing that investigations might take long. No award was made in favour of the complainant on these basis as the bank was not found to be negligent. The complainant was advised to follow up the reported matter with the Police.

(1) Bankers' Code of Conduct

It is imperative that the Bankers' Code of Conduct be revised to encapsulate new changes that have occurred since its inception in July 2002.

The bankers' Code of Conduct is important for the following reasons:

- Ensures cordial working relationship between customers and their banks.
- Better availability of the code to customers at the banks, thereby enhancing public education
- Facilitate the implementation of the banking industry-wide training of bank personnel on the revised code.
- The enhancement of the Botswana banking systems international reputation for integrity.

(2) Banks and Customer Satisfaction Surveys

Underlying the above initiative, it is imperative that a survey be conducted annually to evaluate the services provided by the Banking Adjudicator by both the banks and customers. This would involve carrying out Banks Satisfaction Surveys and Customer Satisfaction Surveys. The Bankers' Association of Botswana can use existing capacity within their banks for this exercise. This is vital to ensure that the service of the office is maintained in line with the set service standards and to obtain feedback necessary for improvement.

Workshop

With the support of the Bankers' Association Of Botswana, the Banking Adjudicator ran a course under the theme 'Customer Complaints an Opportunity for Service Excellence' for bank officials involved in Complaints Handling for member banks.

- The main aim was to guide them in the implementation of the Recommendations contained in the 2005 / 2006 Annual Report and to give them an insight into the operations, role, mandate and jurisdiction of the Banking Adjudicator and in return to receive feedback.
- How the complaints handling procedures between the Banking Adjudicator and the Banks' interface and expectations thereon.
- Identifying service gaps in customers' complaints handling, and how these could be addressed.

Issues in the International Scene

Due to financial constraints, the Banking Adjudicator was unable to attend the Annual Conference of International Network of Financial Ombudsman (ADR -Alternative Dispute Resolution Conference) ,which was held from 28th - 31st August 2006 Brisbane Gold Coast Australia.

On 26-28th September 2007, the Banking Adjudicator has been honored to participate alongside representatives of long-established schemes from countries such as Canada, United Kingdom, Ireland, Australia, New Zealand, South Africa and other jurisdictions, to the International Network of Financial Ombudsman -Annual Conference in London UK.

The Banking Adjudicator has been invited by the South African counterpart, Ombudsman for Financial Services and agreed to join the newly established Ombudsman Association of Southern Africa.

ADR- Alternative Dispute Resolution

ATM – Automated Teller Machine

INFO – International Network of Financial Ombudsman

BAB – Bankers’ Association of Botswana

Banks- Commercial banks (members of the Bankers Association of Botswana)

BCC – Bankers’ Code of Conduct

BWP- Botswana Pula

Central Bank – Bank of Botswana

Ex-gratia – a token of goodwill

GBP- Great British Pound

Inter-se – between

NBFIRA – Non Bank Financial Institution Regulatory Authority

OASA – Ombudsman Association of Southern Africa

OFS(SA) – Ombudsman for Financial Services (South Africa)

Obituary

We pass our condolences to the friends and family of the Retired Judge John Gittings who passed on in May 2007, who had a short stint as the Banking Adjudicator following the retirement of Dr Derek John Hudson in 2005.

Acknowledgements

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

Contacts Details:

Office of The Banking Adjudicator

Plot 767 Tati Road :

Life and General Building (adjacent to Trinity Church & Brackendene Lodge)

Address: Private Bag 00404 Gaborone Botswana

Tel : 393 5409 Fax 393 5406

Cell: 71326282

E mail address: bankadjud@info.bw

Bankers' Association of Botswana Members



