

Credit Ombudsman Service Limited
ACN 104 961 882

Credit Ombudsman Service

Annual Report on Operations
2004-2005

Table of Contents

Table of Contents	2
Chairman's Report	3
Scheme Manager's Foreword	5
Credit Ombudsman Service Limited Structure	7
Scheme Manager	7
The Ombudsman	7
The COS Dispute Resolution Process	9
Internal Dispute Resolution	9
Initial Referral	9
Conciliation.....	9
Determination.....	10
Inquiries and Complaints – 2004/5 Statistics	14
Volume of Contacts.....	14
Where complaints and inquiries came from	16
Demographics of Complaints	16
Complaints outside jurisdiction.....	16
Time Taken to Resolve Complaints	17
Current Caseload	18
Profile of Complaints	18
The type of financial product or service involved.....	18
The product or service provider.....	19
The purpose for which the financial product or service was obtained	19
The underlying cause of the complaint.....	20
Any Systemic Issues or other trends.....	20
Nature of loan transactions in the credit marketplace	21
Related body corporate	21
Calculation of repayments.....	22
Significant Trends	22
Case Studies.....	23
Improper increase in interest rate.....	23
Failure to keep consumer informed.....	23
Provision of incorrect information by Member	25
Delay in settlement of new loan	26
APPENDIX A.....	29
Definitions	29

Chairman's Report

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

This is the second year of the operation of COSL. COSL has continued to face new challenges during 2004-2005, primarily as a result of the continued growth in COSL Membership and the flow on effects of the growth of COS jurisdiction.

COSL Membership increased from 3146 members to 5802 members during the 2004-2005 period. This has enabled COSL to provide significantly more comprehensive coverage of the credit industry. Associated with this development is the growing concern expressed by COSL Members in relation to their Membership and the costs of funding COSL.

COSL, like other ASIC approved EDR schemes, is an industry funded scheme that was created to promote standards of good practice in the industry, consumer confidence and to provide consumers and Members with a cost effective alternative to resolving disputes through the traditional legal system. Under Policy Statement 139 ASIC requires COSL to meet the following criteria:

- accessible
- independent
- fair
- accountable
- efficient, and
- effective

These criteria place a number of constraints on the operation of COSL. For example, to ensure that COSL is accessible to consumers, ASIC requires COSL to provide its dispute resolution service free to consumers. COSL aims to balance the cost of providing the COSL dispute resolution service as fairly as possible across the COSL Membership. This is currently achieved through a dual arrangement of Membership fees and service fees. The current approach minimises the extent to which Members who are not the subject of a COSL complaint subsidise the cost of the service for COSL Members who do receive complaints. It is important to emphasise that COSL benefits the entire credit industry by promoting standards of good practice and consumer confidence in the industry.

ASIC Policy Statement 139 also limits COSL's ability to shift the cost of the service to consumers in situations where the Member is not "at fault". COSL would require approval from ASIC, consumer organisations and industry groups to effect a change to this policy resulting in charging consumers for the service. ASIC policy indicates that the current practice is unlikely to change. Any such change would differentiate COSL from the other EDR schemes approved by ASIC.

The COS Rules outline the jurisdiction of COS to assist COSL Members and the consumers to resolve a dispute. It is important to highlight that the COS Rules were developed through consultation with the credit industry, consumer organisations and ASIC to ensure that COS could meet the goals that form the basis of COSL, in particular the promotion of good practice in the industry and consumer confidence.

The COS Rules form the basis of the COS process and outline the timeframes that must be achieved to satisfy ASIC that COS can provide an efficient and effective service. The timeframes accord with the expected timeframes for resolution that are contained in the Rules and Terms of Reference of other ASIC approved EDR schemes. Over time it has become apparent that the ability of COS to meet these timeframes often correlates with the timeliness of the responses from consumers and COSL Members. COS has continued to improve the efficiency and effectiveness of its service over the 2004-2005 period and I commend the COS staff on the professionalism and diligence that has been demonstrated during this challenging period of COSL's development.

The growth in COSL Membership has also raised other challenges for COSL. The structure of the entities that apply for COSL Membership can vary significantly. For example, some Aggregator groups require all the members of the group to individually become a COSL Member. Other entities may not, instead relying on the concept of the "controlled" contractor to enable the members of the group to be covered under the single COSL Membership. This has made it very difficult for consumers and COSL staff to readily identify whether or not a particular entity is a COSL Member. This inconsistency may serve to limit the extent to which COSL can provide an accessible service for consumers.

Another important development faced by COSL during the 2004-2005 period was the release of the long awaited Regulatory Impact Statement Discussion Paper of the Ministerial Council on Consumer Affairs on National Finance Broking Regulation. This report indicated a general support for national regulation of the finance industry and highlighted the important role that will be played by schemes, such as COSL, in the future direction of the industry.

Finally, I would extend my sincere thanks to Ms Katherine Lane and Ms Catherine Uhr (Consumer Directors) and Mr Gary Storkey and Mr Jon Denovan (Member Directors) for their contributions to the governance of the Company. In addition I note with thanks the contribution of Mr Phil Naylor who retired as a director during the year.

GW Matthews
Chairman

Scheme Manager's Foreword

Peter Robinson

Chief Executive Officer
Australian Commercial Disputes Centre

The Australian Commercial Dispute Centre is responsible for the day to day management of the Credit Ombudsman Service (COS) that is provided by COSL. The second year of COSL's existence presented a number of new and interesting challenges for the provision of the COS case management services.

The distribution of the contacts received by COS changed noticeably in the 2004-2005 period relative to the 2003-2004 period. Of particular note was the distinct shift in the ratio of inquiries compared to complaints in 2004-2005 compared to 2003-2004. It is significant that while COS received 1471 general inquiries about COSL Members, only 271 complaints were lodged with COS. This reflects the greater importance placed by COS on ensuring that consumers are referred back to COS Members to resolve an initial complaint through the Members' Internal Dispute Resolution Procedures before a formal complaint is lodged with COS.

COS also experienced a large decrease in the number of inquiries and complaints received that relate to non-Members. This trend may reflect the sharp growth in COSL Membership from 3146 members at 30 June 2004 to 5802 members at 30 June 2005.

Significantly there was a 42% increase in the number of complaints finalised by COS in 2004-2005 relative to the number of complaints finalised in the 2003-2004 period. 95% of these matters were finalised after facilitated negotiation and conciliation between the consumer and COSL Member. Only 5% of the matters required a determination by the Credit Ombudsman to resolve the dispute. It is important to note that while the Credit Ombudsman's decisions do not set a precedent in the strict sense, they do provide guidance to COS staff and the industry more generally on the expectations that consumers could reasonably hold in their dealings with Members. Case studies of the Credit Ombudsman decisions are provided on the COSL website for the reference of consumers and COSL Members.

COS is in the early stages of its development and is mindful of the necessity to carefully monitor trends in the nature and volume of complaints and inquiries received. COS identified two key trends in the nature and volume of complaints and inquiries in 2004-2005.

- a) the expansion of COS jurisdiction is beginning to flow through into the types of complaints received by COS
- b) COS has experienced continued growth in the number of complaints in relation to line of credit products sold with ongoing monitoring services or debt reduction schemes

During 2004-2005 COS undertook a comprehensive review and refinement of its internal processes and procedures. The refinement is evident in the professionalism and rigour that is applied to COS matters and the significant improvement in the management of COS matters. It is hoped that the benefits of this will continue to be identified by COSL Members and consumers.

I would like to thank Ms Mary Walker, Credit Ombudsman New South Wales, who resigned earlier this year, for her valuable contribution. I appreciate the assistance of Ms Teresa Anderson as Ms Walker's replacement as Credit Ombudsman New South Wales. Finally I would like to express sincere thanks for the work of our case management team, which included Cynthia Leonard, Elly Williams, Emma Matthews and Glenn Barnes. The staff has provided enthusiastic service despite the rigorous demands of Members and Consumers alike.

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 Manger 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 2005 the Board of Directors comprised:

Chair

Graeme Matthews

Consumer Representatives

Katherine Lane

Catherine Uhr

Industry Representatives

Gary Storkey

Jon Denovan

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.

There are 4 full time staff dedicated to the operation of the COS dispute resolution service. These officers manage complaints in accordance with the COS Dispute Resolution process outlined 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 are 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

If the complaint is not resolved at the initial stages of the COSL process it may be referred to the Credit Ombudsman for determination.

The Ombudsman will decide the procedure to adopt in determining a complaint. For example, the Ombudsman may choose to conduct a formal hearing or determine the complaint on the basis of documents provided by the parties.

The Ombudsman will have regard to the following principles when determining a complaint:

- relevant legal principles
- the MIAA Code of Practice or other Recognised Code of Practice
- good practice in the Credit Industry
- fairness in the circumstances

The Ombudsman may award compensation up to \$100,000 for Direct Loss suffered by the Consumer. The amount of compensation will be what the Ombudsman believes is sufficient but not more than is required to compensate the Consumer for their Direct Loss. The Ombudsman may also 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 Ombudsman's determination in full and final settlement of the Dispute within one month of it being made.

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 2005 the Ombudsmen are:

Victoria

Roderick Smith

New South Wales, Queensland and Australian Capital Territory

Teresa Anderson

The COS Dispute Resolution Process

COS may assist consumers to resolve their complaint in relation to services provided by COSL Members that relate to the 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.

Consumers may make a complaint to COS where the Consumer believes that 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 COS dispute resolution process is set out in its Rules and outlined in the following diagram.

The process can be broken into a number of distinct stages.

Internal Dispute Resolution

The consumer raises the complaint directly with the COSL Member. This provides the COSL Member with the opportunity to resolve the complaint in a quick and cost effective manner without the intervention of a third party, such as COS. COS classifies these as Inquiries.

Initial Referral

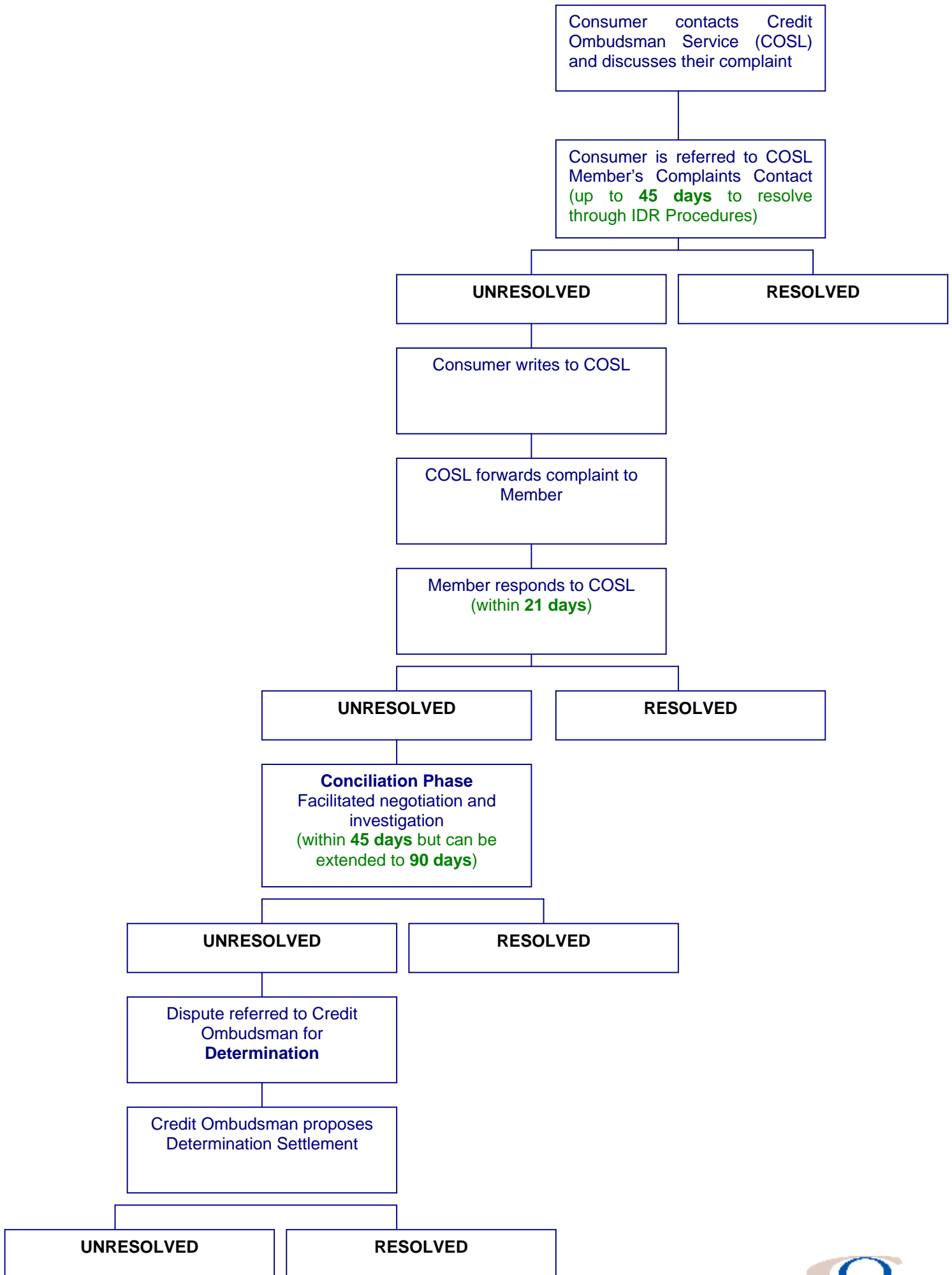
The consumer has made a prior complaint on same subject matter to the COSL Member. The complaint has not resolved to consumer's satisfaction and COS assistance is sought by the consumer. COS forwards the consumers complaint to the COSL Member for a response. The response is in turn forwarded to the consumer.

Conciliation

The complaint was not resolved by the Members Initial Referral response and the consumer requires formal COS assistance to resolve the matter. The conciliation stage may involve facilitating informal negotiation, conducting mediation or providing a recommendation to the consumer and Member about resolving the dispute.

Determination

If the parties are unable to reach a negotiated resolution of the complaint it will be referred to Credit Ombudsman for a determination in accordance with COSL Rules.



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
- 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
- the complaint relates to the level of any legally permissible fee, charge or commission
- 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
- 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
- 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 – 2004/5 Statistics

COS classifies contacts into Inquiries and Complaints.

1. **Inquiries** include an issue or concern in relation to a product or service supplied by a COSL Member which the Consumer has not attempted to raise with the Member through the Member's Internal Dispute Resolution process. Inquiries may also be of a general nature in relation to the Credit 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.

Volume of Contacts

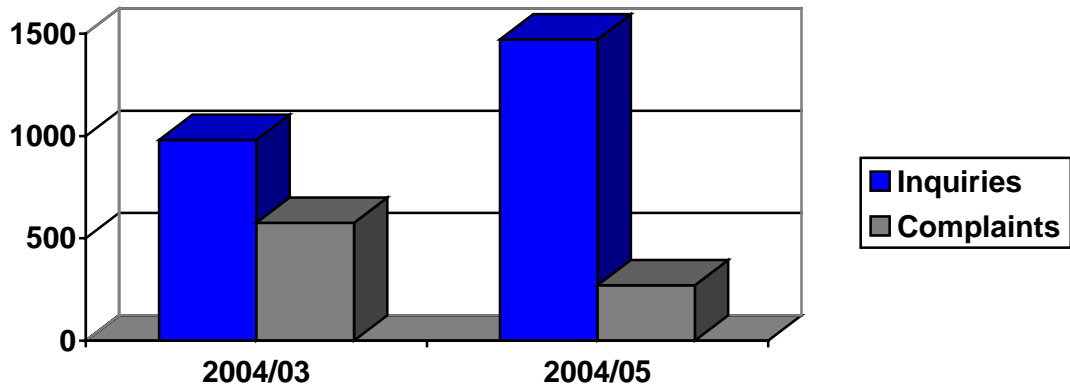
In the period 2004-2005 COS received a total of 2156 contacts comprising:

- 271 complaints regarding Members within jurisdiction
- 397 complaints about non-Members
- 1471 general inquiries
- 17 complaints regarding Members which were outside COS jurisdiction

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

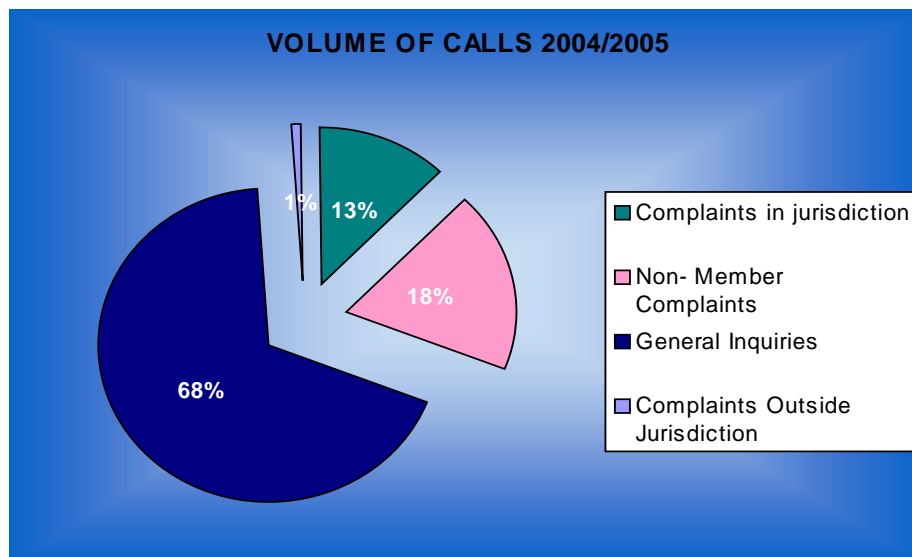
Volumes of Inquiries and Complaints



This represents a 21% decrease in the volume of general contacts received by COSL in the 2004-2005 period relative to 2003-2004.

The distribution of the contacts has changed noticeably in the 2004-2005 period relative to the 2003-2004 period. In particular, there has been a large decrease in the number of inquiries and complaints received that relate to non-Members. This trend may reflect the sharp growth in COSL Membership from 3146 members at 30 June 2004 to 5802 members at 30 June 2005.

Notably the ratio of inquiries compared to complaints increased significantly in 2004-2005 compared to 2003-2004. This reflects the greater importance placed by COS on ensuring that consumers are referred back to COS Members to resolve an initial complaint through the Members' Internal Dispute Resolution Procedures before a formal complaint is lodged with COS.



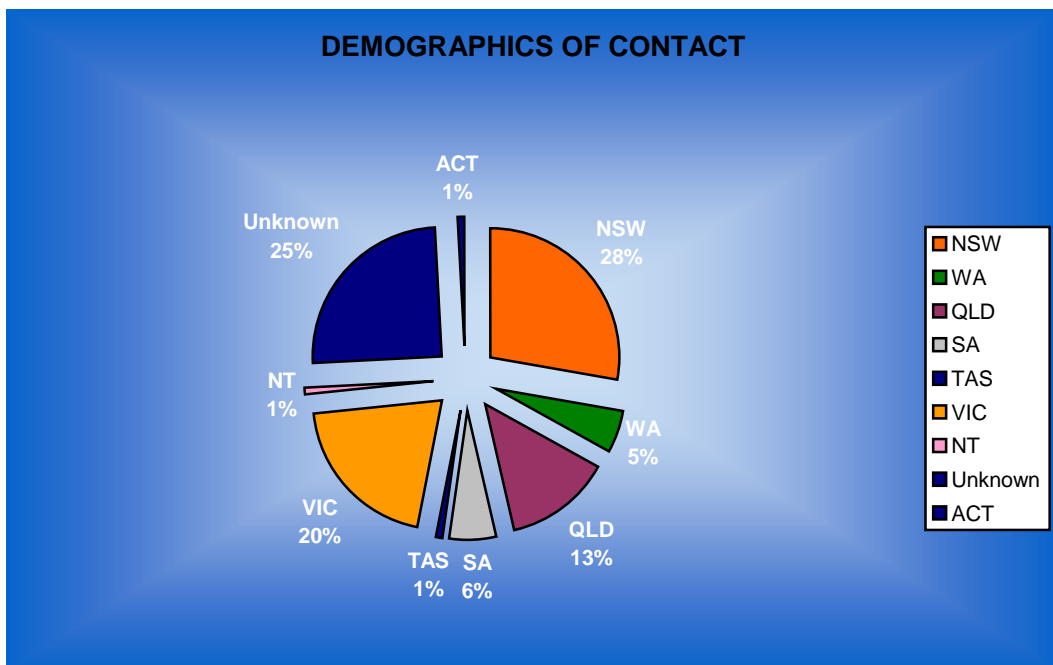
Where complaints and inquiries came from

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

Call Centre	45%
Fair Trading	3%
Phone Book	1%
Legal Centre	1%
Other	50%

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 414 complaints that fell outside COS jurisdiction. The majority of the complaints that fell outside COS's jurisdiction related to non-member complaints. The number of complaints received that related to non-members was 397.

In addition, there were 17 complaints about Members that fell outside of COS 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 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	135-179 days	180+ days
Initial Referral	12	14	41	20	11	22
Conciliation			2	10	16	22
Determination						9
Total	12	14	43	30	27	53

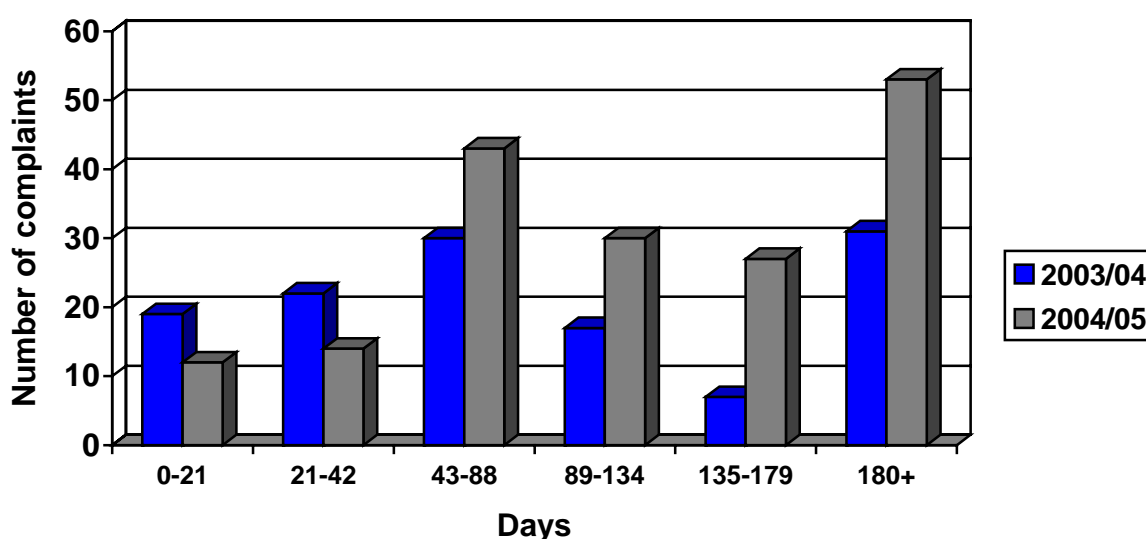
Initial Referral: Prior complaint made on same subject matter to the COSL Member and the complaint was not resolved to consumer's satisfaction

Conciliation: Complaint not resolved and the consumer requires formal COS assistance.

Determination: Complaint referred to Credit Ombudsman for determination in accordance with COS Rules.

COS finalised 179 complaints in the 2004-2005 period. This was 42% increase on the 126 complaints finalised in the 2003-2004 period.

Time taken to finalise complaint



Current Caseload

The caseload of COS at 30 June 2005, including age and status of cases, is outlined in the table below:

	0-21 days	21-42 days	43-88 days	89-134 days	135-179 days	180+ days
Initial Referral	10	8	9	3		
Conciliation			8	4	5	11
Determination						12
Total	10	8	17	7	5	23

Initial Referral: Prior complaint made on same subject matter to the COSL Member and the complaint was not resolved to consumer's satisfaction

Conciliation: Complaint not resolved and the consumer requires formal COS assistance.

Determination: Complaint referred to Credit Ombudsman for determination in accordance with COS Rules.

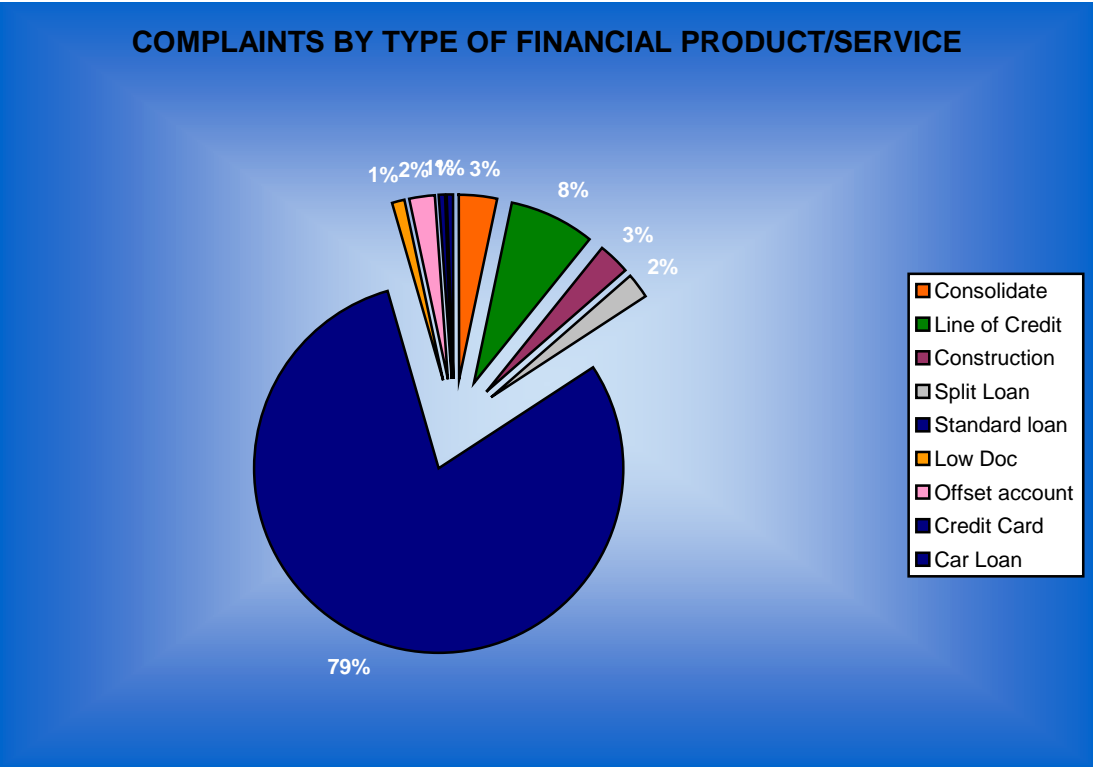
Profile of Complaints

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 2004-2005 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	41%
Originator*	18%
Mortgage Manager	7%
Lender	32%
Securitiser	0%
Wholesaler	1%

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

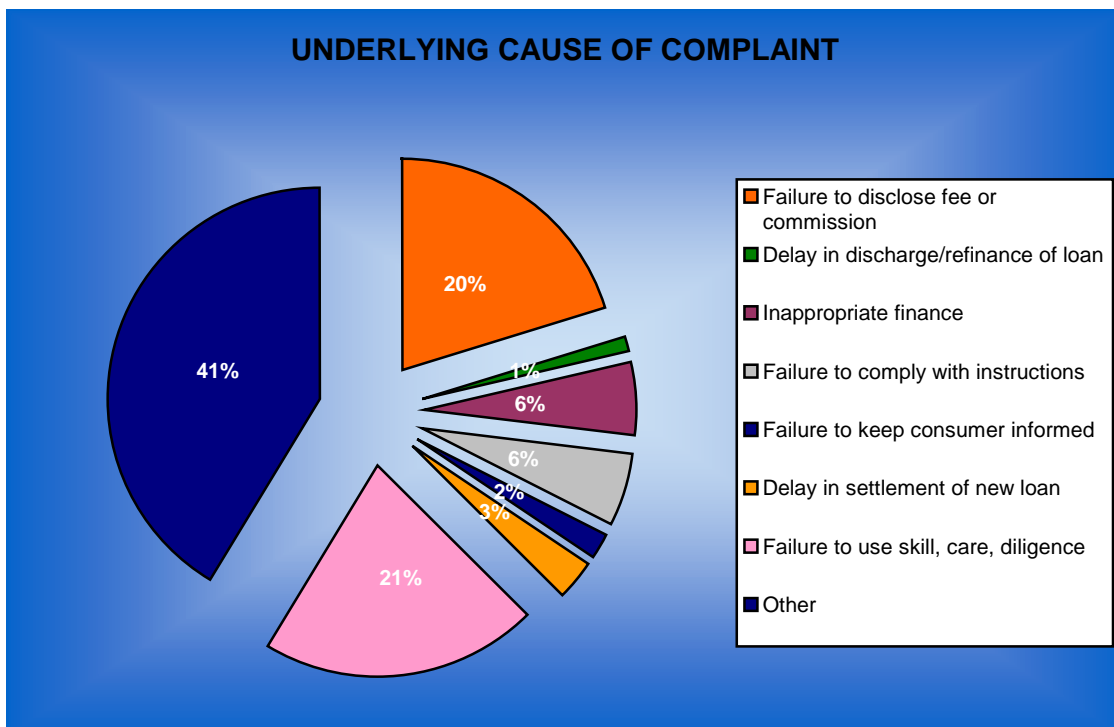
The purpose for which the financial product or service was obtained

Approximately 75% of the complaints received by COS in the 2004-2005 period related to a financial product or service obtained for a residential purpose and 24% related to a financial product or service obtained for an investment purpose. Only 1% 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 2004-2005 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

COS aims to identify systemic issues as early as possible. Systemic issues are identified by COS when:

- COS staff notice a number of disputes that relate to the same issue;
- COS staff identify an issue that is raised in a single dispute that could affect other consumers in a similar manner to the consumer involved in the dispute

In accordance with COS status as an ASIC approved External Dispute Resolution (EDR) scheme, COS reports systemic issues to ASIC on a quarterly basis.

Outlined below are the systemic issues identified by COS during 2004-2005.

Nature of loan transactions in the credit marketplace

Membership of COS has increased from 3146 members at 30 June 2004 to 5802 members at 30 June 2005. This growth in Membership is the most probable cause of the 45% decrease in the number of complaints and inquiries that fell outside of COS jurisdiction because they related to non-Members. Despite this, the nature of loan transactions in the credit marketplace together with voluntary membership of COSL fundamentally limit COS's ability to provide a dispute resolution service that adequately covers the Credit Industry.

For example, as reported in the 2003-2004 Annual Report COSL faces difficulties in resolving complaints where 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. When a complaint is received by COSL in relation to a credit transaction it may only become clear after some time has passed 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. Thus 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 an insufficient nexus between the conduct of the COSL Member and the loss, and instead the loss is attributable to a non-COSL member.

A clear example of the effect of the loan transaction chain is in relation to complaints regarding Break Cost fee calculations. COSL has received a number of complaints where the Break Cost calculations are performed by a non-COSL Member. It is only after extensive contact with both the consumer and Member that it becomes clear that the Member has not acted in a manner which would bring this complaint within COSL jurisdiction.

This issue is also evidenced in relation to delays in settlement. It may only be after considerable time has passed that it becomes clear that the conduct of the COSL Member did not cause the delay in settlement. Instead the delay is attributable to a non-COSL Member, such as a Lender. COSL is not able to assist the consumer in relation to these complaints.

This issue has significant implications for COS's ability to provide a dispute resolution service with comprehensive coverage of the credit marketplace.

Related body corporate

COS's ability to provide a dispute resolution service that adequately covers the Credit Industry is limited in situations where the conduct complained about relates to a related body corporate of a COS Member. While the consumer may have dealt with the COS Member to obtain credit if, during the loan transaction, a related body corporate performs a role that is the subject of the complaint, COS is unable to assist the consumer to resolve this complaint, unless an

agency relationship can be established. To date there have been a small number of complaints that have raised this issue. COS will continue to monitor this situation and the implications of this for COS's coverage of the credit marketplace.

Calculation of repayments

A systemic issue has been identified in relation to the method of calculating fortnightly repayments. COS is receiving a growing number of inquiries and complaints in which the broker has calculated fortnightly repayments as half a monthly repayment while the funder calculated fortnightly repayments as 1/26th of the annual repayment or vice versa. Consumers have expressed dissatisfaction at this miscommunication and the consequent effect this has on their ability to service their loans.

Significant Trends

The second year of COS existence as an ASIC approved EDR concluded on 30 June 2005. COS appreciates that it is in the early stages of its development get it is mindful of the necessity to carefully monitor trends in the nature and volume of complaints and inquiries received. Adherence to this surveillance will ensure that COS is well positioned to respond to any significant changes in the future. Two key trends have been identified.

Expansion of COS jurisdiction

The effects of the increased COS jurisdiction are beginning to flow through into the types of complaints received by COS. In the 2004-2005 period COS received its first complaint in relation to car finance arranged by a COS Member.

Line of credit products

Over the 2004-2005 period COS has continued to receive complaints in relation to line of credit products sold with ongoing monitoring services or debt reduction schemes. Notably the complaints relate to a growing number of COS Members that were not previously identified by COS as providing such products and services. COS will continue to monitor the number of complaints in relation to these products.

Case Studies

The case studies included in this report illustrate the various issues raised in complaints resolved by COS, the COS process and the different resolutions reached by the parties with COS assistance.

Improper increase in interest rate

The consumer was a former employee of the Member. During his employment, the consumer took out a number of loans with the Member. These loans were subject to an implied staff discount. After ceasing employment with the Member, the consumer set up a business that the Member believed was in breach of the consumer's employment contract.

The consumer complained that after he had ceased his employment with the Member, the Member had unfairly increased the interest rate on his loans. The consumer had received notification that the higher rates were the result of the removal of his staff discount. The consumer claimed that the increase represented a penalty above the removal of the staff discount.

In the course of the COS process the Member admitted that it had increased the consumer's interest rate by more than the staff discount. The Member felt justified in its actions, because the Member believed that the consumer had breached his employment contract.

The Ombudsman noted that under the loan contract the Member had the power to alter the interest rate on the Consumer's loan. The Ombudsman further noted that the power must be based on proper grounds. The Ombudsman found that the Member had breached its obligation to exercise that power in a proper manner by increasing the consumer's interest rate beyond the combined effects of the removal of the staff discount and Reserve Bank increases.

The Ombudsman ordered that the Member adjust the interest rate on the consumer's loans to the Member's current standard variable rate. The Ombudsman further ordered that the Member reimburse the consumer the difference between the amount of interest paid by the consumer at the higher rate and the amount that would have been paid at the Member's standard variable rate for the period during which the higher interest rate was applied.

The Ombudsman noted that he did not have jurisdiction under the COS Rules to consider any action the Member may take against the consumer in relation to breaches of the employment contract.

Failure to keep consumer informed

The consumer contacted the Member for assistance in negotiating a Professional Pack with a Lender. The Member successfully negotiated a loan at a rate that was discounted from the standard rate available.

The Member continued to assure the consumer that the discounted rate was available until a few days before settlement of the loan. Only six days before settlement the consumer was informed that the discount was 10 basis points less than previously outlined to the consumer. The consumer protested against the changed rate but begrudgingly executed the loan documents and settled the loan to avoid the risk of delaying the settlement.

The consumer sought compensation to reflect the 10 basis point shortfall.

The Member fully cooperated with the COS process and undertook a complete investigation of the complaint raised by the consumer. During the conciliation process it became evident that the Member had been informed of the 10 basis point reduction in the discount available approximately one month prior but failed to communicate this information to the consumer until shortly before settlement of the loan.

After some negotiation the Member proposed an agreement to compensate the consumer. The consumer agreed to the monetary terms of the proposed agreement but objected to payment being subject to the continuation of the trailing commission being received by the Member from the Lender. The consumer suggested that the terms of agreement should include the requirement that the Member make a claim under its professional indemnity policy so that the consumer was protected in the event of the subsequent insolvency of the Member. The Member did not accept the suggested amendments and the complaint was referred to the Ombudsman for Determination.

The Ombudsman found that while the Member had failed to notify the consumer of the change in the discounted rate within a reasonable time of becoming aware of the change, this arose due to an innocent mistake and there was no deception or misrepresentation by the Member.

The Ombudsman noted that it was not clear whether the discount offered to the consumer was the best available rate at the date of settlement but agreed that the consumer had been denied the opportunity to reconsider the available options.

The Ombudsman found that the Member had accepted its error and taken reasonable steps to resolve the complaint during the conciliation phase of the COS process. The Ombudsman also found that the terms set out in the proposed agreement reflected reasonable compensation of the loss suffered by the Consumer in the circumstances.

The Ombudsman noted that it was not reasonable to expect the Member to make a claim under its professional indemnity insurance policy. The Ombudsman noted that as the settlement was a contractual settlement it necessarily involved both parties assuming the element of risk that the other party would be able to continue to perform its side of the bargain.

The Ombudsman also noted that the terms of the proposed agreement that linked the payment of the compensation to the receipt of trailing commission was reasonable because the commission seemed secure in the absence of any action or failure on the part of the consumer.

As the consumer had discharged the loan during the COS process the Ombudsman found that it was reasonable for the Member to compensate the consumer for one half of the 10 basis point shortfall from the date of settlement of the loan until the date of refinance.

Provision of incorrect information by Member

During discussions about a potential loan with the Member the consumers indicated to a representative of the Member that the monthly repayments were too high. The consumers stated that the Member's representative informed the consumers that they could reduce the monthly repayments by splitting the loan into variable and fixed rate components.

When completing the loan application the consumers contacted the Member's representative again to confirm that the loan product could be split after settlement and the amount of repayments that they could expect to make each month. An approval letter was received from the Member that disclosed a higher monthly repayment amount. The consumers again contacted the representative who indicated that the loan could be split after settlement to reduce the monthly repayment amount.

The consumers attempted to split their loan after settlement. The representative informed the consumers that the information and repayment estimates that were initially provided were incorrect.

Through negotiations with the Member, the consumers were able to fix part of their loan but the repayment amounts were higher than indicated by the representative of the Member. The consumers stated that they had suffered a loss as a result of their reliance on the statements of the Member's representative. The consumers sought to be able to split their loan and make repayments closer to those quoted by the Member's representative prior to entering the loan agreement.

The Member noted that at the time of application the Low Doc loan could not be split and that the consumers had signed a loan agreement on those terms. The Member noted that it should have been obvious to the consumers that given the size of the loan, they could not split the loan and make the relatively small repayments outlined by the Member's representative.

The Ombudsman noted that there was significant dispute over the representations made by the Member's representative. On balance the Ombudsman accepted that the representative had made representations along the lines suggested by the consumers. The Ombudsman found that nevertheless it was not entirely reasonable for the consumers to accept the representations at face value. The Ombudsman noted that it was hard to

imagine that anyone with even modest experience in lending could expect the loan at the applicable interest rate to be sustained by the repayments suggested by the Member's representative.

Further the Ombudsman noted that whilst it may have been reasonable for the consumers to expect that their loan may have been split after settlement, it was unwise for the consumers to proceed on the assumption that their fixed component repayments would be much lower per month.

The Ombudsman found that as the Member had agreed to split the loan, this part of the complaint was addressed. The Ombudsman then addressed the issue of whether any additional compensation was necessary.

In the circumstances the Ombudsman accepted that the Member's representative had acted negligently during the transaction. The Ombudsman accepted that this had caused difficulty to the consumers but also accepted that the consumers had contributed to this. The Ombudsman found that the consumers were entitled to some modest compensation and considered the offer of \$2000 previously made by the Member represented a reasonable estimate of the loss.

Delay in settlement of new loan

Case 1

The consumer applied for a loan with the Member. During the course of the loan being processed the consumer complained that:

- There was a lack of clear communication regarding the product availability;
- There were delays in responses and processing;
- There were errors in the loan documentation; and
- The consumer was provided with inadequate advice in relation to the fixed interest component.

After a 6-month delay, the loan was settled. As a result of the delay, the interest rate applicable to the fixed interest component of the loan increased from approximately 6.5% at the time of the original application, to 7.1% at the date of settlement. The consumer claimed \$8,000 in compensation, being the increase in the interest the consumer believes they are liable to pay as a consequence of the delays of the Member.

The Member claimed the delays during the loan approval stage were due to the delay by the consumer in producing the necessary documentation required to make requested changes to the loan structure. The Member further asserted that the consumer did not indicate their dissatisfaction with the Member's service at any time during the loan approval process.

The matter was decided by the Credit Ombudsman who made the following observations:

- The consumer could not produce documentation to prove his assertion that the responsibility for the delays lay with the Member. The Member produced some correspondence supporting their claim that the consumer was slow to produce the necessary documentation.
- The critical period during which the increase in the interest rate occurred was a period within which the consumer was in a position to influence the loan application process. While there is some evidence of a possible delay on the part of the Member, the Credit Ombudsman could not conclude that any loss suffered by the consumer could be directly attributed to the Member.

The Credit Ombudsman determined that the complaint by the consumer was not established.

Case 2

The consumer entered into a contract for the purchase of a property, settlement of which was to occur on 28 April 2003. To finance the purchase, the consumer made an application for a loan to the Member.

The original loan application was made in the name of the consumer, but later amended the application to include their spouse on the application. The Member claimed that notification of the amendment was faxed to the Originator 6 weeks prior to the settlement date. On the date of settlement, the Originator did not release the funds, which led to the settlement being postponed. The Originator claimed they had not received notification of the amendment to the borrower profile until the day prior to the settlement. The Member claimed the Originator was notified of the change weeks earlier.

As a result the vendor elected to extend the settlement for a month and charged the consumer \$5000 for the postponed settlement. The delay and fee were outside of the control of the consumer. The Originator claimed they were not notified of the change of identity of the borrowers, but indicated that once notified they made the funds available the day after settlement.

The consumer claimed the extension fee of \$5,000 and additional rental costs of \$1,100. The Member conceded fault of one day, given the funds were not available until the day after the original settlement date, and offered to reimburse the consumer one day of interest for the delay. The Member would not accept fault for the longer delay period. The consumer chose to have the matter determined by the Credit Ombudsman.

The Credit Ombudsman noted that responsibility for the failure to make the funds available by the settlement date did not lie with the consumer.

The Credit Ombudsman noted that there was no documentary evidence from the Member to substantiate their claim that the Originator was notified of the change in the loan application weeks prior to the settlement date. Regardless, the Ombudsman indicated that the overriding responsibility to ensure there was

no barrier to settlement lay with the Member. Partial reimbursement by the Member conceded that it had such responsibility.

The Credit Ombudsman determined that the consumer's claim was established and the Member was directed to pay the additional amount payable on settlement and the additional rental, less savings on interest and the amount already reimbursed, totalling \$5,097.57.

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 being 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 or entity 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.