

**Credit Ombudsman Service Limited**  
**ACN 104 961 882**

**Credit Ombudsman Service**

**Annual Report on Operations**  
**2004**

## Table of Contents

Table of Contents.....	2
Chairman’s Report.....	3
Scheme Manager’s Foreword .....	5
Credit Ombudsman Service Limited Structure .....	6
Scheme Manager .....	6
The Ombudsman.....	7
The COS Dispute Resolution Procedure.....	8
Inquiries and Complaints – 2003/4 Statistics.....	11
Volume of Contacts .....	11
Where complaints came from .....	12
Demographics of Complaints .....	12
Complaints outside jurisdiction .....	13
Time Taken to Resolve Complaints.....	13
Current Caseload .....	14
Profile of Complaints.....	14
The type of financial product or service involved .....	15
The product or service provider .....	15
The purpose for which the financial product or service was obtained .....	15
The underlying cause of the complaint .....	16
Any Systemic Issues or other trends .....	16
Case Studies.....	17
Failure to comply with consumer’s instructions .....	17
Failure to disclose fee or commission.....	17
Exercise of due skill, care and diligence.....	18
APPENDIX A.....	19
Definitions .....	19

## Chairman's Report

On behalf of the Board of Credit Ombudsman Service Limited, I have pleasure in presenting the Board's Report on Operations 2004. This report is mandated by Article 36 of the Company's Constitution.

The first year of the Company's operations has been marked by:

- the granting of approval as an external dispute resolution scheme by ASIC under ASIC Policy Statement 139;
- a major increase in COSL's jurisdiction; and
- a massive growth in COSL's membership.

At its commencement of operations on 1<sup>st</sup> July 2003, COSL's membership comprised Full Members and Life Members of the Mortgage Industry Association of Australia ("MIAA"). At this time, the Company was known as Mortgage Industry Ombudsman Service Limited and as the Company's then name implied, the scheme's jurisdiction was limited to complaints against members who had dealt with consumers in respect of real estate mortgage secured lending.

In November 2003, after consultation with ASIC, the Company's membership base was expanded to include finance brokers, mortgage brokers and other operatives in the credit industry that were not members of MIAA.

On 17 December 2003 ASIC approved the Company as an external dispute resolution scheme under ASIC Policy Statement 139. As the Company's then Constitution was not fully effective to deal with the expansion of the Company's dispute resolution jurisdiction, on 17 February 2004, at a Special General Meeting, the Company adopted a new name, Credit Ombudsman Service Limited, a new Constitution, and new rules known as the Credit Ombudsman Rules.

During the year, COSL's membership base expanded from some 1,200 "deemed" Members to now in excess of 3,100.

The rapid growth in both jurisdiction and membership placed significant pressures on the Company's administration. I am however pleased to say that the massive workload generated by this was dealt with competently and calmly.

On behalf of the Board, I wish to thank Mr Gary Storkey and staff of HomeStart Finance who, together with the firm of Geoffrey Horton & Associates Solicitors, responded immediately to COSL's request for assistance in establishing COSL's initial membership database and processing of a very significant number of membership applications.

I wish particularly to express the Board's appreciation to Ms Frances Aunger who at short notice accepted the task of managing the many thousands of membership applications which required attention after the Company's Special General Meeting in February 2004. Ms Aunger's efforts have contributed significantly to COSL now having effective membership records and administration systems.

I would also record my appreciation of the efforts of Mr Bernard Ripperger, Ms Cynthia Leonard and other staff of Australian Commercial Dispute Centre who have

professionally and competently dealt with the increase in dispute resolution workload which occurred through the year.

The year ahead will see further significant challenges for COSL. In particular, COSL, and the Credit Industry, eagerly awaits the release of the report of the Standing Committee of Officers of Consumer Affairs (“SCOCA”). If this report recommends compulsory membership of an ASIC approved EDR scheme as a condition of operating in the Credit Industry, and if that recommendation is accepted by the various governments and implemented, then depending upon timing issues COSL will need to “gear up” to prepare for a further significant increase in membership and dispute resolution workload.

Finally, I would extend my sincere thanks to Mr Jason Li, Ms Katherine Lane and Ms Catherine Uhr (Consumer Directors) and Mr Gary Storkey and Mr Phillip Naylor (Member Directors) for their contributions to the governance of the Company.

GW Matthews  
Chairman

## **Scheme Manager's Foreword**

***Peter Robinson***

Chief Executive Officer

Australian Commercial Disputes Centre

The last 12 months has seen a host of major changes to COS. Most significantly, COS attained accreditation as an ASIC approved External Dispute Resolution scheme under ASIC Policy Statement 139. Being an "ASIC approved EDR scheme" means that COS meets the very stringent requirements set out in ASIC's Policy Statement 139. The key principles of PS 139 are that a scheme must be:

- a. accessible
- b. independent
- c. fair
- d. accountable
- e. efficient, and
- f. effective

PS 139 prescribes certain features of the scheme. For example, the decision-making processes and administration of the scheme must be independent of those sectors of the industry that fall within its jurisdiction and which provide its funding. The Scheme's coverage must be sufficiently broad to allow it to deal with the majority of consumer complaints in the relevant industry. One of the major requirements of the scheme is that it is provided free to consumers.

These requirements are the reason for many of the changes that turned MIOS into the COSL. Independence required a governing body that was separate from the MIAA. The need to ensure coverage led to the expansion of COS's jurisdiction to include the full range of credit services, as well as some other services ancillary to credit. Membership is also open to any credit service provider.

Over the 2003-2004 period, COS experienced a 60% increase in the number of contacts received. This was reflected in the large increase in the number of both general inquiries and complaints received by COS. Significantly, there was a large increase in the number of general inquiries received by COS in relation to complaints about Credit Industry participants, including non-members of COSL. This would indicate a growth in consumer awareness of COS, and other EDR schemes, as alternatives to legal proceedings to resolve a dispute with a credit service provider.

Scheme Manager staff had significant success in conciliating outcomes to complaints prior to the matters being referred for determination. The number of matters referred to the Ombudsman increased slightly on the previous year however this is viewed positively by COSL as these decisions provided some additional benchmarks by which it can evaluate the standards of practice within the credit industry. Whilst the 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.

## Credit Ombudsman Service Limited Structure

The Credit Ombudsman Service Limited has oversight of the COS. It is comprised of an independent Chairman, and an equal number of Member and Consumer representatives.

COSL is responsible for preserving the independence of COS and for supervising the appointment and conduct of the Scheme Manager and Ombudsman. It meets quarterly with the COS Scheme Manager to review the performance of the Scheme and discuss industry and consumer concerns.

As at 30 June 2004 the Board of Directors was:

### **Chair**

Graeme Matthews

### **Consumer Representatives**

Katherine Lane

Catherine Uhr

### **Industry Representatives**

Gary Storkey

Phil Naylor

### **Scheme Manager**

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

In 2003-2004, number of full time staff dedicated to the operation of the COS dispute resolution service rose from 3 to 4. These officers manage complaints in accordance with the COS Dispute Resolution Procedures (see below).

The Scheme Manager is required to collect and analyse data on the Scheme, and provide regular reports to the COSL Board on the number and nature of the complaints received by the Scheme and the manner and timeframes in which the complaints were resolved. The Scheme Manager also reports on any significant issues that impact on the operation of the Scheme and systemic issues and/or serious misconduct by members of COSL.

## **The Ombudsman**

Where a complaint cannot be resolved through facilitation or conciliation, at the request of the consumer, the matter is referred to the Credit Ombudsman. The Scheme Manager may also declare the conciliation phase complete and refer a matter to the Credit Ombudsman if it appears that no further assistance can be provided through conciliation.

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 Consumer 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.

An Ombudsman is appointed on the basis of their independence, experience in legal adjudication or dispute resolution and general commercial experience.

As at 30 June 2004 the Ombudsman are:

### **Victoria**

Roderick Smith

### **New South Wales, Queensland and Australian Capital Territory**

Mary Walker

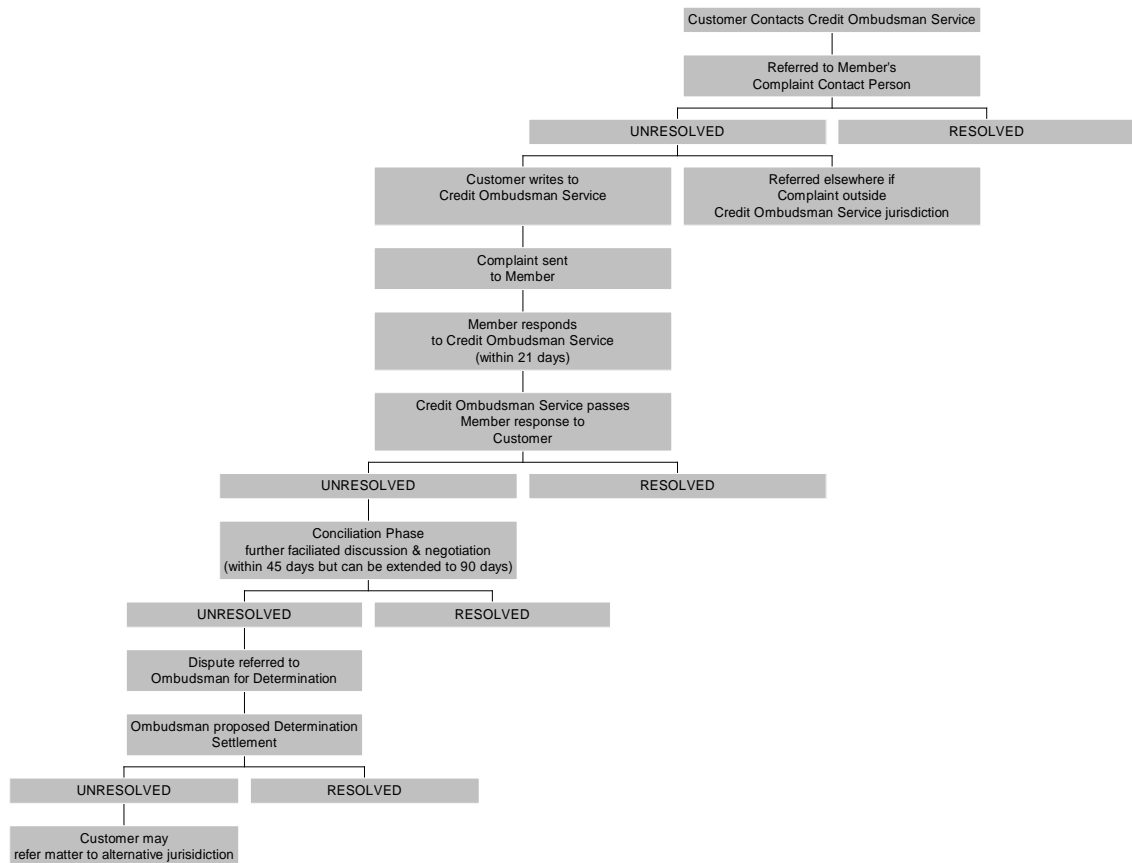
# The COS Dispute Resolution Procedure

Consumers can make a complaint to COS where it appears a member has:

- breached relevant laws
- breached the MIAA Code of Practice or other Recognised Code of Practice
- not met standards of good practice in the Credit Industry, or
- acted unfairly in 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 COS dispute resolution process is set out in its Rules as outlined in the following flowchart.



The Credit Ombudsman Service has power to consider a dispute except where:

- the complaint is about a Member's acts or omissions that do not comprise or otherwise are not directly related to the Member providing Member Services to the consumer
- the complaint is about someone who is not a Member at the time the complaint is made
- the complaint is about a Member who is not obliged to comply with the Rules because that Member is a member of another external disputes resolution scheme approved by the Board
- the consumer is claiming more than \$100,000 compensation in respect of the complaint or in the aggregate of all the consumer's complaints based on the same subject matter against the same Member
- where any aspect of the complaint relates to acts, omissions, policies or commercial or other matters by or concerning someone other than the Member the complaint concerns eg. a Lender's decision to refuse a Loan application, Loan interest rates, a Lender's policy to require mortgage insurance
- where the complaint relates to the level of any legally permissible fee, charge or commission
- where the complaint relates to any transaction entered into outside Australia
- in the case of a secured Loan, where the security is situated or legally registered outside Australia or is governed by laws other than the laws of Australia
- no compensation or orders (see Rule 16) are sought against a Member
- where the compensation sought is compensation other than for Direct Loss
- the consumer lodging the complaint was not the Borrower, prospective Borrower, Loan Guarantor or prospective Loan Guarantor to whom the Member Services in question were directly provided by the Member
- the Member's act or omission complained about occurred before the date of commencement of these Rules (note: different versions of the Credit Ombudsman Rules will operate in respect of your complaint depending on the date of receipt of your complaint – refer to Rule 10)
- a complaint has been previously lodged by the consumer about the same Member which has been considered by the Scheme Manager or the Ombudsman, unless relevant new evidence is available
- the subject matter of the complaint is already the subject of proceedings before a court, tribunal, arbitrator, other ombudsman or other Dispute Resolution Scheme or is under investigation by any ombudsman, unless both the consumer and the Member consent in writing to the complaint being considered by COS

- the complaint has already been determined by a court, tribunal, arbitrator or ombudsman, or other dispute resolution scheme
- it is more appropriate that the complaint be dealt with by a court or another independent complaints or dispute resolution or arbitration procedure
- the complaint involves an issue that might have important consequences for the Member or the Credit Industry, or an important or novel point of law, and is dealt with under the special procedures set out in Rules 70 to 75.
- if the Scheme Manager, or the Credit Ombudsman, as the case may be, is satisfied that the complaint is frivolous or vexatious or is being pursued in a frivolous or vexatious manner or for an improper purpose.

## **Inquiries and Complaints – 2003/4 Statistics**

COS classified contacts into Inquiries and Complaints.

1. **Inquiries** include an issue or concern of general nature in relation to the Mortgage Industry. Examples include questions regarding the operation of COS, the COS process, membership of COSL, 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, or the conduct of staff in dealing with the consumer. A complaint may have already been raised with the Member but has not been resolved to the consumer's satisfaction.

In the 2003-4 period, COS's jurisdiction broadened to include services provided by COSL Members that relate to a consumer being provided or applying to be provided with Credit. This includes financial products and financial services directly incidental to the Credit negotiated, arranged, provided or managed by the Member.

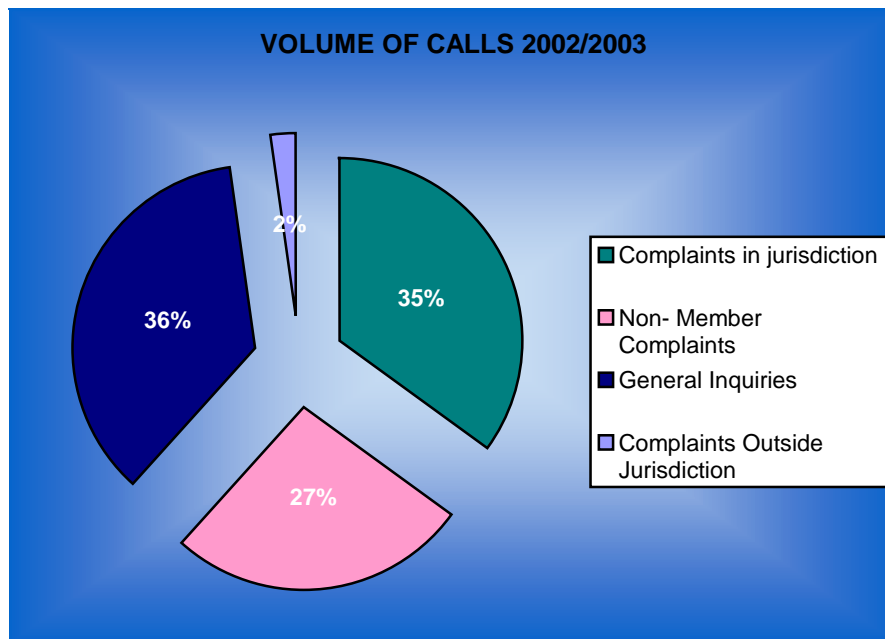
### **Volume of Contacts**

In the period 2003-2004 COS received a total of 2729 contacts comprising:

- 955 complaints regarding Members within jurisdiction
- 725 complaints about non-Members
- 988 general inquiries
- 61 complaints regarding Members which were outside COS's jurisdiction

This is an increase in 60% on the number of general contacts received by MIOS (as it then was) in the 2002-2003 period.

The distribution of the contacts has changed noticeably in the 2003-2004 period relative to the 2002-2003 period. In particular, there was a large increase in the number of general inquiries received in relation to issues of Membership following ASIC Class Order 03/1048, which exempted mortgage brokers from licensing requirements in relation to offset accounts if they were a member of an approved EDR scheme. COS also experienced a large increase in the number of contacts received from the general public in relation to how to express their dissatisfaction with their credit service provider.



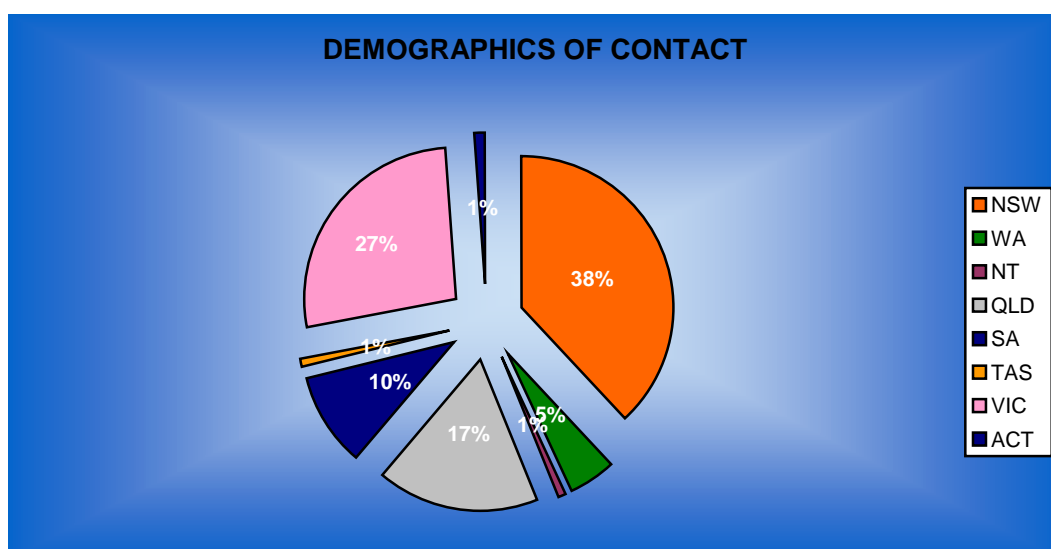
### Where complaints came from

Consumers were referred to COS from a range of sources including:

- BFSO – 26.1%
- Fair Trading- 4.4%
- Phone Book- 3.9%
- Other - 65.63%

### Demographics of Complaints

The demographics of the inquiries and complaints received are displayed in the chart below.



## Complaints outside jurisdiction

COS received a total of 786 complaints that fell outside COS's jurisdiction. The majority of the complaints that fell outside COS's jurisdiction related to non-members complaints. The number of complaints received that related to non-members was 725.

In addition, there were 61 complaints about Members that fell outside of COS's jurisdiction. These complaints came within one or more of the following categories:

- The subject matter of the complaint was the subject of current legal proceedings or being considered by another Ombudsman or Tribunal
- The complaint related to the activity of a third party or purely to a commercial decision of the company
- The complaint related to a Member to Member dispute
- Compensation of more than \$100,000 was sought by the consumer
- The Member was an exempt member as part of another ASIC approved EDR scheme

## Time Taken to Resolve Complaints

The complaints received by COS were resolved in accordance with the timeframes outlined in the table below.

	0-21 days	21-42 days	43-88 days	89-134 days	134-179 days	180+ days
<b>Class 2</b>	19	22	30	16	7	19
<b>Class 3</b>				1		4
<b>Class 4</b>						
<b>Class 5</b>						8
<b>Total</b>	<b>19</b>	<b>22</b>	<b>30</b>	<b>17</b>	<b>7</b>	<b>31</b>

**Class 2:** Prior complaint made on same subject matter to Member staff or complaints contact person and matter not resolved to consumer's satisfaction.

**Class 3:** Matter not resolved and consumer requires formal COS assistance.

**Class 4:** Matter not resolved and COS makes recommendation for resolution.

**Class 5:** Matter referred to Credit Ombudsman in accordance with COSL Rules.

## Current Caseload

The caseload of COS at 30 June 2004, including age and status of cases, is outlined in the table below:

	<b>0-21 days</b>	<b>21-42 days</b>	<b>43-88 days</b>	<b>89-134 days</b>	<b>134-179 days</b>	<b>180+ days</b>
<b>Class 2</b>	11	11	7	4	3	11
<b>Class 3</b>	1			11	1	9
<b>Class 4</b>						
<b>Class 5</b>						10
<b>Total</b>	<b>12</b>	<b>11</b>	<b>7</b>	<b>15</b>	<b>4</b>	<b>30</b>

**Class 2:** Prior complaint made on same subject matter to Member staff or complaints contact person and matter not resolved to consumer's satisfaction.

**Class 3:** Matter not resolved and consumer requires formal COS assistance.

**Class 4:** Matter not resolved and COS makes recommendation for resolution.

**Class 5:** Matter referred to Credit Ombudsman in accordance with COSL Rules.

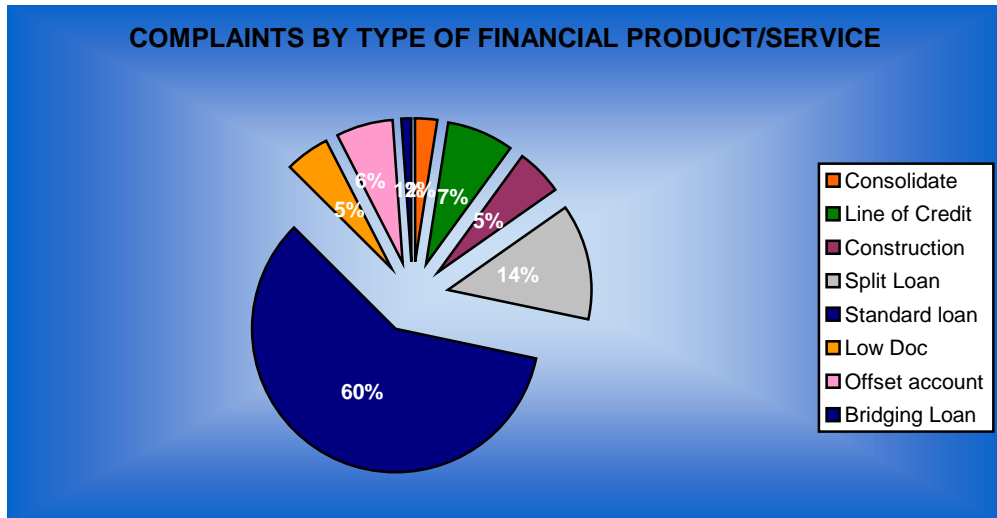
## Profile of Complaints

The following categories can be used to identify the nature and profile of the complaints received by COS:

1. The type of financial product or service involved;
2. The product or service provider;
3. The purpose for which the financial product or service was obtained;
4. The underlying cause(s) of the complaint; and
5. Any Systemic Issues or other trends.

## The type of financial product or service involved

The type of financial product or service involved in the contacts received by COS for the 2003-2004 period are analysed as follows:



## The product or service provider

The complaints received by COS can be analysed by the type of product or service provider involved in the complaint. Please note COSL Members may operate as a different type of product or service provider depending on the role that the Member is performing in a particular credit arrangement. For the purposes of COS, Members are classified by the type of product or service that they are predominantly providing in relation to each specific complaint.

Broker	26%
Originator*	25%
Mortgage Manager	20%
Lender	17%
Securitiser	1%
Wholesaler	1%

\*Originator, for the purposes of COS, refers to the originator of finance.

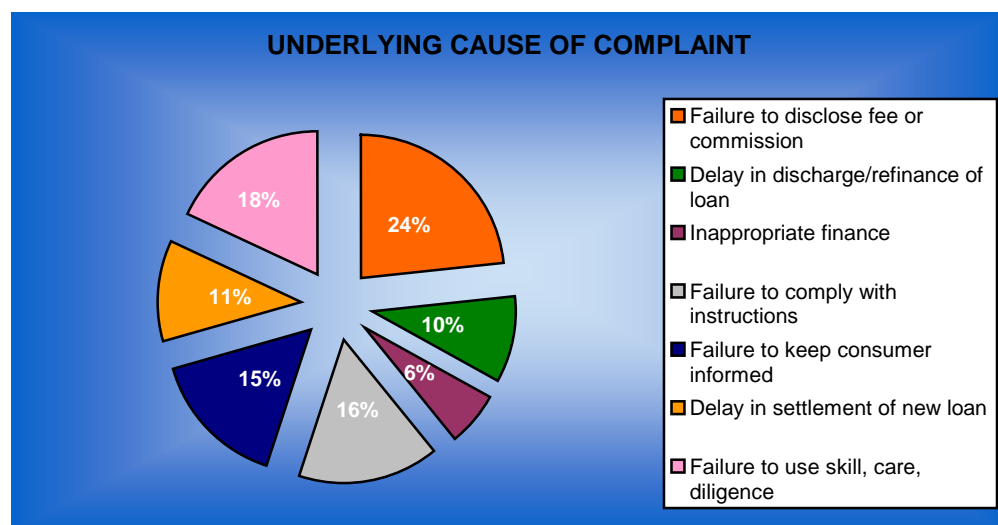
## The purpose for which the financial product or service was obtained

Approximately 68% of the complaints received by COS in the 2003-2004 period related to a financial product or service obtained for a residential purpose and 30% related to a financial product or service obtained for an investment purpose. Only 2% of the complaints received by COS related to a financial product or service obtained for a business-related purpose.

## The underlying cause of the complaint

The key categories for the underlying cause of the complaints received by COS for the 2003-2004 period were:

- Failure to disclose fee or commission
- Delay in discharge/re- finance of loan
- Inappropriate finance for consumer
- Failure to comply with consumer instructions
- Failure to keep consumer informed of relevant information in relation to proposed loan
- Delay in settlement of new loan
- Failure to use skill, care and diligence



## Any Systemic Issues or other trends

Despite the increase in COS's jurisdiction that has developed over 2003-2004, COS received a total of 786 complaints that did not fall within COS's jurisdiction. The majority of these complaints, being 725 in total, related to non-members. Voluntary membership of COSL places a fundamental limitation on COS's ability to provide a dispute resolution service that adequately covers the Credit Industry.

This issue is further compounded by the nature of the loan transactions involved in the credit marketplace. A chain of different credit industry participants may be involved in arranging credit, each of which bears responsibility for the performance of different, but interdependent roles. If a complaint is received by COS in relation to a credit transaction and it becomes clear that a number of parties are responsible for the subject matter of the complaint, the consumer will not have any recourse against the non COSL member link in the credit arrangement chain. While the complaint may appear valid and prima facie within COS' jurisdiction, it may fall outside COS' jurisdiction if it becomes evident that there is insufficient nexus between the conduct of the COSL Member and the loss, and instead the loss is attributable to a non-COSL member.

## Case Studies

Following are examples of matters handled by COS.

### *Failure to comply with consumer's instructions*

The consumer had set in motion arrangements to refinance their existing loan with the Member. The consumers contacted the solicitors for the Member, who appeared to be handling the discharge of the consumer's mortgage to confirm the progress of the transaction. The consumer did not attempt to cancel the refinance transaction at this stage.

On the day prior to settlement, the consumer rang the discharge department of the Member to advise that he wished to cancel the discharge and retain his existing loan arrangement. A representative of the Member assured him that the transaction would be cancelled. A fax was also sent to the Member to confirm the consumer's instructions to cancel the refinance. The next day, the Member deducted a periodical mortgage payment from the consumer's account.

A number of days later the consumer received a letter from the proposed re-financier confirming settlement of the new loan arrangement. The consumer immediately contacted the Member for an explanation. The consumer made several calls to the Member over the following two weeks and did not receive a clear explanation.

The Member did not dispute this contact made by the consumer but, in response to the complaint raised with COS, asserted that the notification to cancel the transaction was received too late. The Member also noted that it was the responsibility of the consumer to arrange with the new financier for the cancellation of the refinance transaction.

The Ombudsman determined that the Member failed to effectively communicate the instructions, thereby causing the refinance transaction to proceed against the wishes of the consumer. The Ombudsman ordered the Member to pay fair compensation to the Consumers (noting that the late notice of cancellation meant that some costs involved in the preparation of the discharge should reasonably be borne by the Consumers).

### *Failure to disclose fee or commission*

The consumers were existing consumers of the Member and made contact with the Member to ascertain the cost implications of a transaction they proposed to enter. A representative of the Member informed the consumers that there would be no fees involved in the proposed transaction. In reliance on this information, the consumers allege that they did not pursue other finance options.

The consumer experienced a lack of attention from the Member and made contact with the Member on numerous occasions in relation to the progress of the loan arrangements. It was not until settlement was imminent that the consumers were informed that they would be required to pay a further mortgage insurance premium and substantial additional fees.

The Ombudsman determined that the consumers were significantly inconvenienced as a result of the failure of the Member to adequately inform the consumer of the costs

involved in the transaction. In particular, the Ombudsman noted that there was an absence of any written notification at the commencement of the transaction, or at any time until settlement was imminent, of the fees and expenses that were not be charged to the consumer. The Ombudsman determined that the Member should compensate the consumer for the expenses incurred as a result of these failures.

***Exercise of due skill, care and diligence***

The consumer alleged that he contacted the Member by telephone to request that his variable rate loan be altered to a fixed rate loan for a period of 1 year. The loan was fixed for 2 years. At the expiry of the first year, the consumer contacted the Member to ask why he had heard nothing about the loan reverting to a variable rate. The Member says that the original instructions from the consumer were to fix the loan for 2 years, and that a confirmatory letter had been sent. In this case, there were 2 directly conflicting accounts as to the critical issue.

The Member had in place a system whereby telephone instructions were confirmed via voicemail before action was taken in response to a request over the phone. This system involved the forwarding of a letter of confirmation to the consumer (which in this case was shown to be correctly addressed). The Member created the only contemporaneous documents relating to the issue. As a consequence, the Ombudsman could only conclude that the consumer, irrespective of any intention to fix the loan for 1 year, was not able to effectively convey this to the Member.

In addition to the existence of the Member's system, the Member (through the loan contract) had put the consumer on notice that a change to the rate would be confirmed in writing. Accordingly, the Member was entitled to assume that as no further request for written confirmation was made by the consumer, that the letter had been received. The determination was in favour of the Member.

## **APPENDIX A**

### **Definitions**

**ACDC** – Australian Commercial Disputes Centre

**COS** - Credit Ombudsman Service

**COSL** – Credit Ombudsman Service Limited.

**Consumer** – any member of the public whether an individual or Small Business but does not include a Member

**Credit Industry** - the marketplace for Credit generally including the various individuals, firms and corporations dealing with Credit whether as Mortgage Brokers, Mortgage Managers, Aggregators, Credit Providers, Finance Brokers or otherwise

**Member** – a person, firm or corporation which is a member of the COSL

**Member Services** - the services provided by a Mortgage Broker, Finance Broker, Aggregator, or other person who (whether as principal, employee, agent or independent contractor), as an intermediary, negotiates or arranges Credit for or on behalf of a Consumer, or by a Credit Provider or Mortgage Manager, and includes financial products and financial services directly incidental to the Credit negotiated, arranged, provided or managed by the Member

**Scheme Manager** – the person appointed by COSL to manage the day-to-day operations of COS

**Rules** – the Rules of COSL as amended and re-promulgated from time to time

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