



# Bulletin No 5

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# Distress and inconvenience awards

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## **Introduction**

The Terms of Reference for the Ombudsman for Banking Services allows the Office to make awards to customers for distress and inconvenience suffered. The maximum amount that can be awarded in this regard is R50 000.

## **Approach to awards of this nature in general**

In assessing such awards, the Office expects customers:

- To be moderately robust in the way in which they deal with a problem
- To take responsibility for ensuring that their financial affairs are in order in the ordinary course of the transactions concerned
- To bear the ordinary and normal degree of inconvenience associated with correcting an unexpected problem: and
- To take reasonable steps to minimize the inconvenience suffered

Case will be assessed conservatively.

## **The quantification of awards of this nature**

There can be no basic formula for the assessment of general damages. It has been described by our courts of law as an assessment of imponderables, which is so discretionary as to be almost arbitrary. Earlier cases of a similar nature may serve as an approximate guide, but they must be applied with circumspection. Every case is assessed on its own merits to determine whether an award is justified and the amount applicable.

## **Simple inconvenience**

Claims for simple inconvenience are not sufficiently substantial to warrant compensation. Examples of this would be the following:

- Not receiving bank statements for one or two months
- Phone calls to the bank not being answered immediately
- Duplicated requests from the bank for information

## **Consequential Medical Damage**

Some customers allege that they have suffered consequential damage in the form of clinical illness that manifests itself as a psychological, medical and/or physical condition as a result of the bank's actions.

An assessment of a claim for damages in this regard would generally require the testimony of medical experts by both parties that can then be cross examined. Claims of this nature are therefore more suited to a court of law and are not suitable for the OBS.

## **Examples of Claims**

Below are a few examples illustrating our general approach to claims for distress and inconvenience. The cases are actual decisions made by the OBS. Assessing the appropriate amount to be awarded in individual cases is highly dependant on the particular circumstances of each case. Awards for distress and inconvenience are only made in the minority of cases.

### **Modest awards (less than R1000)**

- The bank delayed paying out on a claim once it had been settled. We awarded R500 for the distress and inconvenience suffered by the complainant in having to wait for a number of weeks for payment after the bank had agreed to settle the claim.
- The bank teller failed to follow prescribed bank procedure when accepting a deposit into an account. The deposit was made to the incorrect account. It took a number of months for the bank to rectify the problem. R500 was awarded.

### **Significant awards (R1000 to R5000)**

- The bank and an insurance company blamed each other for delaying the processing of a claim on a life cover policy for almost a year. The insurance company eventually settled the claim. R4000 was awarded to the complainant for the bank's significant contribution to the delay.
- The bank omitted to pay over premiums, deducted from the complainant's account, to an insurance company. This resulted in the claim being turned down. R1000 for distress and inconvenience was included in the final settlement.
- The bank gave the complainant's life insurance policies to a broker without permission or authority. The broker had the policies ceded to a company without any justification. The complainant suffered substantial distress in trying to have the policies freed from the cession. An amount of R3000 was awarded for distress and inconvenience.
- The bank gave out personal account details to one of the parties busy with a divorce settlement without permission or authority. An amount of R1000 was awarded for distress and inconvenience.
- In applying for a bond the complainant was consistently misinformed by the bank regarding the status of the application. This caused the application to be delayed for a number of weeks. R1000 was awarded.

- Customer's wife is an employee of the bank. She used her husband's financial information, as obtained from bank's system, in their divorce dispute. The customer accepted the bank's offer of R3000 in settlement of the complaint.
- The bank instituted legal action against the complainant while our Office was dealing with the complaint. This was despite repeated warnings to the bank in similar cases that legal action must be pended. R3000 distress and inconvenience was awarded to the complainant.
- The bank ignored repeated requests for further information on a complaint. In the final adjudication an amount of R1000 was awarded to the complainant for the bank delaying finalisation of the matter.

### **Exceptional awards (over R5000)**

- Complainant purchases shares through the bank, but was erroneously debited twice with the cost thereof. This led to the account being overdrawn and her cheques being dishonoured. The complainant claimed damages because of her good name being tarnished. R2000 was awarded in compensation during 2002. In 2003 complainant claimed a further additional amount based the fact that a negative bank report, based on the dishonoured cheques, was issued to another institution after the case had been finalized by our Office. The file was re-opened and a further R10 000 was awarded to the complainant.
- The Complainant's chequebook was fraudulently obtained by an unknown person. The perpetrator wrote out several cheques that were dishonoured by the bank. The complainant received calls from various merchants that the cheques were made out to and received visits and letters of demand from debt collecting agencies. Bank only offered a letter of apology and R1 000 but did nothing more at the time to assist the customer. This was increased to R3 000 after the complaint was lodged with us. A final award of R8000 was made.
- The Complainant bought property on the bank's PIP list. It was described as a 2 bedroom unit. Complainant could not view the unit and transfer went through without her being able to do so. When she wanted to take occupation she found that it was a 1 bedroom unit and she also could not take occupation as there were tenants. Occupiers only evicted 10 months after transfer took place. Bank refunded complainant R45 000 as a price reduction on the smaller property and R10 000 for distress and inconvenience suffered.

- Complainant was a school that had a savings account into which all school fees were deposited. Bank closed savings account without notifying complainant that they intended to do so or had done it. Many of the school's parents believed that the school was bankrupt. Complainant stated that due to this closure many parents did not enrol their children with the school and the school lost the fees. It could not be established that the parents did not enrol their children due to the account having been closed. Many other factors were found to have contributed to the loss. It was however held that the closure of the account was a significant factor contributing to the loss. R20 000.00 for distress and inconvenience was awarded and accepted by the bank and complainant.
- Shares belonging to the complainant were held by the bank as security for certain loans. The shares were sold by mistake and then repurchased by the bank. Certain instructions given to the bank regarding the shares were never carried out, resulting in substantial losses. The shares were consistently mismanaged by the bank. An amount of R50 000.00 for distress and inconvenience was awarded.

**Adv NJ Melville**  
**Ombudsman**