

# **Memorandum of Understanding**

between

**Reserve Bank of New Zealand**

and

**Banking Ombudsman Scheme Limited**

# Memorandum of Understanding dated

16 June 2020

Between **Reserve Bank of New Zealand Limited (RBNZ)**

And **Banking Ombudsman Scheme Limited (BOS)**

## 1. Background

- 1.1. RBNZ was established under the Reserve Bank of New Zealand Act 1989 ('**RBNZ Act**'). RBNZ is New Zealand's central bank. Its main functions are to formulate and implement monetary policy to maintain price stability and support maximum sustainable employment, to promote the maintenance of a sound and efficient financial system, and to meet the currency needs of the public. The Bank is also prudential supervisor for banks (under the RBNZ Act) and non-bank deposit takers (under the Non-Bank Deposit Takers Act 2013 ('**NBDT Act**')) in New Zealand.
- 1.2. BOS is an approved dispute resolution scheme under section 50 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ('**FSPR Act**'). Its purpose is to investigate and resolve disputes between customers and their banking service providers. Under the FSPR Act the approved dispute resolution schemes are intended to be accessible, independent, fair, accountable, efficient, and effective.
- 1.3. RBNZ and BOS work in areas of common interest relating to the New Zealand financial system.
- 1.4. The parties have agreed to enter into this Memorandum to formalise their relationship of cooperation, and to record the basis upon which they will endeavor to assist each other in the performance of their respective functions.

## 2. Purpose

- 2.1. The purpose of this Memorandum is to formalise the relationship of cooperation between RBNZ and BOS, recording each party's commitment to consult, cooperate and share information in relation to entities supervised by RBNZ that are members (as defined in the FSPR Act) of the Banking Ombudsman scheme ('**Member Entities**'). The consultation, cooperation and sharing of information will assist both RBNZ and BOS to achieve their complementary objectives and facilitate fair, efficient and transparent financial markets and confidence in the banking system.

## 3. Cooperation Principles

- 3.1. RBNZ and BOS agree that in their dealings with each other as contemplated under this Memorandum they will:
  - (a) act in good faith, and approach issues in a timely, collaborative, open, and transparent manner;
  - (b) seek to dispel confusions and misunderstandings about their different roles;
  - (c) seek to achieve a complementary and consistent approach, so far as it is practicable and appropriate given their independent roles and respective objectives;
  - (d) meet and communicate regularly, at appropriate levels of seniority, to discuss and exchange views on matters of mutual interest;

- (e) confer on and discuss any trends, themes, insights or systemic issues (arising out of their work relating to banking services and products) which are relevant to their respective purposes;
  - (f) consult one another at an early stage on any issues that might have significant implications for the other organisation; and
  - (g) where possible, share (for comment) draft documents (such as consultation papers and briefings) that relate to the other party's remit and functions.
- 3.2. In accordance with the cooperation principles, but without limiting their general application, both parties agree to make relevant information available to the other as set out in this Memorandum, and subject to any legislative requirements and the BOS Terms of Reference referred to in clause 4.

#### **4. Relevant legislation and BOS Terms of Reference**

- 4.1. BOS acknowledges that RBNZ's ability to share information with BOS is limited by section 105 of the RBNZ Act and section 54 of the NBDT Act.
- (a) Section 105 of the RBNZ Act prohibits RBNZ from publishing or disclosing information, data or forecasts that are supplied or disclosed to, or obtained by, RBNZ under Part 5 of the RBNZ Act, except in the circumstances set out in section 105(2) of the RBNZ Act. Such circumstances include publication or disclosure to a person who RBNZ is satisfied has a proper interest in receiving the information.
  - (b) Section 54 of the NBDT Act prohibits RBNZ from publishing or disclosing information, data, or forecasts that are supplied or disclosed to, or obtained by, RBNZ under the NBDT Act, except in the circumstances set out in section 54(2) of the NBDT Act. Such circumstances include publication or disclosure to a person who RBNZ is satisfied has a proper interest in receiving the information.
- 4.2. RBNZ will therefore only disclose or supply information to BOS under this Memorandum where the disclosure is permitted under section 105 of the RBNZ Act or section 54 of the NBDT Act. Furthermore, RBNZ may, by written notice, impose any conditions on BOS in relation to the publication, disclosure, or use of information or documents provided to it by RBNZ in accordance with section 105(3) of the RBNZ Act or section 54(3) of the NBDT Act (as the case may be).
- 4.3. RBNZ acknowledges that BOS's ability to share information with RBNZ is limited by BOS's Terms of Reference ('**TOR**'). The TOR provide that BOS is not able to disclose personal information regarding a complaint BOS has received:
- (a) that may identify the complainant or the bank named in the complaint (refer to paragraph 38 of the TOR); or
  - (b) where the person who provided the information to BOS has asked for that information to be kept confidential to BOS, unless BOS has the consent from the person that provided that information to disclose it to RBNZ (refer to paragraph 46 of the TOR).
- 4.4. However, BOS must disclose information to RBNZ about a complaint BOS has received if it is required by law to do so (refer to paragraph 39 of the TOR).
- 4.5. BOS may also disclose information to RBNZ if it needs to consult with RBNZ to decide whether BOS or RBNZ should consider a complaint BOS has received, provided BOS has the complainant's consent to disclose any information that may identify the complainant (refer to paragraphs 2.6 and 39.4 of the TOR).

- 4.6. If BOS has reasonable grounds to believe that a Member Entity has materially contravened or is likely to materially contravene relevant legislation (being the RBNZ Act, the Insurance (Prudential Supervision) Act 2010 or the NBDT Act), BOS must communicate that fact to RBNZ in accordance with BOS' obligations under the FSPR Act.
- 4.7. RBNZ acknowledges that BOS's ability to share information with RBNZ is also limited by the Privacy Act 1993.
- 4.8. BOS will only disclose or supply information to RBNZ under this Memorandum where the disclosure is permitted under the TOR and is not in breach of the Privacy Act 1993.

## 5. Referrals

- 5.1. In some instances, RBNZ receives complaints which may be suitable for referral to BOS. To support the efficient and effective resolution of complaints, RBNZ will develop its public materials to ensure complainants are aware of the services BOS offers for appropriate complaints and allegations.

## 6. Meetings

- 6.1. RBNZ and BOS will meet at such times and places as the parties agree from time to time. The meetings will facilitate regular contact between the parties on routine operational matters, trends, banks operating on the perimeter of financial markets legislation and risks relating to specific banks or banking products.
- 6.2. Senior representatives of the parties will meet at least annually to review and discuss the operation of this Memorandum and cooperation and coordination between the parties.

## 7. Contact Persons

- 7.1. The parties' principal points of contact are set out below, and are otherwise as communicated by the parties to each other from time to time:

### **RBNZ**

Simone Robbers  
Assistant Governor / GM Governance,  
Strategy and Corporate Relationships

Email: [simone.robbers@rbnz.govt.nz](mailto:simone.robbers@rbnz.govt.nz)  
Phone: +64 4 471 3850

### **BOS**

Nicola Sladden  
Banking Ombudsman

Email: [Nicola.Sladden@bankomb.org.nz](mailto:Nicola.Sladden@bankomb.org.nz)  
Phone: +64 4 282 0173

## 8. Confidentiality

- 8.1. For the purposes of this Memorandum, '**Confidential Information**' includes all information, whether written or oral or by any other means, relating to any engagement between the parties pursuant to this Memorandum and all information provided by the parties in accordance with this Memorandum, other than information that:
- (a) is in or comes into the public domain through no fault of the relevant party or any of its officers, employees, agents or contractors;
  - (b) was and can be demonstrated to have been, lawfully in the relevant party's possession or known to the relevant party before its disclosure; or

- (c) is disclosed to the relevant party by a third party having no obligation of confidence in relation to that information.

8.2. Each party agrees:

- (a) to keep confidential all Confidential Information; and
- (b) to use the Confidential Information solely for the purposes of performing its functions.

8.3. The parties will abide by all relevant privacy obligations and legislation and not disclose any personal information which it is not permitted to disclose to the other party, or which the disclosure of would amount to a breach of any privacy obligations or legislation or governing rules that apply to that party.

8.4. Nothing in this Memorandum will prevent the disclosure of information that is required or permitted to be disclosed by law. Where either party is required by law to disclose information obtained under this Memorandum or intends to disclose information obtained under this Memorandum which it is expressly permitted by statute to disclose in the particular circumstances, the disclosing party will notify the other party in writing as soon as practicable.

## **9. Legal Nature of Memorandum**

9.1. This Memorandum is intended to be facilitative only and to assist RBNZ and BOS in the performance of their respective functions, and is not intended to create legally enforceable rights or obligations.

9.2. Nothing in this Memorandum:

- (a) limits the exercise by RBNZ of any of its powers or the performance by the RBNZ of any of its functions under the RBNZ Act or any other legislation, or requires RBNZ to act in a particular manner in the exercise of its powers or the performance of its functions;
- (b) limits the exercise by BOS of any of its powers or the performance by BOS of any of its functions under the FSPR Act or other legislation, or requires BOS to act in a particular manner in the exercise of its powers or the performance of its functions; or
- (c) requires or obliges either party to provide any information to the other except as regulated by law under financial markets legislation or other relevant legislation.

9.3. This Memorandum does not affect any right of RBNZ or BOS to communicate with or obtain information or documents from any other person.

## **10. Issues and dispute resolution**

10.1. Where there is a disagreement over any matter related to issues in this Memorandum, the parties will seek to resolve the issue by discussion at an operational level. If these negotiations fail, the matters will be referred to the RBNZ Assistant Governor / GM Governance, Strategy and Corporate Relations and the Banking Ombudsman for discussion and resolution.

## **11. Term and Review**

11.1. This Memorandum will continue in full force and effect unless and until terminated in the following manner:

(a) by agreement of both parties; or

(b) by either party on not less than 3 months' written notice to the other party.

11.2. Upon termination of this Memorandum, the parties must meet, as soon as practicable, to discuss and agree the process by which any joint initiatives or protocols developed under this Memorandum will be terminated. This includes ensuring, to the maximum extent possible, that their respective interests and objectives and on-going performance of their respective functions are not prejudiced by such termination beyond the extent of any prejudice necessarily caused by virtue of the termination.

## Execution

Signed for and on behalf of the  
**Reserve Bank of New Zealand**



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Governor

Date: 16 June 2020

Signed for and on behalf of **Banking  
Ombudsman Scheme Limited**



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Banking Ombudsman

Date: 16 June 2020