

Credit Ombudsman Service Limited
ACN 104 961 882

Credit Ombudsman Service

Annual Report on Operations
2005/2006

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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 2005/2006. This report is mandated by Article 36 of the Company's Constitution.

COSL Membership increased from 5802 Members to 6517 Members during the 2005/2006 period. COSL warmly welcomes its new Members.

This increase in Membership has continued to enhance COSL's ability to provide comprehensive and effective coverage of the credit industry, a key benchmark of COSL's approval as an ASIC approved External Dispute Resolution (EDR) scheme.

All ASIC approved EDR schemes are required to comply with ASIC Policy Statement 139, which includes the following benchmarks:

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

To an extent these criteria structure 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. Equally policy statement 139 limits COSL's ability to shift the cost of the service to consumers in situations where the Member is not "at fault".

In order to retain its status as an ASIC approved EDR scheme COSL is required to undertake an independent review of its operations every three years. For this purpose COSL engaged The Navigator Company Pty Limited. This process involved extensive surveying of COSL Members and consumers who had lodged complaints with COSL, interviews with key stakeholders and a review of COSL case management procedures. The Reviewer made a number of recommendations that the COSL Board is currently considering. The final report from this review will be available at www.creditombudsman.com.au in the near future.

Over the past twelve months COSL has continued to provide further opportunities for communication with COSL Members. Initiatives have included the provision of regular newsletters and increased attendance at COSL Member Continuing Professional Development and training days. These initiatives have greatly enhanced COSL's ability to communicate key messages to its Members and also the opportunity for COSL Members to provide valuable feedback to COSL. From this feedback it has become evident that many COSL Members do not fully understand the parameters of COSL jurisdiction and the process followed by COSL.

The COSL Rules outline the jurisdiction of COSL to assist COSL Members and the consumers to resolve a dispute. These Rules were developed after consultation with the industry, consumer groups and ASIC. The COSL Rules also form the basis of the COSL process and outline the timeframes that must be achieved to satisfy ASIC that COSL can provide an efficient and effective service.

The COSL process is a consensus-based process that focuses on producing a mutually satisfactory outcome. It is an inquisitorial process that provides equal opportunity to both Members and consumers to put forward their concerns and opinions. This aims to ensure procedural fairness, independence and effective dispute resolution. A diagrammatic representation of the COSL process is provided in this report.

In the 2005-2006 period 92% of the matters finalised by COSL were resolved after facilitated negotiation and/or conciliation between the consumer and COSL Member. Only 8% of the matters required a determination by the Credit Ombudsman to resolve the dispute.

COSL has continued to improve the efficiency and effectiveness of its service over the 2005-2006 period and I commend the COSL staff on the professionalism and diligence that has been demonstrated. In particular I would like to record my sincere thanks for the efforts of the staff of the Australian Commercial Disputes Centre in further enhancing the quality and reputation of the COSL dispute resolution service.

Finally, I would extend my thanks to Ms Katherine Lane and Ms Catherine Uhr (Consumer Directors) and Mr Jon Denovan and Mrs Vicky Edema (Member Directors) for their contributions to the governance of the Company. In addition I note with thanks the contribution of Mr Gary Storkey 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 (COSL) that is provided by COSL.

The third year of COSL's existence has continued to pose fresh and exciting challenges for the efficient and effective provision of case management services.

Overall COSL experienced a 26% increase in the volume of contacts received in 2005-2006 relative to 2004-2005. The ratio of inquiries compared to complaints continued to increase in 2005-2006 compared with 2004-2005. This may reflect the efforts made by COSL Members to effectively resolve an initial complaint through the Members' Internal Dispute Resolution Procedures. COSL hopes to be able to develop a better understanding of this trend in the coming year through the use of consumer surveying and analysis of Member IDR Procedures.

Significantly the number of inquiries and complaints received that related to non-members increased 34% relative to the number of inquiries and complaints received in 2004-2005 that related to non-Members. This trend is particularly noteworthy because the number of COSL Members increased from 5802 at 30 June 2005 to 6517 at 30 June 2006. While increased awareness of COSL within the community may, partly, explain the growth in number of non-member contacts received by COSL further examination of this issue will need to be undertaken during 2006-2007.

COSL has noted an increase in the level of complexity of the complaints managed by COS. Notwithstanding this COSL finalised 204 complaints in the 2005-2006 period. This was a 14% increase on the number of complaints finalised in the 2004-2005 period and a 62% increase on the number of complaints finalised in the 2003-2004 period. This reflects the professionalism and rigour that is applied to COSL matters and the significant improvement in the management of COSL matters.

60% of these matters were finalised at the Initial Referral stage of the COSL process and 32% following Conciliation. Only 8% of the matters required a determination by the Credit Ombudsman to resolve the dispute. Case studies are provided in this report to illustrate the variety of issues raised in complaints resolved by COSL, the COSL process and the different resolutions reached by the parties with COSL assistance

I would like to thank both Credit Ombudsman, Ms Teresa Anderson and Rod Smith, for their valuable contribution to the provision of case management services by ACDC. 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 have continued to provide

enthusiastic and professional service despite the rigorous demands placed upon them over the past twelve months.

Credit Ombudsman Service Limited Structure

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

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

As at 30 June 2006 the Board of Directors comprised:

Chair

Graeme Matthews

Consumer Representatives

Katherine Lane
Catherine Uhr

Industry Representatives

Jon Denovan
Vicky Edema

Scheme Manager

The COSL 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 COSL dispute resolution service. These officers manage complaints in accordance with the COSL Dispute Resolution process outlined below.

The Scheme Manager is required to collect and analyse data on the Scheme, provide regular reports to the COSL Board on the number and nature of the complaints received by the Scheme as well as 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:

- a) relevant legal principles
- b) the MIAA Code of Practice or other Recognised Code of Practice
- c) good practice in the Credit Industry
- d) 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.

COSL uses a panel of Ombudsman. Each Ombudsman is appointed on the basis of their independence, experience in legal adjudication or dispute resolution and general commercial experience.

As at 30 June 2006 the Ombudsman are:

- Roderick Smith
- Teresa Anderson

The COSL Dispute Resolution Process

COSL may assist consumers to resolve their complaint in relation to services provided by COSLL 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 COSL where the Consumer believes that a Member has:

- a) breached relevant laws
- b) breached the MIAA Code of Practice or other Recognised Code of Practice
- c) not met standards of good practice in the Credit Industry, or
- d) acted unfairly in the circumstances.

The COSL dispute resolution process is set out in its Rules and outlined in the diagram on page 11.

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 COSL. COSL classifies these as Inquiries.

Initial Referral

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

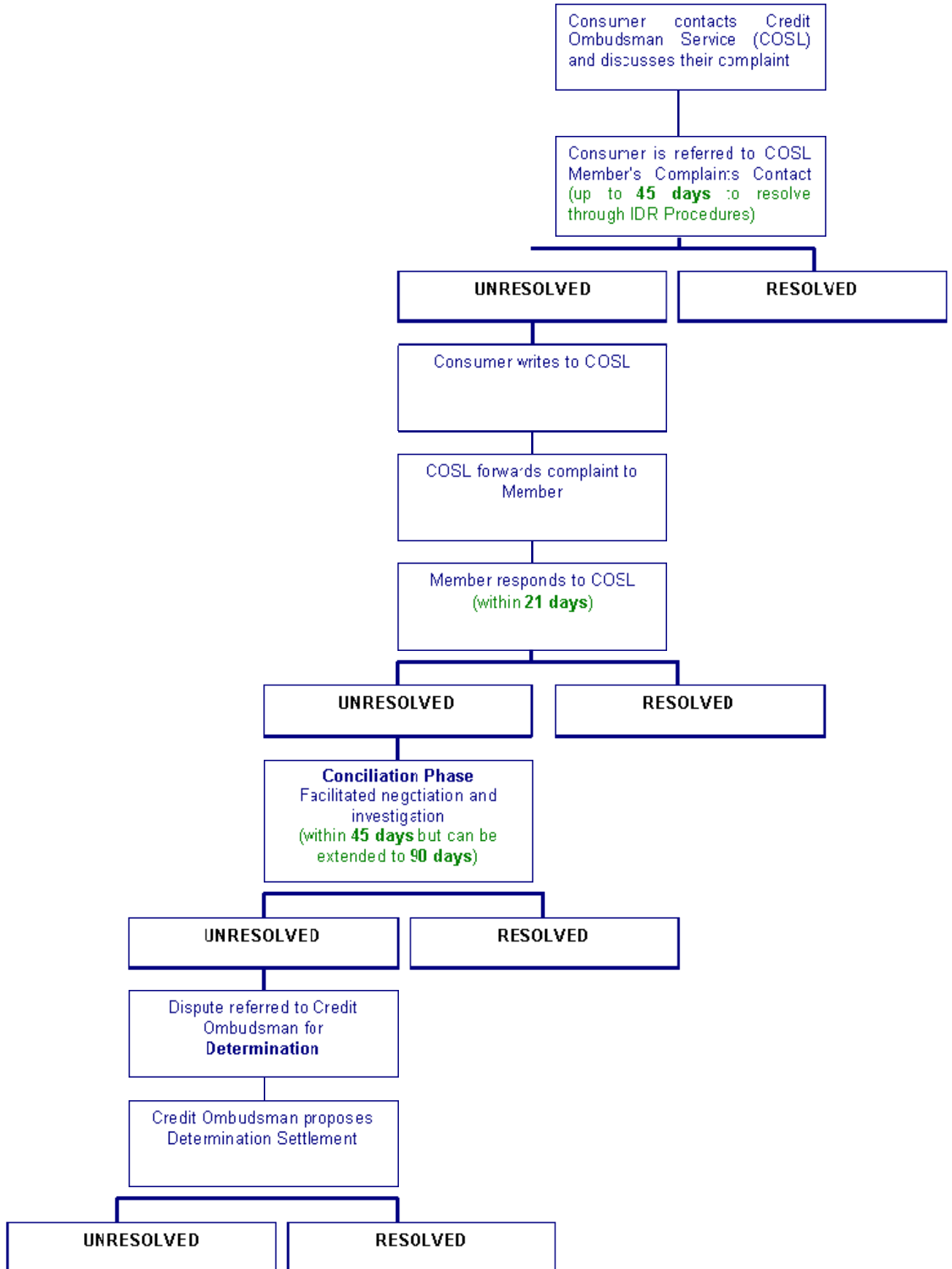
Conciliation

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

Determination

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

Rules.



Edition 2 of the COSL Rules came into effect on 1 January 2006. In accordance with the amended Rules, COSL has power to consider a dispute except where:

1. 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;
2. the complaint is about someone who:
 - a) was not a Member at the time of the acts or omissions complained of; or
 - b) is not a Member at the time the complaint is made to COSL;
3. the complaint is about a Member who is not obliged to comply with the COSL Rules because that Member is a member of another external disputes resolution scheme approved by the COSL Board;
4. 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;
5. 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;
6. the complaint relates to the level of any legally permissible fee, charge or commission;
7. the complaint relates to any transaction entered into outside Australia;
8. the security is situated or legally registered outside Australia or is governed by laws other than the laws of Australia;
9. no compensation or orders are sought against a Member;
10. the compensation sought is compensation other than for Direct Loss;
11. 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;
12. the Member's act or omission that the complaint relates to (or the earliest of them) occurred more than 6 years before the date of receipt of the complaint by COSL or before the date of commencement of these Rules (whichever is the shorter period);
13. 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;
14. 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:
 - a) both the consumer and the Member consent in writing to the complaint being considered by COSL; or

- b) the proceedings were commenced by the Member on or after the date of receipt of the written complaint by COSL;
- 15. the complaint has already been determined by a court; tribunal; arbitrator; ombudsman; or other dispute resolution scheme unless the particular proceedings leading to the determination of the complaint were commenced on or after the date of receipt of the written complaint by COSL;
- 16. it is more appropriate that the complaint be dealt with by a court or another independent complaints or dispute resolution or arbitration procedure;
- 17. 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;
- 18. COSL is satisfied at the time of receiving the complaint, or at any time after receiving the complaint that:
 - a) if the matters set out in the complaint were found to be true, these matters would not constitute:
 - a breach of relevant laws by the Member;
 - a breach of the MIAA Code of Practice or other Recognized Code of Practice by the Member;
 - a failure by the Member to meet standards of good practice in the Credit Industry; or
 - the Member acting unfairly towards the consumer; or
 - b) the complaint is frivolous or vexatious or is being pursued in a frivolous or vexatious manner or for an improper purpose.

Inquiries and Complaints – 2005-2006 Statistics

COSL 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 COSL, the COSL 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

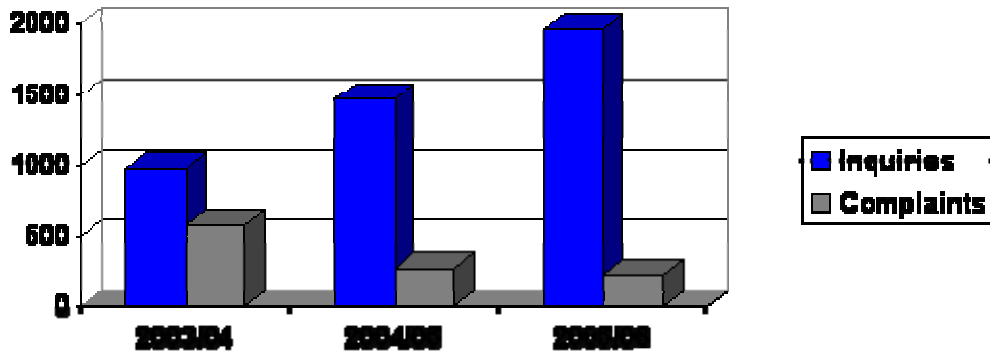
In the period 2005-2006 COSL received a total of 2724 contacts comprising:

- 227 complaints regarding Members within jurisdiction
- 1958 inquiries
- 526 complaints about non-Members
- 13 complaints regarding Members which were outside COSL jurisdiction

By contrast, in the period 2004-2005 COSL received a total of 2156 contacts comprising:

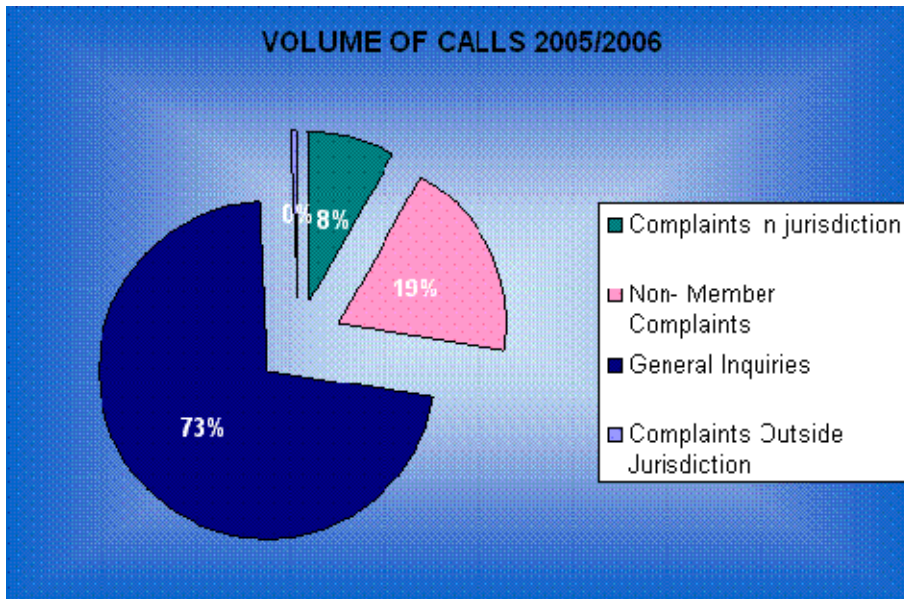
- 271 complaints regarding Members within jurisdiction
- 1471 inquiries
- 397 complaints about non-Members
- 17 complaints regarding Members which were outside COSL jurisdiction

Volumes of Inquiries and Complaints



This represents a 26% increase in the volume of contacts received by COSL in the 2005-2006 period relative to 2004-2005.

The ratio of inquiries compared to complaints continued to increase in 2005-2006 compared with 2004-2005. This trend was also noted in the 2004-2005 period compared to 2003-2004. This may reflect the efforts made by COSL Members to effectively resolve an initial complaint through the Members' Internal Dispute Resolution Procedures.



Complaints outside jurisdiction

COSL received a total of 539 inquiries and complaints that fell outside COSL jurisdiction. The majority that fell outside COSL's jurisdiction related to non-member complaints. The number of inquiries and complaints received that related to non-members was 526. This was an increase of 34% relative to the number of inquiries and complaints received in 2004-2005 that related to non-Members.

This trend is particularly noteworthy because the number of COSL Members increased from 5802 at 30 June 2005 to 6517 at 30 June 2006. Increased awareness of COSL within the community may, in part, explain this trend.

In addition, there were 13 complaints about Members that fell outside of COSL jurisdiction. These complaints came within one or more of the following categories:

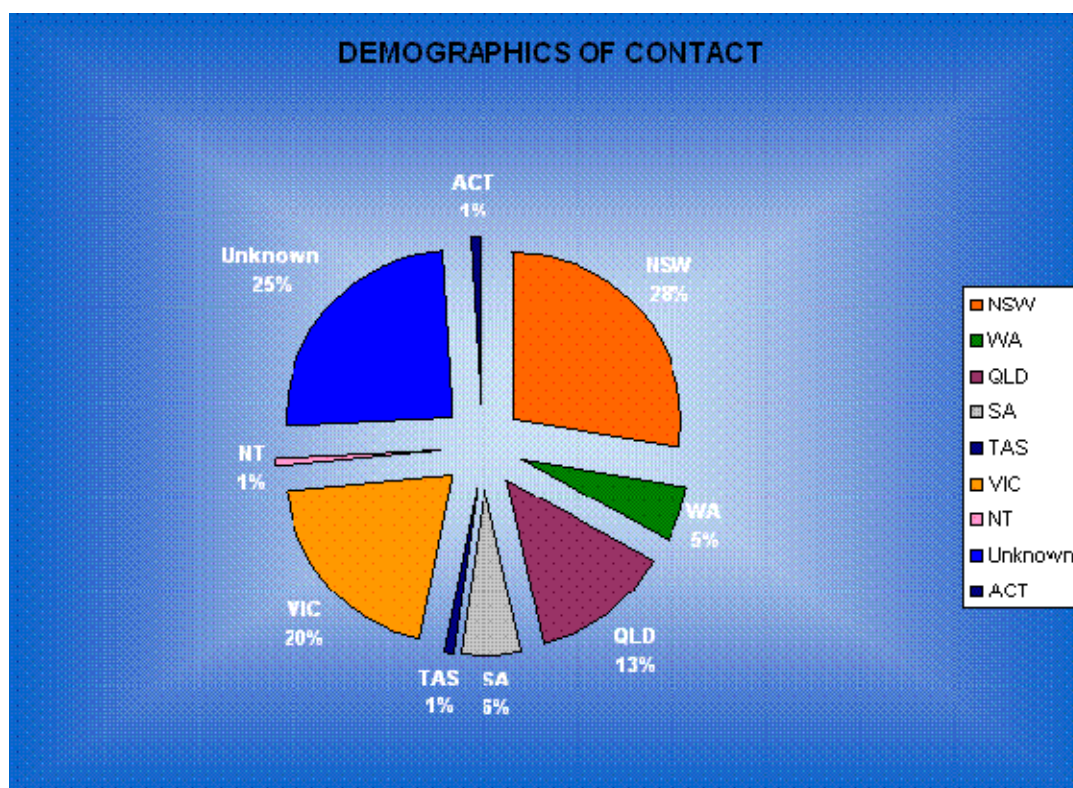
- The subject matter of the complaint was the subject of current legal proceedings or being considered by another Ombudsman or Tribunal
- Compensation of more than \$100,000 was sought by the consumer
- The Member was an exempt member as part of another ASIC approved EDR scheme.

Where complaints and inquiries came from

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

Call Centre	47%
MIAA	2%
COSL Member	2%
Fair Trading	1%
Financial Counsellor	1%
Legal Centre	1%
Other	46%

Demographics of Complaints



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

Time Taken to Resolve Complaints

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

	0-21 days	22-42 days	43-88 days	89-134 days	135-179 days	180+ days
Initial Referral	9	27	58	23	6	-
Conciliation	-	1	7	17	17	23
Determination	-	-	-	-	-	16
Total	9	28	65	40	23	39

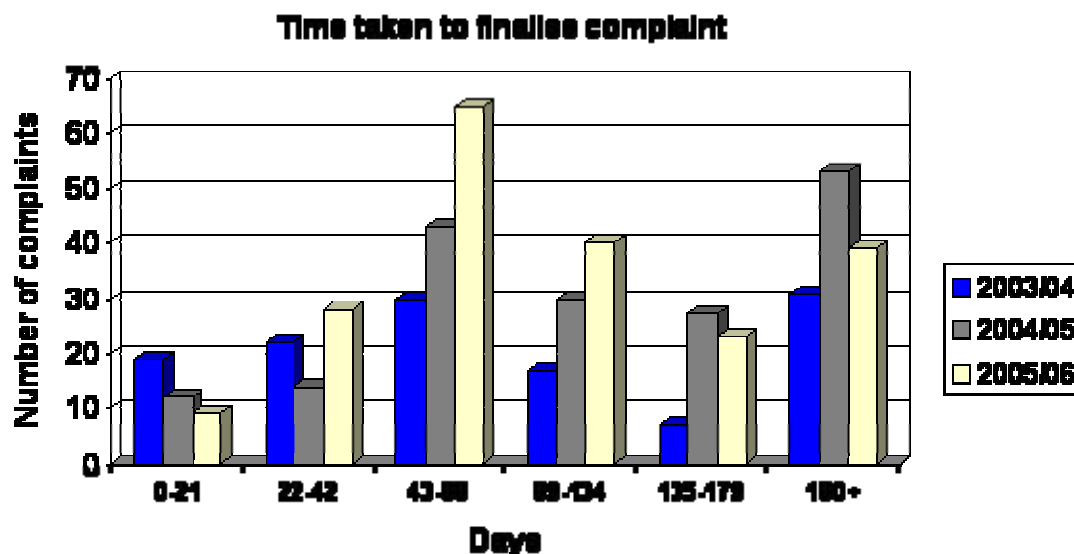
Initial Referral: Prior complaint made on same subject matter to the COSL Member and the complaint was not resolved to consumer's satisfaction

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

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

COSL finalised 204 complaints in the 2005-2006 period. This was 14% increase on the 179 complaints finalised in the 2004-2005 period and a 62% increase on the 126 complaints finalised in the 2003-2004 period.

The time taken to resolve these complaints is detailed in the chart below.



Current Caseload

The caseload of COSL at 30 June 2006, including age and status of cases, is outlined in the table below:

	0-21 days	22-42 days	43-88 days	89-134 days	135-179 days	180+ days
Initial Referral	9	12	17	4	-	-
Conciliation	-	-	3	8	6	12
Determination	-	-	-	-	-	8
Total	9	12	20	12	6	20

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 COSL assistance.

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

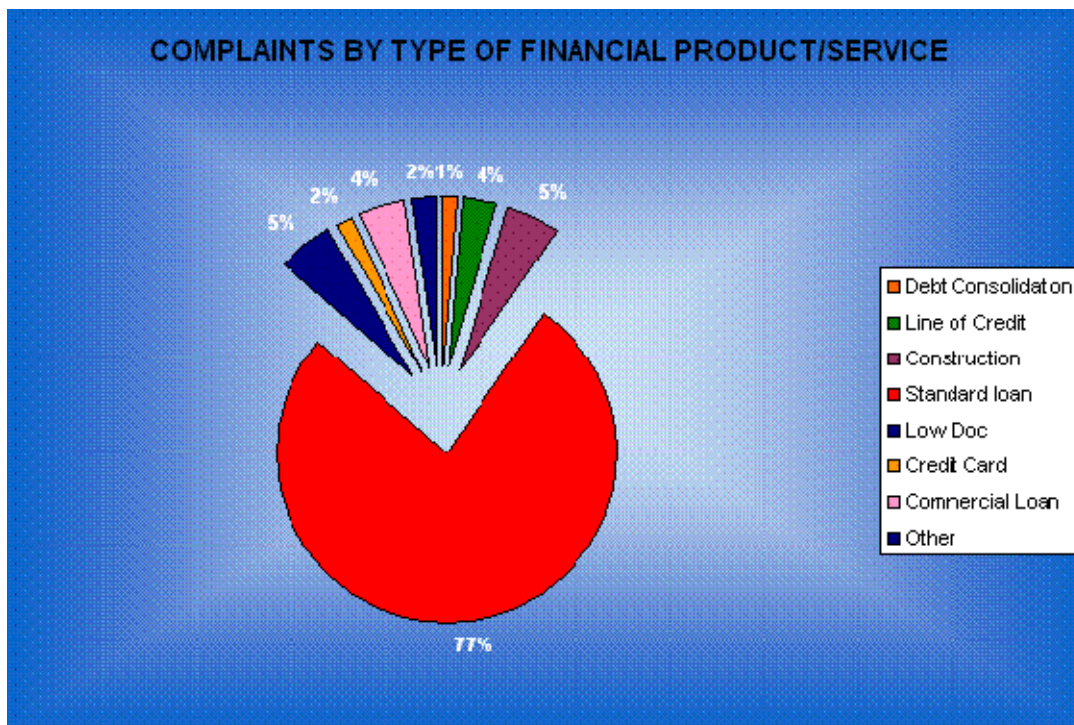
Profile of Complaints

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

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 COSL for the 2005-2006 period are analysed as follows:



COSL received a small number of complaints in relation to

- Spilt loans
- Offset accounts
- Bridging finance
- Insurance
- Reverse mortgages

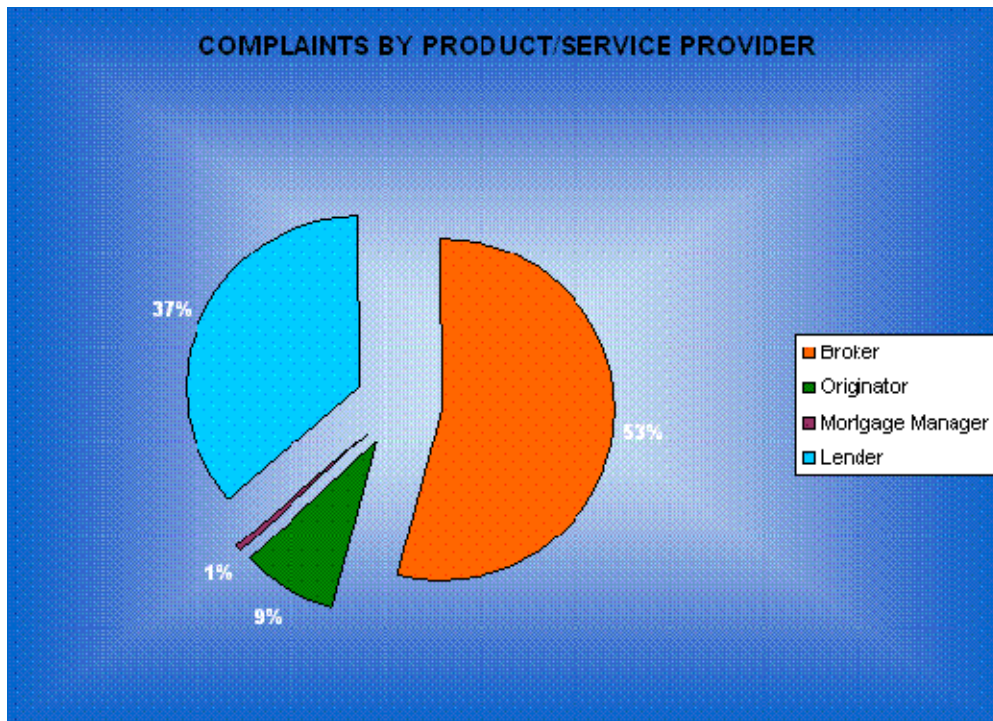
These complaints have been grouped into "Other". Such complaints accounted for 2% of the complaints received by COSL in 2005/2006.

The product or service provider

The complaints received by COSL 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 COSL, Members are classified by the type of product or service that they are predominantly providing in relation to each specific complaint.

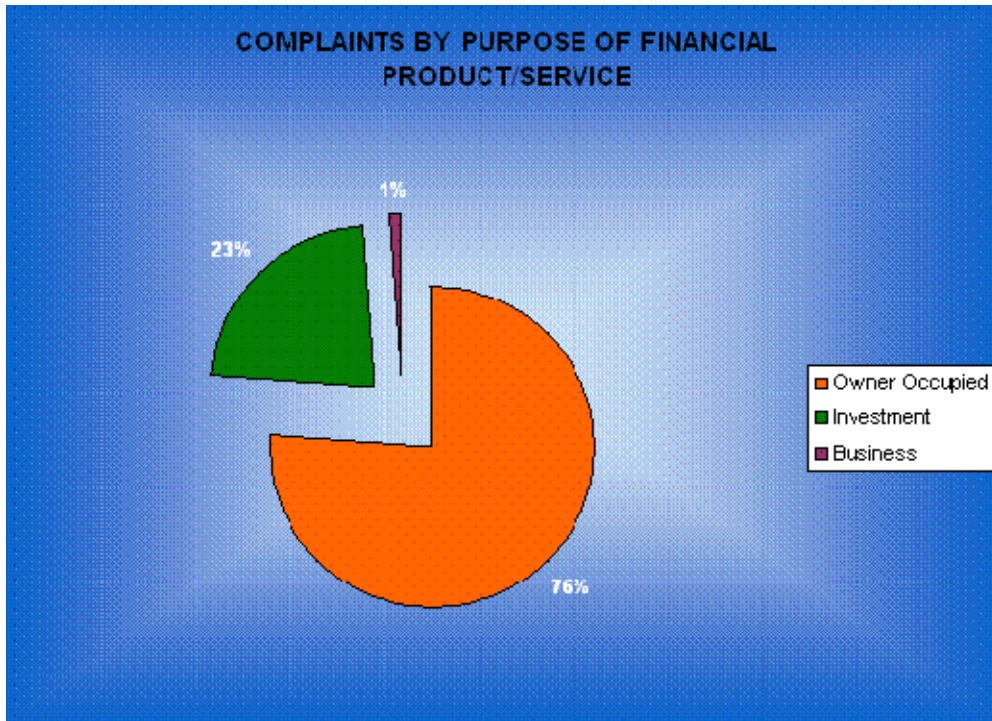
Broker	53%
Originator*	9%
Mortgage Manager	0.5%
Lender	37%
Securitiser	0%
Wholesaler	0%

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



The purpose for which the financial product or service was obtained

Approximately 76% of the complaints received by COSL in the 2005-2006 period related to a financial product or service obtained for a residential purpose and 23% related to a financial product or service obtained for an investment purpose. Only 1% of the complaints received by COSL related to a financial product or service obtained for a business-related purpose.



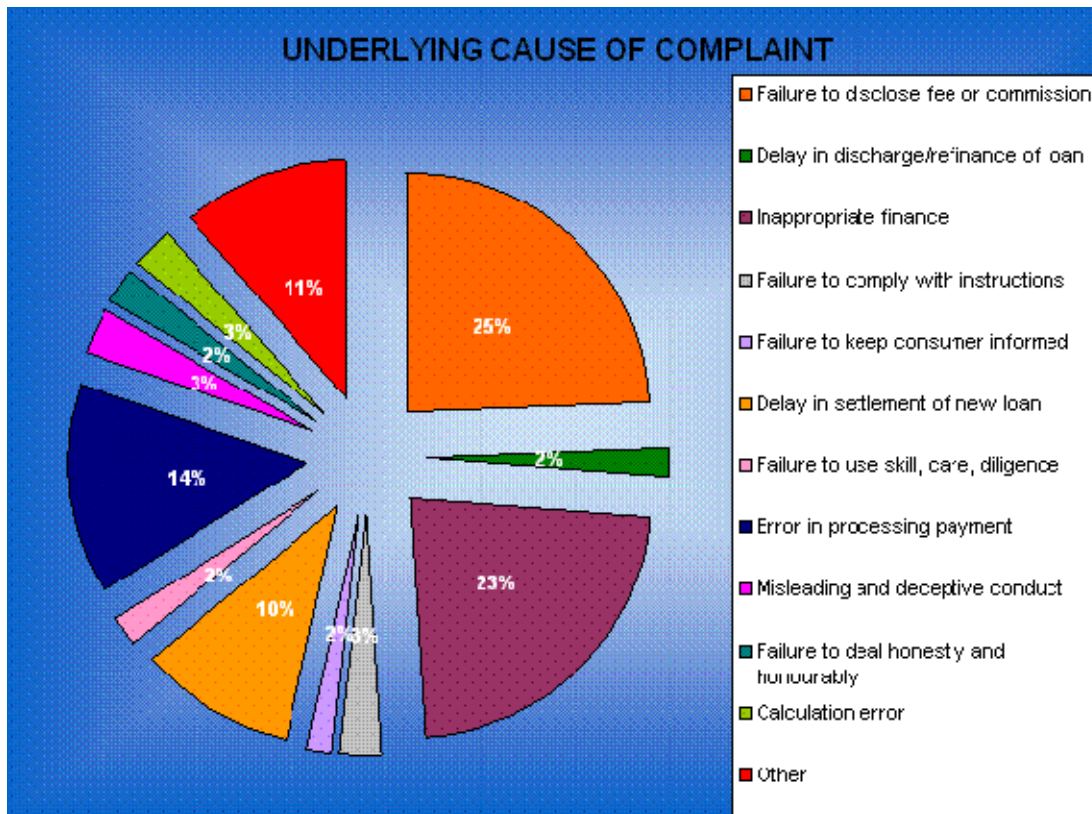
The underlying cause of the complaint

The key categories for the underlying cause of the complaints received by COSL for the 2005-2006 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
- Error in processing payment
- Calculation errors
- Misleading and deceptive conduct
- Failure to act honestly and honourably

These categories accounted for 89% of the complaints received by COSL in 2005-2006. The remaining 11% were based on other underlying causes including but not limited to:

- Failure to disclose relevant details at the time of application
- Failure to take agreed action within reasonable time
- Failure to advise consumers of the outcomes of loan applications within 5 days
- Failure to refund amounts owing within 2 days



Any Systemic Issues or other trends

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

- COSL staff notice a number of disputes that relate to the same issue;
- COSL 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 COSL status as an ASIC approved External Dispute Resolution (EDR) scheme, COSL reports systemic issues to ASIC on a quarterly basis.

Outlined below are the systemic issues identified by COSL during 2005-2006.

Nature of the credit marketplace

The nature of the credit marketplace continued to pose a systemic problem for COSL in 2005-2006.

For example, as reported in the 2003-2004 and 2004-2005 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 COSL jurisdiction, it may fall outside COSL jurisdiction if it becomes evident that there is an insufficient nexus between the conduct of the COSL Member and the loss. This places a fundamental limitation on the ability of COSL to provide an effective and accessible dispute resolution service for the credit industry.

This is further compounded by voluntary COSL Membership. Participants in the credit industry are not legislatively required to have an individual COSL Membership. Instead, participants may be “controlled” contractors of a COSL Member. Consumers and COSL alike have experienced extreme difficulty identifying whether or not a particular participant was covered by a COSL Membership. To remedy this situation and enhance the accessibility of COSL, COSL requires Members to provide details of the controlled contractors who are covered by a COSL Membership.

This nature of the credit marketplace will continue to have significant implications for COSL’s ability to provide a dispute resolution service with comprehensive coverage of the credit marketplace.

COSL is heavily lobbying state governments to ensure that uniform credit legislation requires all parties to a credit transaction be members of an EDR scheme.

Significant Trends

The third year of COSL existence as an ASIC approved EDR concluded on 30 June 2006. COSL appreciates that it is in the early stages of its development yet 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 COSL is well positioned to respond to any significant changes in the future. A number of key trends have been identified.

Non-member complaints and inquiries

Membership of COSL has continued to increase. As at 30 June 2005, COSL had 5802 members. At 30 June 2006 COSL had 6517 members. Interestingly, despite the continued increase in COSL Membership the number of complaints and inquiries that fell outside of COSL jurisdiction because they related to non-Members increased by 34% relative to the 2004-2005 period. This trend may, in part, be explained by increased awareness of COSL within the community. However, this highlights the limitation of voluntary COSL Membership on the ability of COSL to provide comprehensive coverage of the credit marketplace.

Provision of Investment Advice

During 2005-2006 COSL received a number of inquiries in relation to the activities of COSL Members that prima facie related to the provision of investment advice.

Under COSL Rules, the provision of investment advice or financial advice by a COSL Member can not be considered by COSL.

At the height of publicity in relation to the collapse of the Westpoint Group COSL noted an increase in the number of inquiries in relation to the advice provided by COSL Members. At 30 June 2006 COSL had not received any complaints in relation to this matter.

Line of credit products

COSL has continued to receive complaints in relation to line of credit products sold with ongoing monitoring services or debt reduction schemes. It was reported in the 2004-2005 Annual Report that these complaints related to a growing number of COSL Members that were not previously identified by COSL as providing such products and services. This trend continued into the 2005-2006 period.

Case Studies

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

Communication breakdown

The consumers had an existing loan, which was managed by the Member. The consumer approached the Member in relation to obtaining finance to purchase an investment property and provide access to additional funds for future purposes. The Member advised the consumers that they would be able to obtain the finance requested by way of an increase to their existing loan facility.

The consumers applied for an increase to their existing loan facility and were granted pre-approval. Following this, the consumers entered into a contract to purchase an investment property.

During the loan application process the lender notified the Member that, due to changes in the consumers' employment, the funds could not be provided by way of an increase to the consumers' existing loan and that the consumers would need to refinance their existing loan to obtain the finance sought. The Member entered into negotiations with the lender to have the deferred administration fee (DAF) on the consumer's existing loan waived. The lender did not waive the DAF and it was charged to the consumers at settlement of the refinance.

The loan arranged by the Member was split into three accounts. Account 1 had a credit limit of \$50,000. At settlement the consumers' loan was drawn down in full and surplus funds totalling approximately \$100,000 were deposited into Account 1. As a consequence of this Account 1 was in credit by approximately \$50,000, while Accounts 2 and 3 were fully drawn.

The consumers stated that:

- they proceeded with the loan application through the Member on the basis that the funds would be obtained by way of an increase to their existing loan facility;
- the Member failed to inform them during the loan application process that they were arranging a refinance and that as a consequence the consumers would be liable to pay a DAF;
- they were being charged interest on approximately \$50,000 more than they had borrowed;
- their available redraw was \$50,000 less than it should have been.

The Member acknowledged that its communications with the consumers during the loan application process were not as clear as they should have been, but felt that the complaint in relation to the DAF would be better directed towards the lender. The Member also noted that the consumers' available redraw was correct and that interest was being charged in accordance with the way in which the loan was set up.

During the COSL process, COSL assisted the Member to better explain the set up of the loan accounts to the consumers. Once the consumer was adequately understood how their loan accounts operated, the consumer and the member were able to reach a mutually acceptable resolution in relation to the DAF.

Failure to be thoroughly knowledgeable

The complaint was brought by a director on behalf of a company (“the consumer”). The consumer engaged the Member to assist it to obtain finance to purchase vacant land and construct town houses on that land.

Due to the consumer’s construction plans being delayed, the Member first assisted the consumer to obtain finance for the purchase of the land only. Subsequent to the settlement of the land purchase, the Member advised the consumer that approval of a construction loan was conditional on the finalisation of the subdivision. The local council planning regulations required the foundations of common wall developments [town houses] to be laid prior to subdivision approval being granted. This prevented the consumer from finalising the subdivision prior to commencing construction. The consumer was unable to commence construction without a construction loan.

The consumer refinanced through another broker to obtain finance to complete the development.

The consumer complained that the land loan organised by the Member was inappropriate for the objective of purchase and construction. The consumer sought a refund of all fees, charges and interest paid in relation to the land loan.

The Member acknowledged that it had general discussions with the consumer regarding its construction plans but was not aware of the nature of the proposed construction. The Member stated it had requested information from the consumer to organise a construction loan, however the consumer had failed to provide this information and as a result the Member was unable to organise a construction loan.

During the conciliation process both the consumer and the Member provided information from the lender stating that it did not offer construction loans in situations where subdivisions were not yet finalised.

As part of the conciliation process COSL prepared an assessment of the issues raised in the complaint. In the assessment COSL considered that:

- The Member was aware of the nature of the consumer’s intended construction prior to arranging the land loan;
- The Member was not aware that the nature of the consumer’s intended construction would impact on the consumer’s ability to meet certain lender’s conditions of approval for construction finance, and failed to take this into account when arranging the land loan. This was arguably a failure to comply with clause 36 of the relevant MIAA Code of Practice;
- Whilst the land loan was appropriate to the purpose of purchasing the land, it was not appropriate for the consumer’s overall purpose in engaging the

- Member; This conduct was arguably a breach of clause 21 of the relevant MIAA Code of Practice;
- The consumer had suffered a loss as a result of the Members conduct that could be compensated through COSL;
 - In the circumstances, the fees incurred by the consumer in entering into and exiting the loan organised by the Member constituted Direct Loss for the purposes of the COSL Rules.
 - The interest incurred by the consumer in relation to the purchase of the land enabled the consumer to utilise the funds and therefore was not Direct Loss for the purposes of the COSL Rules.

COSL facilitated further negotiations between the consumer and Member and a mutually satisfactory resolution of the complaint was reached.

Lack of care and diligence

One of the consumers was made redundant. The consumers approached the Member seeking to reduce their repayments as outlined in the hardship provisions of their loan contract. The consumers' loan was in arrears and the Member assessed that the consumers were ineligible to access the hardship provisions.

The Member assisted the consumers to apply to Australian Prudential Regulation Authority ("APRA") for a release of their superannuation funds in order to pay the arrears that had accumulated. Funds were released by APRA and applied to the loan to clear the arrears. However, the Member did not implement the previously requested repayment reduction. This resulted in the account again falling into arrears. The Member assisted the consumers to apply to APRA to withdraw a second allocation of funds from their superannuation.

In their complaint to COSL, the consumers indicated that they would not have suffered a loss but for the Members failure to implement a reduction in their repayments after their arrears were paid with the first allocation of their superannuation funds.

The consumers sought a refund of the second release of superannuation funds applied to the loan because the Member's failure to implement the hardship provisions after the first allocation of superannuation funds had directly resulted in their account falling into arrears a second time, thus necessitating the second release of superannuation funds.

The Member outlined that the consumers had failed to request the implementation of the repayment reductions outlined in the hardship provisions following payment of the arrears. The Member considered that the consumers had contributed to their loss as they withdrew funds from the second allocation of their superannuation.

During the conciliation phase COSL prepared a case assessment. It was noted that Member was arguably on notice that the consumer wished to activate the hardship provision after the first allocation of superannuation funds because the Member had been informed that the consumers wished to activate these provisions but, at the time of request, did not meet the criteria.

COSL also considered that but for the conduct of the Member in not implementing the hardship provisions, the application of the second allocation of superannuation funds would not have been required. COSL recommended that the Member reimburse the consumers the amount of the second allocation of superannuation funds, less the amount the consumers had redrawn for personal use.

The Member and consumers agreed to settle the complaint as recommended by COSL.

Unconscionable conduct in approving loan

The consumer indicated that the Member had acted unconscionably in providing the consumer with a loan because the consumer was in a position of special disadvantage and the Member knew or ought to have known that the consumer had no income.

The consumer is a quadriplegic as a result of an accident and was not eligible for a disability pension. The consumer indicated that he told the Member that he had no income. The consumer's sole asset is his home.

The consumer required money to meet his debts and living expenses and approached the Member to obtain a loan against his home. The consumer maintained that he informed the Member that the loan was not for investment purposes. The loan was processed as a low documentation loan for investment purposes. It did not come within the parameters of the Uniform Consumer Credit Code (UCCC).

In response the Member indicated that the consumer stated verbally and in writing that the funds were intended for investment purposes. The Member also indicated that at no time did the consumer indicate that he had no income but rather had signed a declaration that he could service the loan.

The Ombudsman determined that, despite the consumer's apparent physical disability, the consumer had some limited business experience and was a person capable of understanding and directing his financial affairs. The Ombudsman noted that the Member was entitled to form this view of the consumer.

The Ombudsman noted that the consumer had signed a loan application and declaration of income in which the consumer described himself as an investor. The Ombudsman also noted that the loan documentation signed by the consumer also stated that the loan was for investment purposes. This unavoidably stated, or inferred that the consumer required the loan either wholly or partially for investment purposes.

The Ombudsman determined that based on the background of the consumer and the apparent extent of his disability that the consumer could not be regarded as a person of special disadvantage in the context of his financial dealings nor could the consumer be regarded as a person unable to understand or make decisions regarding his financial affairs.

Important Note:

During the COSL process the Member raised a jurisdictional challenge.

The mortgagee had had taken preliminary steps to commence enforcement action. The Member argued that in the circumstances, the complaint related to the conduct of the mortgagee rather than the funder.

The Member also argued that, under Rule 17 of the COSL Rules, it is more appropriate that the complaint be “...*dealt with by a court or another independent complaints or dispute resolution or arbitration procedure*”.

The Member argued that the issues raised in the complaint should be considered in court as part of the enforcement proceedings undertaken by the mortgagee and that it was not prepared to enter into any further correspondence in relation to the complaint.

This issue was referred to the Credit Ombudsman for a Ruling on whether or not this complaint came within the jurisdiction of COSL.

The Credit Ombudsman ruled that the complaint came within COSL jurisdiction because the issues that formed the basis of the complaint related to the Member’s conduct rather than that of the mortgagee which had initiated the legal action.

Incorrect honouring of cheques

The consumer indicated that during a two-week period the Member wrongfully honoured cheques when the consumer’s line of credit was over its limit. The consumer noted that he would not have written cheques during this period if he had been aware that this money was not available.

The consumer also stated that the Member should not have debited his bank account on the same day that he authorised a payment of an equal amount to his line of credit account.

The Member noted that the consumer was aware that the funds had been deposited at settlement of his loan on the consumer’s instructions and that the consumer was aware that the funds were not available in his line of credit account during the time that he wrote the cheques.

The Member indicated that notwithstanding that the cheques placed the consumer’s account into debit, the cheques were honoured as a gesture of good will. The Member also stated that it acted on the express authority of the consumer when debiting the consumer’s bank account.

The Ombudsman found that the consumer acted on a misapprehension when drawing cheques against his line of credit account when it was in debit. The Ombudsman noted that the decision of the Member to honour the consumer’s cheques was an unwise decision in the circumstances but that it was rectified within a few days and should not be construed as a breach of an obligation owed by the Member to the consumer.

The Ombudsman noted that, given that the consumer had obtained the benefit of the funds, the consumer had not suffered a loss as a result of the Member's conduct.

Misrepresentation and unaffordable finance

The Member had assisted the consumers with an application to refinance their home and applications for finance secured by two investment properties, which the Member had recommended the consumer purchase. The consumers also purchased a 12 month Mortgage Management package from the Member.

The consumers indicated that they relied on representations of the Member in relation to opportunity to profit from the sale and purchase of the investment properties when they entered into the contracts to purchase the investment properties. The consumers were of the opinion that they suffered a loss when the investment properties were valued at a lower price than the purchase price that the Member encouraged them to agree to pay.

The consumers also outlined that they received unaffordable finance as they could not afford to service the loans secured by the investment properties in addition to the loan secured by their home.

The consumers further indicated that they were provided with a principal and interest loan in circumstances where they had requested an interest only loan.

The consumers were of the opinion that they did not receive the services as outlined in the 12 month Mortgage Management package.

The complaint was referred to the Credit Ombudsman for a Ruling as to whether the complaint was within COS jurisdiction. The Credit Ombudsman ruled that the following aspects of the complaint were within COS jurisdiction:

- The conduct of the Member in relation to the 12 month Mortgage Management package;
- The conduct of the Member in relation to the provision of a principal and interest loan;
- The conduct of the Member in relation to the provision of affordable finance.

The Credit Ombudsman ruled that the following aspects of the complaint were outside the jurisdiction of COS:

- The conduct of the Member in any inducement to purchase property;
- The conduct of the Member in the provision of any investment advice.

The aspects of the complaint that were within COS jurisdiction were not resolved during the Conciliation phase of the COS process. The complaint was referred to the Credit Ombudsman for Determination.

The Credit Ombudsman determined that as the Member had already refunded the cost of the 12 month Mortgage Management package, there was no Direct Loss

relating to the conduct of the Member with respect to the 12 month Mortgage Management package.

The Credit Ombudsman determined that the provision of the principal and interest loan occurred in circumstances where the documentation provided by the lender outlined that the loan would require principal and interest payments. As the consumers were in receipt of legal advice during the application for and receipt of the loans, the consumers were in a position to ensure that the loan they were to receive was interest only. The consumers receipt of a principal and interest loan was therefore not referable to the conduct of the Member.

The Credit Ombudsman determined that the Member facilitated the application for finance in circumstances where that finance was required to complete a purchase contract that had already been entered into by the consumers. The Credit Ombudsman also determined that the Member was reasonably entitled to rely upon the lender's loan servicing capacity assessment. The Credit Ombudsman also determined that the consumers had the benefit of independent legal advice and that it was the consumers' decision to purchase the investment properties, rather than the decision to borrow funds, which resulted in their later difficulties in servicing the repayments. As such, the Member did not engage in conduct that resulted in the provision of unaffordable finance.

The Credit Ombudsman found that the consumers had not sustained their complaint

APPENDIX A

Definitions

ACDC – Australian Commercial Disputes Centre

COSL - 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 COSL

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 COSL for the purpose of dispute resolution in accordance with the Rules.