



Botswana Banking Ombudsman

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Terms of Reference

1. Introduction

1.1 The self-regulatory dispute resolution scheme of the Botswana Banking Ombudsman (BBO) exists to provide a free, accessible, and efficient alternative to other remedies such as court proceedings, for customers of member banks of the Bankers Association of Botswana.

1.2 The Banking Ombudsman's principal powers and duties are to consider disputes directed by these terms of reference and to facilitate the satisfaction, settlement or resolution of disputes whether by agreement, recommendations or determinations or by any other appropriate means. It is not a function of the Banking Ombudsman to provide general information pertaining to the banking industry, bank services, bank policy or procedures.

2. Scheme Objective

2.1 The scheme provides independent and expedient resolution of disputes utilizing criteria such as:

- a) The law;
- b) Good Banking Practice;
- c) Bankers Code of Conduct;
- d) Banking Practice in other Jurisdictions; and
- e) Fairness in all circumstances

3. Scheme Independence

3.1 The Banking Ombudsman acts independently and enjoys security of tenure. He/she can only be dismissed for incompetence, gross misconduct, failure or incapability to carry out his/her duties. The Banking Ombudsman may not be dismissed on grounds of being unpopular with customers or banks.

3.2 The scheme's independence is further guaranteed given that:

- a) Banking Ombudsman and employees of his/her office are entirely responsible for the handling and determination of complaints;
- b) The Banking Ombudsman is accountable only to the Bankers Association of Botswana; and

- c) The scheme is also adequately financed by the Bankers Association of Botswana to carry out its mandate

4. Service Cost

4.1 The scheme provides a free service to disputants

4.2 Member Banks of the Bankers Association of Botswana meet the costs of operation for the scheme

5 Complainant/Disputant Criteria

5.1 A dispute against a member Bank of the Bankers Association of Botswana may be lodged by:

- a) An individual bank customer; or
- b) Business (including company, corporation, an association, a partnership or a trust) with a turnover for the last financial year of P2 000 000 or less

6. Banking Ombudsman's Jurisdiction

6.1 To be considered, a complaint must be:

- a) Against a bank that is a member of the Bankers Association of Botswana;
- b) Against customer's own bank;
- c) Relate to a claim not more than P500 000;
- d) Relate to mal-administration on the part of the bank causing loss, distress, or inconvenience that is not of a trivial nature;
- e) Relate to an incident that happened two years ago or less; and
- f) Refer to misleading advertising

7. Ineligible Complaints

7.1 The Banking Ombudsman may decline considering complaint if the dispute pertains to:

- a) The exercise by a bank of its commercial judgements on lending policy or interest rates;
- b) Banks failure grant a loan, save the bank failed to follow proper procedure;

- c) A dispute which was, or becomes the subject of proceedings in any court, tribunal, arbitrator, independent dispute resolution body or if the OBA determines the matter may be appropriately dealt with by another dispute resolution party;
- d) A complaint that occurred more than two years ago;
- e) A non- member Bank of the Bankers Association of Botswana;
- f) Non- Banking Services; or
- g) Any other grounds determined by the Banking Adjudicator

8. Other Duties of the OBA

8.1 Reporting: The Banking Ombudsman reports directly to the Banker's Association of Botswana.

8.2 Policy Analysis and Feedback

- a) Periodic Reports, Annual Reports, and recommendations, as required by applicable law, these terms of reference, and constitution, presented to the Banker's Association of Botswana, Bank of Botswana (BOB), and stakeholders in the banking fraternity. Based on anonymous aggregate data, the reports discuss trends in lodged complaints, identify patterns or problem areas in dispute resolution, policies and practices, and may recommend revisions, or improvements in order to eliminate recurring grievances.
- b) The BBO serves a resource for member banks in formulating or modifying policy and procedures in dispute resolution, and raises concerns that may surface due to the gap between the stated goals of the Bankers Association and actual practice
- c) The scheme also functions as sensor within the banking fraternity and community in identifying problems or trends that affect the entire banking industry, or significant parts of the community; if appropriate, the BBO may recommend creative ways to address the issues
- d) The BBO may provide early warning of new areas of organizational concern, upward feedback, critical analysis of systematic need for improvement, and make system change recommendations.

8.3 Community Outreach and Education

It is a function of the BBO to inform and educate the customers of the member banks and general public about the BBO's existence, its role and procedures, as well as precautions best used to avoid difficulty when using the banking system.

8.4 Annual Business Plan and Budget

The Banking Ombudsman must:

- a) Prepare an annual business plan including a proposed budget for the scheme; and
- b) Submit both the budget and business plan to the Bankers Association of Botswana before the start of the relevant financial year

8.5 Establishing/Maintaining the OBA

The Banking Ombudsman is responsible for:

- a) The day to day management and conduct of the BBO (including, without limitation, the power to appoint and dismiss employees, independent contractors, agents, and determination of the terms of employment)

Ensuring the integrity of the office is maintained by all BBO staff through independence, fair process, neutrality, impartiality, confidentiality and timely attention to the resolution of issues while treating customers with dignity and respect.

- b) The Banking Ombudsman has the power to incur expenditure on behalf of the OBA consistent with the budget approved by the Bankers Association of Botswana.

8.6 Dispute Resolution

The Banking Ombudsman shall:

- a) Provide impartial and confidential consultation to aggrieved and/or concerned customers of member banks of the Bankers Association;

- b) Remain Independent, neutral, impartial, and exercise good judgement;
- c) Assist complainants in interpreting their banks' policies and procedures;
- d) Clarify issues to complainants and generate options for resolution;
- e) Facilitate the complainant's assessment of the pros and cons of possible options;
- f) If direct action by the Banking Ombudsman may be an appropriate option, obtain the complainant's agreements and permission before proceeding;
- g) If necessary, and while maintaining confidentiality, conduct appropriate informal fact-finding to better understand an issue from both perspectives;
- h) With the complainant, consult with all parties to clarify and analyse problems, focus discussions, and develop a mutually satisfactory process for resolution;
- i) Consult with member banks' complaint handling staff to develop cooperative strategies for complaint resolution;
- j) Encourage a flexible conflict resolution process to maximize the member banks' ability to meet the needs of complainants equitably; and
- k) Whenever possible and appropriate, provide referrals to other resources

8.7. Grounds for Complaint Dismissal

At any stage of the dispute resolution procedure, the Banking Ombudsman may dismiss the case if:

- a) The complainant misled the Banking Ombudsman about his/her case;
- b) The complainant is uncooperative;
- c) The complainant has failed to respond to correspondence requesting for information or comments within a reason time period;
- d) The complainant has been vexatious, abusive, or insulting when communicating with the BBO. The office has the sole right to determine if or not the complainant has been insulting, vexatious, abusive or insulting; or
- e) An exigent dispute of facts exists that cannot be resolved through probabilities

8.8. Withdrawal of Complaint

At any time during the dispute resolution process, the complainant may terminate her/his case with BBO, and institute legal action if he/she first informs the BBO in writing.

8.9. Delegation of Authority

The Banking Ombudsman may delegate all or any of his/her powers and duties to employees of the BBO except:

- a) The power to make recommendations or determinations; and
- b) The Banking Ombudsman's power to delegate

9.0 Confidentiality and Privacy

9.1 The documents, information, and correspondence submitted to the BBO shall be deemed confidential; including the letters and documents sent to the office by the bank.

9.2 Should a complainant provide the Banking Ombudsman with a document that the disputant does not wish the bank to see, it shall be clearly marked confidential by the submitter.

9.3 All documents, correspondence, and information provided to the BBO shall not be subpoenaed by the complainant or his/her representative, nor must the Banking Ombudsman and his/her staff be subpoenaed.

9.4 The Banking Ombudsman may require a member bank of the Bankers Association of Botswana involved in the dispute to provide, or procure the provisions of, any information the BBO may consider necessary for resolution of the dispute.

9.5 The Banking Ombudsman must not disclose any information relating to a dispute to anyone except:

- a) An employee, consultant, independent contractor or agent of the BBO who needs the information for purpose of performing his/her duties

10.0. Rules of Evidence

The Banking Ombudsman may not be bound by any legal rule of evidence.

11.0 Previous Decisions

Any preceding decisions made by the Banking Ombudsman, or his/her predecessors, shall not be binding on him/her.

12.0 Investigation Procedure for Disputes

12.1 For the BBO to consider a complaint, the disputant must first have given their bank a reasonable amount of time to resolve the complaint internally.

12.2 If the complainant has given the bank sufficient time, and the complaint is still not resolved, the disputant may lodge a case with the BBO if it falls under the Banking Ombudsman's jurisdiction. In such cases, the scheme may:

- a) Assess the dispute after considering the bank's response and evidence provided by the disputant. Following which, a suggestion will be made on how to settle the case;
- b) If the disputant is not satisfied with the suggested resolution, call for him/her to make further submissions in support of their case;
- c) If mediation is necessary, the two parties may be put in face-to-face formal meetings between representatives of both parties, with the Banking Ombudsman presiding as the mediator;
- d) If a settlement is not agreed in mediation, the Banking Ombudsman may provide a provisional recommendation after incorporating any new evidence or submissions presented; and
- e) If further evidence or submissions are made, the matter proceeds to a determination; which is a binding written ruling by the Banking Ombudsman.

12.3 The procedures for the resolution of a dispute must ensure that:

- a) The reasons for any conclusion about the merits of a dispute must be provided on request to the parties involved; and
- b) In response to any such conclusion, the parties concerned have reasonable opportunity to make further submissions before a recommendation is issued by the Banking Ombudsman.

12.4 The recommendation must:

- 1) Be in writing;
- 2) Include reasons for the recommendation;
- 3) Include the terms of settlement or recommendation;
- 4) Include any documentation necessary to complete the withdrawal or settlement;
and
- 5) State the date for acceptance of the recommendation by the parties concerned,
and the consequences of them failing to respond in time.

12.5 A determination may include:

- 1) A sum of money not exceeding P800, 000;
- 2) Not more than P5,000 for inconvenience; and
- 3) An order for the provision of information relating to the case

12.6 The determination must:

- 1) Be in writing;
- 2) Include reasons for the determination;
- 3) Include the terms of the determination;
- 4) Include any monetary amount to be paid; and
- 5) State that, if within a certain period of time after its issue the disputant accepts it,
the determination shall be binding on the disputant and financial services
provider

12.7 The Banking Ombudsman must give a copy of the determination to the parties involved, and provide a form to the disputant providing for acceptance of the determination in full, and as final settlement of the dispute.

13.0 Referral

13.1 If the Banking Ombudsman concludes that there is another more appropriate institution that can deal with the dispute, such as court, tribunal or any other dispute resolution party, the BBO may refer the disputant to the specialist dispute resolution scheme considered appropriate.

13.2 If the Banking Ombudsman has referred a dispute to the banking services provider, the BBO may not consider the dispute until:

- 1) The bank has responded to the dispute; or
- 2) 15 working days, or any lesser period determined by the Banking Ombudsman has elapsed

13.3 Whichever occurs first, other than in exceptional circumstances where delay, in the opinion of the Banking Ombudsman, is undesirable in which case the BBO may consider the dispute earlier.

14.0 Guidelines on Non-Financial Loss Caused to a Customer

If in the opinion of the Office of the Botswana Banking Ombudsman a financial business has done something considered wrong, and there is evidence to substantiate such and the customer has lost out as a consequence of that action, the financial business is requested to put things in order.

Non-Financial Loss may be defined as emotional or practical impact of the bank's mistake caused on the complainant/ customer of the bank. The impact may be in different forms.

- **Inconvenience** –which may encompass anytime the consumer has spent and/or trouble and effort the consumer has had to endure as a consequence of the bank's action.
- **Distress**- which may include upset, embarrassment, anxiety, disappointment, loss of expectation and stress.
- **Damage to reputation**- including situations where a consumer's personal reputation has been affected as a direct result of the action of the bank.
- **Pain and suffering**- including any negative physical or mental effect on the consumer arising from the bank's action.

The BBO Terms of Reference and the Banker's Code of Conduct spell out our jurisdiction and therefore the power to award compensation which we consider to be "fair under the circumstances". This means that any award will be made proportionate to and commensurate with the impact a business action (or inaction) had ultimately on the complainant. In two similar instances/complaints where a similar error occurred, the award amounts might differ depending on the impact of such an error. These awards are not intended to "penalise or

punish” the financial business but merely to ensure equity and put the complainant at the position at which they could have been had the error not occurred.

There are at least 4 levels which are in place and are used as guidelines for making awards.

1. **Moderate Level** – (Less than P500-00)
2. **Substantial Level**- (501-00 TO P3,000-00)
3. **Severe Level**- (P3,001-00 to P6,000-00)
4. **Extreme Level** – (P6,000-00 to P10,000-00)

15.0 Time Limits

14.1 The Banking Ombudsman may only consider a dispute against a bank that first occurred:

- 1) On or after the concerned bank first became a member of the Bankers Association of Botswana.

16.0 The Banking Ombudsman

The current contact details of the Office of the Botswana Banking Ombudsman are:

Physical Address: Plot 184 Tlale House (Main Mall)

Postal Address: Private Bag 00404, Gaborone, Botswana.

Email- enquiries@ botswana banking ombudsman.org.bw

Website: www.botswana banking ombudsman.org.bw

Tel: +267 393 5409 **Fax:** +267 393 5406

Cell: +267 71326282

15.1 Review of the Terms of Reference

Review of the Terms of Reference will be undertaken by the Bankers’ Association of Botswana periodically. Consultation with the public (consumer organizations; other interested industry associations; relevant regulatory bodies; and other interested stakeholders) will take place during the review process. Changes to banking practice,

technology and legislation may also justify an interim review and amendment of the Terms of Reference.

You can submit complaints and suggestions concerning the terms and the general operation of the Terms of Reference in writing to the Bankers' Association of Botswana:

The Current contact details are:

The Chairperson; Bankers' Association of Botswana;

Private Bag BR 218; Broadhurst Gaborone Botswana.

Tel: +267-364 2648 Facsimile: +267-390 2853