

## **Memorandum of Understanding between Financial Ombudsman Service and Credit Ombudsman Service**

The Financial Ombudsman Service Limited ('FOS') and the Credit Ombudsman Service Limited ('COSL') are external dispute resolution schemes approved by the Australian Securities and Investments Commission. Both FOS and COSL receive complaints or disputes against financial service providers ('FSP') who are members of their respective schemes.

The purpose of this Memorandum of Understanding is to document the arrangement between FOS and COSL in relation to the handling of a complaint or dispute received by one scheme but which may be more appropriately dealt with by the other scheme where the loan which is the subject of the complaint or dispute is part of a securitisation programme. This is desirable because in a securitisation programme, the programme funder or servicer (also known variously as programme manager, fund manager, wholesale lender or wholesale funder) may be a member of one scheme while the securitisation trustee may be a member of the other scheme.

### *Background*

In a securitisation programme, the trustee is the lender of record, but under the servicing agreement between the trustee and the programme funder or servicer ('counter-party'), the day-to-day administration of the programme and other management responsibilities are discharged by the counter-party. Issues which are strictly the responsibility of the trustee are almost always delegated to the counter-party, such that the counter-party will accept complaints or disputes about, among other things, debt-collection, legal proceedings, unjustness or financial hardship applications on behalf of the lender.

Furthermore, such trustees may be exempt from the licensing and the internal dispute resolution provisions of the National Consumer Credit Protection Act on the basis that the counter-party will perform the obligations or exercise the rights of the trustee.

(Some counter-parties do not deal directly with the borrower (that is, until the loan falls into arrears), and rely instead on a mortgage manager to manage the loan by, for example, issuing statements, monitor repayments and making enquiries about arrears.)

Macquarie Bank (as funder of the PUMA programme) is unique in this regard. They will accept complaints or disputes if the matter relates to them as a programme funder or servicer, but where the matter relates to an Originator/Manager in the PUMA program (usually members of COSL), the complaint or dispute is referred to COSL (in some cases the Originator/Mortgage Manager will deal directly with COSL and in others, Macquarie will liaise with COSL on behalf of the Originator).

- 1 A complaint or dispute about a credit facility which has as its lender of record a securitisation trustee ('securitised loan') should, as a general rule, be directed by the scheme which receives the complaint or dispute to whichever scheme the counter-party (or 'white label' lender) belongs to.

- 2 Specifically, each of FOS and COSL will refer to the other scheme ('proper scheme') a complaint or dispute about a securitised loan (and will transfer the documents comprising the complaint or dispute as well as supporting material if the complainant or applicant has consented to this), in the following circumstances:

<b>Trustee is a member of:</b>	<b>Counter-party is a member of:</b>	<b>Proper scheme will be:</b>
FOS	FOS	FOS
COSL	COSL	COSL
COSL	FOS	FOS
FOS	COSL	COSL
FOS and COSL	FOS	FOS
FOS and COSL	COSL	COSL

- 3 The complaint or dispute will be referred back to the scheme to which the trustee is a member if the counterparty is unable or unwilling for any reason to deal with a complaint or dispute which involves an application to vary or set aside a credit contract on grounds of financial hardship, an application to postpone enforcement proceedings, an allegation that the loan or the fees are unjust or unconscionable or an allegation that the credit contract is 'unsuitable'.
- 4 Each of FOS and COSL will refer to the other a complaint or dispute received by it about a securitised loan under a PUMA programme funded by Macquarie Bank (and will transfer the documents comprising the complaint or dispute as well as supporting material if the complainant or applicant has consented to this), as follows:

<b>Trustee is a member of:</b>	<b>Subject-matter of complaint or dispute relates to:</b>	<b>Proper scheme will be:</b>
FOS and/or COSL	Macquarie Bank (member of FOS)	FOS
FOS and/or COSL	Originator/Mortgage Manager (member of COSL)	COSL

On receipt of a complaint or dispute the Scheme will identify if the complaint or dispute is a loan which forms part of a securitisation programme and, if so, take steps to identify the relevant counterparty as soon as possible. As this may involve an initial referral to the trustee, there may be a short delay in identifying the appropriate scheme to deal with the dispute.

If it is determined that the transferee scheme is the more appropriate forum, the complaint or dispute will be transferred to the transferee scheme within three business days, and the consumer will be informed in writing that their complaint or dispute has been transferred and the reason for that transfer.

The transferee scheme will provide a written acknowledgement to the consumer that they have received the complaint or dispute within three business days of the receipt of the transferred file and will otherwise deal with the complaint or dispute as soon as practicable according to its own Terms of Reference or Rules.

Where a dispute or complaint is referred to a scheme ('second scheme') by another scheme ('first scheme'), the time limit for bringing the dispute or complaint to the second scheme will apply from the date when the dispute or complaint was lodged with the first scheme and the dispute or complaint will be deemed to have been lodged with the second scheme on the date that it was lodged with the first scheme. Any recovery action, including legal proceedings, which occurs after the date of lodgement with the first scheme is to be discontinued

Both schemes will at all times and in cooperation with the consumer ensure that there are open lines of communication in accordance with each schemes' procedures.

If the authorised representatives of the schemes cannot agree which scheme should deal with the complaint or dispute, or if any other issue arises which cannot be managed or resolved by the authorised representatives, they will refer the matter to the Ombudsman of their respective scheme for resolution.

This protocol may be amended from time as occasion demands and with the agreement of the FOS Ombudsman and the COSL Ombudsman.

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Financial Ombudsman Service Limited

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Raj Venga  
Credit Ombudsman  
Credit Ombudsman Service Limited

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Date

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Date