

Report of the Banking Adjudicator

for the period from May 2004 to April 2005

Presented to the Bankers' Association of Botswana
on 17th June 2005

1. Introduction

This was the third 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.

The members of the Bankers' Association 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. The other banks are all commercial banks.

2. Overview of the complaints against the members of the Bankers' Association during the year

There were no complaints against the merchant banks.

As a rough rule of thumb, about 30% of the complaints against the commercial banks were found to have merit. In these cases, the Banking Adjudicator worked side by side with the complaints officers at the commercial banks to see that suitable adjustments were made in the customers' favour.

However, when such an adjustment took four to six months to be effected, this was an unacceptable level of service. The Banking Adjudicator complained about the delay to the banks concerned. In a small number of cases, modest *ex gratia* payments were

made to the customers, as compensation for the excessive delay in sorting out quite simple problems. The banks have promised to speed up their complaint handling procedure, so that this kind of delay should become a thing of the past.

Conversely, about 70% 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 the very disappointed customers.

These explanations sometimes duplicated what the bank staff had already told the complainant, but the complainant wanted to hear the explanation from a neutral person. The aggrieved customers generally needed a lot of counselling. All of them felt that they had been unfairly treated.

The Banking Adjudicator always looked for legally valid grounds on which to base a complaint to the bank concerned. When that approach failed, the banking Adjudicator had to explain to the complainant the difference between moral indignation and the legal basis for a valid complaint. Some examples of the without-merit cases are given at paragraph 2.2 below.

In many of the cases, the complainant had written to the bank concerned but had not received a reply. 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 replied to the customers' letters of complaint.

The sizes of the amounts of money complained about

One particular complaint concerning a succession of alleged fraudulent withdrawals from a medium sized company's call account, involved a number of transactions over a six month period. The successive amounts were individually small enough to be considered by the Banking Adjudicator, being below the Banking Adjudicator's limit of P250,000, but the total amounted to more than P400,000. The bank complained against was then advised that the Banking Adjudicator had withdrawn his assistance to the complainant, who was advised to hire his own attorney.

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.

2.1 A small sample of the with-merit cases

(a) *Incorrect rate of interest used on a car loan contract*

In a few cases, a bank eventually found that it had used a rate of interest on the customer's car loan account which was higher than the interest rate specified in the contract. When the customers complained to the Banking Adjudicator, it sometimes took the bank more than six months to correct their own error. The banks concerned have agreed that this is not an acceptable standard of performance. A small number of *ex gratia* payments were made to the injured parties.

(b) *Too low monthly instalments on a car loan contract*

In a few cases, a bank signed a car loan contract with a customer where the bank had incorrectly calculated the monthly instalment, which was much too low. The customer was subsequently puzzled that the outstanding balance on the bank loan statement was declining so slowly that there was no possibility that the loan would be paid off by the end of the loan contract period.

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 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. The Banking Adjudicator Advised the angry customer to discuss the matter with the bank concerned, so that a mutually agreed solution could be found.

The bank concerned said it would make a modest *ex gratia* payment to the customer, once a solution had been found.

(c) *Simple arithmetic errors made by the banks*

In two cases that were brought to the Banking Adjudicator, the banks had made simple arithmetic errors on the customers' bank statements. When the customers went to their branches to complain, the banks readily agreed that they had made the errors. The junior enquiries staff at the branches then referred the error correction to their respective branch managers. However, when the errors had not been corrected after four months, the customers complained to the Banking Adjudicator.

The Banking Adjudicator swiftly had the acknowledged, undisputed errors corrected. Two *ex gratia* cheques were awarded by the banks to the frustrated customers.

2.2 A few selected (but typical) without-legal-merit cases

This year's annual report will concentrate on the without-legal-merit cases, in order to demonstrate the counselling role provided by the Banking Adjudicator in such circumstances. It is definitely worthwhile for complainants to have a neutral person such as the Banking Adjudicator to complain to.

Some of these cases could have been avoided if the senior bank staff had been better at communicating with their customers. At the same time, a lack of basic banking prudence (such as the failure to check a bank statement), and greed in some cases, contributed to some unreasonable complaints by the customers.

(a) Unexplained extension of the expiry date of a car loan contract

A large amount of the Banking Adjudicator's time was taken up with complaints from unhappy car loan customers at the commercial banks. Over 1,000 customers were involved, but only a few came to see the Banking Adjudicator. In the majority of the cases, the customer was in the wrong, but there were a few egregious cases where the bank had indeed made a serious error.

The most frequent customer complaint was that the expiry date of the customer's loan contract period had been extended, but the bank had failed either to notify the customer of the revised expiry date, or to give the customer an explanation of what had caused the continuation of the payment of the instalments after the end of the loan contract period.

The bank's reasoning was that they had a contract with the customer's **employer**, that all procedural correspondence should pass through the office of the employer on its way to the employee concerned. However, when informed by the bank of the failure by an employer to pay an instalment on time, the **employer** nearly always failed to pass on the necessary information to the **employee** concerned, and the bank never took the trouble to check that their customer had been informed. This less than perfect system has since been revised.

(b) Increase in car insurance premiums during a car loan contract

In another set of car loan cases, the customers had asked for their car insurance contracts to be changed to another insurer, in the middle of the loan contract period, even though the second insurer charged a higher insurance premium. The monthly instalments were not increased, so the expiry date necessarily had to be extended. The banks told the employers, but the employers again failed to inform the affected employees. A great deal of unnecessary unhappiness ensued.

(c) Lost early car loan records

Although the continuation of instalments after the original expiry date was usually justified in terms of the contract, as illustrated above, the banks concerned had sometimes mislaid their own records relating to the first year of the loan contract period. This meant that the bank was unable to give a satisfactory explanation to the customer, even when the bank was correctly implementing the terms of its own contract. The customers had nearly always lost their copies of the contract, the relevant bank statements, and the relevant salary slips. This situation is in the process of being rectified. The previous cardboard carton method of archiving old loan account statements is being replaced by electronic archiving.

(d) Failure to pay the first car loan instalment on time

A frequent error was that the customer's **employer** had failed to honour the customer's obligation to make the first instalment on the stated starting date in the contract, after the **employee** had signed a contract with his or her **employer** to that effect. If the employee in this way failed to make the first payment of a 48 month

contract, say, the employee is legally at fault. The **employee** has no legal remedy by blaming his employer for the dereliction of duty.

The effect of additional compound interest charged on the loan from the beginning of month 2 to the end of month 48, on account of the missing instalment in the first month, could easily amount to the customer having to pay two additional instalments in months 49 and 50.

The law requires the employee/customer in this situation to rectify his or her employer's omission as promptly as possible, i.e. the **employee** must make good the employee's obligation to the bank if the **employer** has failed to do so on behalf of the employee. However, the Banking Adjudicator found that only one out of a thousand employees with unpaid first instalments in fact did so. The remaining customers mistakenly thought that they had luckily escaped the first instalment, and kept quiet about this apparently fortuitous event. Four years later, they found out just how much this failure to pay the first instalment had cost them.

(e) Improved error recognition by the banks

Again, steps have been put in place for the bank's computer to generate an 'Exception Report' each month. Unpaid loan repayment instalments will be highlighted so that prompt action may be taken by the bank to inform the employee that an instalment had not been paid on time. Experience has shown that the employers are not to be relied on to pass on the necessary information to their employees. The banks are slowly coming to the conclusion that they made an error of judgment in thinking that the employers they contracted with, mostly central or local government departments, could be relied on to carry out their part of the agreement.

(f) The sale of repossessed cars

When a customer fails to maintain his or her monthly car loan instalments, the bank concerned will repossess the car, in terms of the lease contract. The banks make every attempt to keep the customer informed as to what is going on. In particular, the banks give the customer a grace period in which to bring the loan account balance up to date. In most cases, the customer was unable to pay the necessary amount. Partial payments do get credited to the customer's loan account, but do not affect the bank's right to sell the car.

When the repossessed cars were sold, the customers frequently complained to the Banking Adjudicator that the car was more valuable than the price achieved at the sales of the repossessed cars. The Banking Adjudicator was then obliged to refer the unhappy customers to the terms of the car loan contract. The banks concerned are willing to show the customer the independent assessor's valuation of the car before the car was put up for auction. These valuations were sometimes quite low because of the badly beaten up condition of the car at the time of repossession.

The Banking Adjudicator told these customers that he could understand the customers' unhappiness, but that their complaints were unfortunately without legal merit. In one case, however, the Banking Adjudicator did complain to a bank when

the sale value of a repossessed car was about P14,000 less than the assessor's valuation. That case is still ongoing.

(g) *The effect of making only a **small** original deposit on a car loan contract*

The financial problems associated with repossessed cars is exacerbated by the policy of most of the banks to ask for only a 10% deposit at the time that a car is purchased through a car loan contract.

A new car will typically lose 20% to 30% of its resale value when it is driven out of the car showroom; and following the system of relatively small monthly instalments over four or five years, the resale value of the car will necessarily decline faster than the balance owing on the loan account. Such car loans are therefore never fully secured by the car itself, during the lifetime of the loan contract, until the final payment has been made. The banks are taking calculated risks that they will be able to recover the unsecured remaining part of the loan, if a repossessed car is sold on the second hand car market.

However, this strategy causes a great deal of stress to defaulting car loan customers, who end up with no car and a substantial sum of money still being owed to the bank. The banks have to hire attorneys to carry out the necessary debt collection from the customers.

At least one bank is reviewing its car loan strategy. They may decide to increase the minimum deposit that they ask for, above 10%.

Next, five non-car loan problems are given.

(h) *Bouncing the 'wrong' cheque*

The customer had written several cheques with a total value which was more than the amount available on his bank account. When the bank bounced one of his cheques, which happened to be his monthly payment to the VAT collector, the customer was aggrieved that he was then fined by the VAT authority. The customer thought that the cheque clearing system should have processed his VAT payment much more quickly than had actually happened (in accordance with the normal time limit for clearing cheques), so that the bank should have received the VAT cheque a day before some other less important cheque, and that the other cheque should then have been bounced the next day instead.

The customer was advised that the BA could see no merit in his case but that he had the right to appeal the BA's decision in a court of law.

(i) *The cash flow problem of the owner of a small business*

The complainant, the owner of a small business, was selling services to a large number of customers. He allowed his customers to pay by cheque.

He was very unhappy when his own cheques were returned unpaid because of insufficient funds on his own bank account, when the business's accounts in his office

showed that there clearly should have been enough funds there. The complainant had mistakenly assumed that the cheques of his customers would all be paid, when in fact some were not. The bank concerned then set up a system whereby the manager could send his messenger to the bank first thing every morning, to find out his available balance at the bank, rather than rely on the theoretical balance in his own books of account.

(j) ATM fraud

The number of reported ATM frauds has decreased. However, the cleverness of the confidence tricksters at ATMs is increasing. This is particularly evident when holders of Botswana debit cards go shopping in South Africa. One Motswana was robbed of P14,000 at an ATM in Pretoria through a clever swindle. There is, however, no legal remedy available to a debit card holder who allowed himself or herself to be defrauded at an ATM, when the bank itself had not contributed to the fraud in any way.

The banks are embarking on a renewed customer education campaign. Two of the banks have redesigned the 'throat' of their ATMs so as to minimise the extent of throat stuffing by criminals. This has resulted in a significant reduction of ATM fraud at those two banks. One bank has installed surveillance cameras, but the criminals simply cover the backs of their heads to the point that they are unrecognisable by the customer, the bank or the police.

One big improvement is that the banks have widened the versatility of the 'hot lines' whose phone numbers are available at the ATMs. The list of phone numbers now includes numbers that may be dialled on the spot by cell phone users.

(k) *Delayed billing of debit card transactions between the banks*

If a customer with a debit card from bank A goes shopping, but uses the swiping machine of bank B at the point of sale, there was occasionally a significant delay before bank B sent the relevant debit note to bank A. In a few cases, the resulting debit entry only arrived on the customer's bank statement on a date when the customer was out of the country. The customers all complained to the Banking Adjudicator that they had been defrauded, because the delayed billing date on their bank statements did not tally with the dates when they had gone shopping with their debit cards.

The Banking Adjudicator had to inform these customers that they were legally liable to pay for their purchases, even when there had been a delay in getting the debits onto their bank accounts.

The banks have taken steps to minimise the delays in inter-bank billing of debit card transactions.

(l) *Keeping enough money on a current account with which to pay standing orders*

Suppose a customer sets up a monthly standing order, either directly or through an insurance company. There must then be enough money on the customer's account at

one minute past midnight on the due day of the standing order. It is not sufficient for a customer to make a deposit on the account later in the day. Most bank computers have the ability to work at night.

Acknowledgement

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