

**Credit Ombudsman Service
Limited**

ACN 104 961 882

**Credit Ombudsman Service
Annual Report on Operations
2003**

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Message from the Chair

Mr Graeme Matthews AM

FAIBF, FAICD, FAIM, AFAMI

This is the third and final report of the Mortgage Industry Review Committee covering the operations of the Mortgage Industry Ombudsman Scheme (MIOS).

MIOS was established by the Mortgage Industry Association of Australasia (MIAA) in August 2000 to provide independent, prompt and low cost resolution of disputes between consumers and members of the MIAA against the criteria of the MIAA code of practice (promulgated on 24 May 2000), the law and fairness.

From the first of July 2003 the oversight and operations of MIOS have been taken over by a company, the Mortgage Industry Ombudsman Service Limited. MIOS Limited is fully independent of MIAA and has a board of directors with an independent chair and an equal number of industry and consumer representatives. The company is seeking accreditation from ASIC under PS139 for the service and it is hoped that this will be achieved by the end of the calendar year.

This report shows that the scheme has continued to service consumers and has achieved a high level of dispute resolution with very few matters needing the formal consideration of an ombudsman.

The last action of the committee has been to draft a constitution for the new company and to revise the rules under which the service operates. These together with some recommendations for revision of the code of practice were approved by the MIAA National Council in late May and confirmed by the new board on 1 July.

I would like to record my appreciation for the support I have received from Jason Li and Gary Storkey as fellow members of the committee, the Australian Commercial Dispute Centre Limited, its Chief Executive Officer and staff. The MIAA through its National Council and Chief Executive Officer Phil Naylor has been very supportive of the scheme. I also acknowledge the advice and assistance received from the ASIC and especially Michael Funston.

I commend the report to the National Council.

Scheme Manager 's Foreword

Bernhard Ripperger

Chief Executive Officer

Australian Commercial Disputes Centre

The 2002-3 year saw the consolidation of the dispute resolution processes that had proven effective in the previous years of operation. Scheme Manager staff had significant success in conciliating outcomes to complaints prior to the matters being referred for determination.

At the same time, the number of matters referred to the Ombudsmen increased slightly on previous years (although not all such matters were finalised by 30 June). This increase is regarded positively as it provides MIOS with some additional benchmarks by which it can evaluate the standards of practice within the mortgage industry. Whilst Ombudsman's decisions do not set a precedent in the strict sense, they do provide guidance to Scheme Manager staff and the industry more generally on the expectations that consumers could reasonably hold in their dealings with Members.

During the second half of 2002-3, the Scheme Manager undertook some refinements of the MIOS Complaints database and a review of the processes of collecting information in order that it could better evaluate the effectiveness of the Scheme. In particular, procedures have been implemented that will allow more detailed tracking of complaints that have been referred back to Members' Internal Dispute Resolution processes. The first comprehensive survey and analysis of these complaints will be undertaken in the year 2003-4.

Since the start of 2003 there has been significant public attention on the issue of the regulation of the mortgage industry. Much of this interest stemmed from a report released in March 2003 on research by the Consumer Credit Legal Centre (NSW) into the potential risks involved in dealing with mortgage brokers. It is pleasing to note that MIOS in cooperation with the MIAA had by then already begun the process of amending its structure and operations in a way that would address most of the recommendations made by that report insofar as they related to the Scheme. In addition, the Scheme Manager has since been collecting specific additional data on broker related complaints in order to provide a more detailed analysis of whether and how the risks identified in the CCLC report are manifest in complaints to MIOS.

Mortgage Industry Ombudsman Scheme Structure

Mortgage Industry Review Committee

The Mortgage Industry Review Committee (MIRC) has oversight of the MIOS. It is comprised of an independent Chairman, and an equal number of Member and Consumer representatives. In 2002-3 there was one MIAA Member and one Consumer Representative.

MIRC is responsible for maintaining the independence of MIOS and for supervising the appointment and conduct of the Scheme Manager and Ombudsmen. It meets quarterly with the MIOS Scheme Manager to review the performance of the Scheme and discuss industry and consumer concerns.

As at 30 June 2003 the Committee Members were:

Chair

Graeme Matthews

Consumer Representative

Jason Li

MIAA Representative

Gary Storkey

Scheme Manager

The MIOS Scheme Manager is the Australian Commercial Dispute Centre Limited. The Scheme Manager is responsible for the day to day operations of the Scheme.

In 2003, number of full time staff dedicated to the operation of the MIOS dispute resolution service rose from 2.5 to 3. These officers manage complaints in accordance with the MIOS Dispute Resolution Procedures (see below). All MIOS staff are accredited in mediation.

In order to support MIRC in monitoring the operation of the MIOS, the Scheme Manager collects and analyses data on the Scheme, and provides regular reports on the number and nature of complaints received, and the manner and timeframes in which they were resolved.

The Ombudsmen

Where a complaint cannot be resolved through facilitation or conciliation, at the request of the consumer, the matter is referred to the Mortgage Industry Ombudsman with jurisdiction over the State in which the complainant resides.

The Ombudsman may choose to conduct a formal hearing or determine the complaint on the basis of documents provided by the parties. Where the Ombudsman finds against a Member they may award compensation of up to \$100,000 for direct loss suffered by the Customer or they may make an order that the Member do or refrain from doing an act in relation to the subject matter of the Dispute. The determination of the Ombudsman is binding on the Member if the Consumer accepts the decision.

The Ombudsmen were appointed on the basis of their independence, experience in legal adjudication or dispute resolution and general commercial experience.

As at 30 June 2003 the Ombudsmen were:

Victoria

Roderick Smith

New South Wales, Queensland and Australian Capital Territory

Mary Walker

Western Australia

John B McAlwey

South Australia and Northern Territory

The Hon Greg Crafter

Tasmania

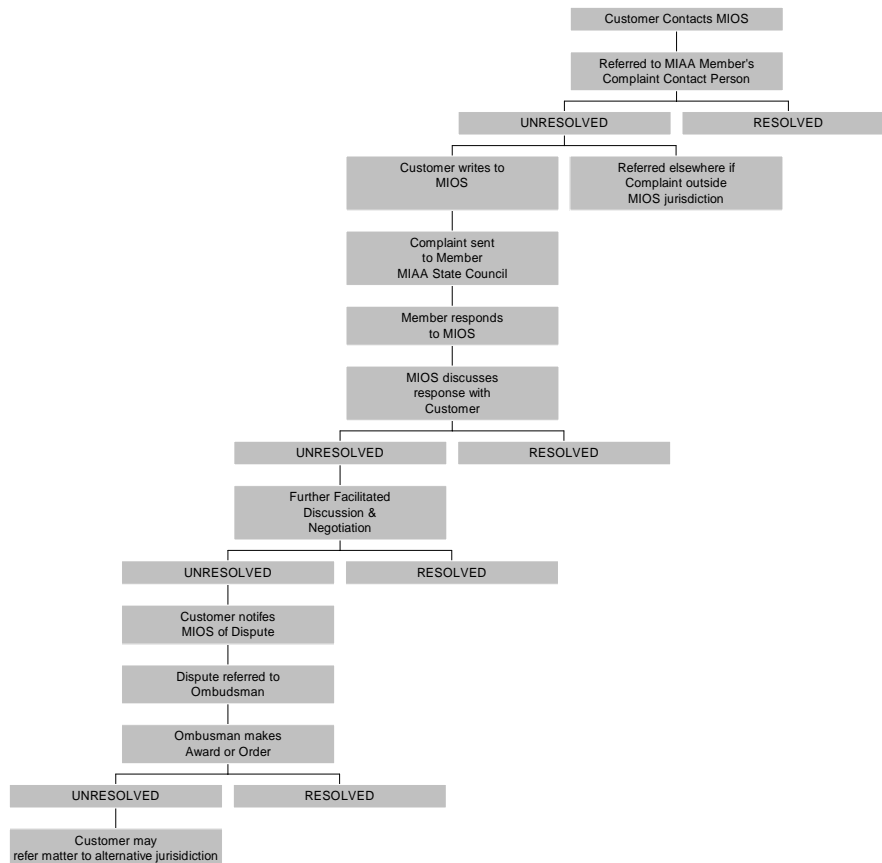
Michael Hodgman QC

The MIOS Dispute Resolution Procedure

Customers can make a complaint to MIOS where it appears a member has failed to comply with the law, best industry practice as set out in the Mortgage Industry Association of Australia (MIAA) Code of Practice or fairness in all the circumstances.

The Code of Practice covers transactions involving the provision of credit secured by way of mortgage over residential real estate within Australia.

The MIOS dispute resolution process is set out in its Rules as outlined in the following flowchart.



The Ombudsman has power to consider a dispute except where;

- The dispute relates to a company which is not a MIAA member;
- The amount claimed in relation to the dispute is more than \$100,000;
- The matter relates to a members practice or policy which does not of itself give rise to a breach of any obligation or duty owed by the member to the customer at law or under the Code of Practice;
- The dispute relates to the level of a fee, charge or commission (except where a dispute relates to non-disclosure or misrepresentation);
- The act or omission first occurred before the date of commencement of MIOS (24 May 2000);
- The subject matter is the subject of any proceedings in or before any court, tribunal, arbitrator, other ombudsman, independent conciliator or other dispute resolution scheme (except where both parties agree); or
- The customer seeks compensation other than for direct loss.

Inquiries and Complaints - 2002/3 Statistics

MIOS classifies customer contacts into Inquiries and Complaints

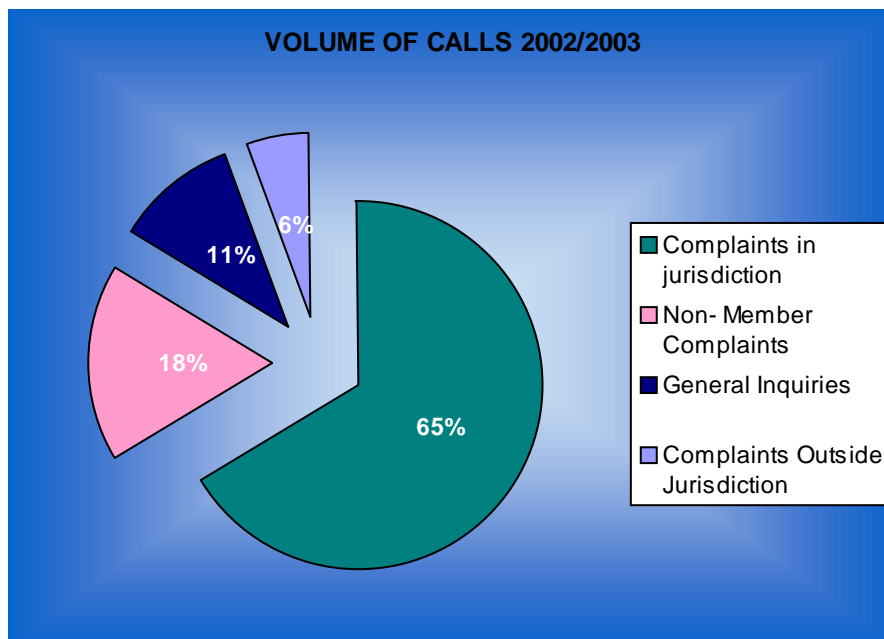
1. An “Inquiry” is a issue or concern of a general nature in relation to the Mortgage Industry, which is not in the nature of complaint. Examples include questions about a particular company's reputation, industry standards in relation to fees charged, or about features of a particular product or service.
2. A ‘Complaint’ is an expression of dissatisfaction with a product or service provided, or the conduct of staff in dealing with the customer.

In the 2002-3 period, the general jurisdiction of MIOS was limited to complaints about dealings with Members of the MIAA in relation to transactions involving the provision of credit secured by way of mortgage over residential real estate.

Volume of Calls

In the period 2002-2003 MIOS received a total of 1622 general contacts comprising;

- 1071 complaints regarding Members within jurisdiction
- 287 complaints about non-Members
- 172 general inquiries
- 92 complaints regarding Members which were outside MIOS jurisdiction



Where complaints came from

Customers were referred to MIOS from a range of sources including;

ABIO - 32.5%

Fair Trading- 22.7%

Phone Book- 9.5%

Other- 35.3%

Complaints outside jurisdiction

There were 92 complaints about Members that fell outside of MIOS' jurisdiction. The majority of these complaints fell within one or more of the following categories;

- The subject matter of the complaint was the subject of current legal proceedings
- The complaint related to the activity of a third party eg Lender's Solicitor
- The complaint related purely to a commercial decision of the company in accordance with a policy or procedure not in breach of the law or Code of Practice. eg a change in interest rates
- The complaint was being considered by another Ombudsman or Tribunal.

How Complaints were dealt with

Of the 1071 complaints within jurisdiction received, 970 were finalised following referral back to the Member to be dealt with in accordance with their IDR procedures. The remainder were resolved through conciliation (95) or determination (6).

Categories of Complaint

Complaints are categorised by subject. The following are the key categories for complaints received in 2002-3:

70% - failure of due skill, care and diligence

The other categories were;

6% - non-disclosure to the applicant of all relevant details about the proposed loan at the time of application.

5% - non-disclosure of a fee or on going commission

4% - delay in refunding amounts which may be due to the applicant if loan application declined

2% - breach of the Consumer Credit Code, the Trade Practices Act or other Fair Trading legislation

3%- failure to keep an applicant informed of all relevant information relating to a proposed loan

2%- delay in advising an applicant of the outcome of the loan application

2%- failure to treat a Customer courteously when making a complaint to a Member

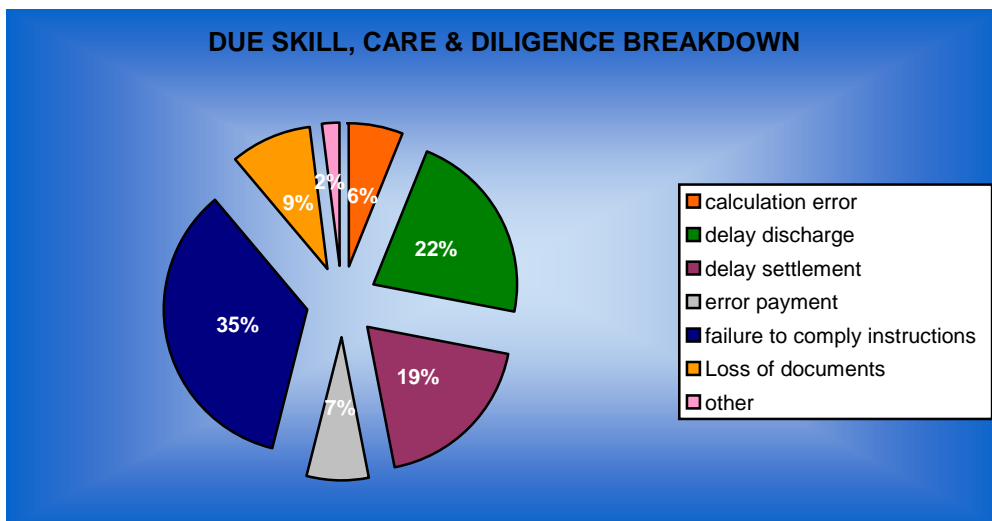
3% - suggestions or recommendations of arrangements for mortgage finance that are not appropriate to the needs of that applicant

1% - lack of thorough knowledge of the Mortgage Industry in which they participate

1% - failure to establish and maintain honest and honorable relationships

1%- failure to tell a Customer who makes a complaint by telephone the name of the Member's "Complaints Contact Person"

The category of 'due skill, care and diligence' can be further analysed as follows:



Case Studies

Following are examples of matters handled by the MIOS.

Repayment Reduction

A Customer contacted a member by facsimile and requested a reduction in loan repayments. The customer did not receive a response to her request but assumed the member had agreed when the lower amount was deducted from her account for the next repayment.

The customer received a default notice and was charged legal fees of \$979. The customer disputed the fees and asked that early repayment fees of around \$2100 be waived as she was unhappy with the service provided by the member and wanted to refinance the loan.

The member agreed to waive the enforcement fees and apologised to the customer. The customer accepted the offer and decided not to discharge the loan.

Broker Fees

Customers contacted MIOS and said they had felt pressured into signing a broker agreement.

The customer claimed the member had arrived at their home unannounced on several occasions and asked them to sign the broker agreement. On one occasion the broker arrived on a weekend while the customer had visitors and refused to leave until the documents were signed. The customers signed the documents and later contacted the member to withdraw from the agreement.

The customers said they were aware that they would be liable for application fees after withdrawing the loan but were also charged broker fees of \$3245.

The customer had contacted the member to claim reimbursement of the broker fees. The member declined their claim because the broker agreement signed by the customers stated fees were payable whether or not the customer proceeded with a loan. The member denied their consultant had pressured the customer into proceeding with the agreement.

Following discussions with MIOS, the member offered to waive the broker fees. The customer accepted the offer.

Product Knowledge

The customers claimed the broker demonstrated a lack of product knowledge and failed to provide a range of options despite several requests from the customers. The customers also claimed the broker made assumptions about what product would be best for the customers without consulting them directly.

The customers main concern was that they were under the impression that they would be able to access a redraw facility but later found this was not possible.

The customers said they went ahead with the product suggested by the broker due to time constraints and other financial pressures. They raised their concerns with the broker when they were signing the documents and claim they were assured the problem could be rectified at a later time.

The customers calculated the loss they would incur over the first few years of the loan by not having access to a redraw facility to be \$2512.17 and sought reimbursement of this amount from the member as well as a refund of the \$600 application fee.

Following discussions with MIOS the member agreed to reimburse the amount claimed by the customers.

Delayed Settlement

The customers contacted the member about refinancing a loan. They discussed fees and charges and the customers claimed the member said there was an application fee of \$390 and the customers would not have to pay anything else.

The customers tried to contact the member several times and did not receive a response until two weeks after they signed a contract to purchase property. The customers said the member assured them that the loan had been approved and was proceeding normally and they would receive confirmation in a few days. The customers waited 6 business days before contacting the member again and left further telephone messages that were not returned.

Two days before the scheduled settlement date, the customers spoke with the member and were advised the loan had not yet been approved. The customer said the member told them not to worry as approval would come through the following day. The customers went to the members office to sign the contract. The customers asked if their solicitor had been sent a copy of the documents and were advised there had not been enough time and they would have to waive their right to seek independent legal advice. The customers raised their concerns about the additional fees and charges listed in the contract and the fact that the contract provided for interest only repayments when this had not been discussed previously. The member said the error could be fixed within 3 days.

The customers claimed reimbursement of penalty interest charged by the vendor and reimbursement of the fees and charges listed in the loan contract which had not previously been disclosed.

The member offered to reimburse the penalty interest and sought a stamp duty refund on behalf of the customers. The member declined their request for reimbursement of application fees as they were listed in the contract. The customers accepted the members offer.

Adequate Information must be provided

In this case, the complainant approached the company for assistance in obtaining finance. The complainant states that he was assured he would be able to obtain a loan, and that he was subsequently advised verbally that the application had been approved, that he would be signing documents within the week and could settle shortly thereafter. The complainant states that a week later he was advised to supply further documentation, but was continually given verbal reassurances as to the date of approval thereafter. He states that he was advised on at least two other occasions that his application had been finally approved, but that this advice was contradicted by other information given to him by the company.

He was provided with a preliminary approval for an amount which was less than the amount requested. No final approval was given as the loan application was withdrawn. A bill for \$1,334 was received from the company.

The company maintained that at no time would the complainant have been advised that the loan had been unconditionally approved until such time as the company had received formal, unconditional approval from a lender. The company stated that the difficulties arose from the complainants "limited understanding of the loan process and general finance knowledge".

The Ombudsman noted that it must be the case that many home finance applicants would have limited understanding of the loan process. It was noted that this places an obligation upon the company to provide adequate information to an applicant about a loan application and its progress. This requirement is clearly spelt out in the MIAA Code of Practice (then clause 9.6).

The Ombudsman found that the complainant had been given confusing and inconsistent information from the time the application was first made. There was little or no written advice provided to the complainant as to the issues which needed to be resolved and the reasons for the delay in obtaining approval for the loan. The Ombudsman held that the complainant be excused from paying the outstanding fee to the company.

APPENDIX A

DEFINITIONS

ACDC – Australian Commercial Disputes Centre

MIAA – Mortgage Industry Association of Australasia

MIRC – Mortgage Industry Review Committee

MIOS – Mortgage Industry Ombudsman Scheme

Customer – any Member of the public who deals with the MIAA Member whether as a borrower, guarantor, prospective borrower, or prospective guarantor, or who in any way seeks the services of a Member in the ordinary course of that Member business in the Mortgage Industry

Member – any person, firm or corporation which is a Member of the MIAA to which the MIAA Code of Practice applies, or any other person, firm or corporation that the National Council of the MIAA agrees may access the MIOS

Scheme Manager – the person appointed by MIRC to manage the day-to-day operations of MIOS

Code of Practice or **Code** – The Mortgage Industry Association of Australasia Code of Practice and Mortgage Industry Ombudsman Scheme as promulgated by the MIAA and as revised by the MIAA from time to time

Rules – the Rules of the Mortgage Industry Ombudsman Scheme as amended and re-promulgated from time to time

Ombudsman – the MIRC appoints a person from a panel of experienced commercial people who are independent from the MIAA, for the purpose of dispute resolution in accordance with the Rules

State Council – the MIAA Chapter Council for the State in which the Customer resides

National Council – the National Council of the MIAA