



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to the FSA, FOS and OFT review of consumer complaints (emerging risks and mass claims)

June 2010

About Consumer Focus

Consumer Focus is the consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses and public services to put consumers at the heart of what they do.

Consumer Focus gives a strong voice to consumers on the issues that matter to them and works to secure a fair deal on their behalf.

We work with consumers and a range of organisations to tackle the problems customers face and to achieve creative solutions that make a difference to peoples' lives.

Our response

Question 1 and Question 7: What more can be done to encourage firms to recognise that it is in their long term interests to handle consumer complaints promptly and fairly and to encourage firms themselves to deal with new and emerging risks before they turn into widespread issues?

To encourage firms to handle consumer complaints more promptly and fairly is not simply a question of getting the banks to recognise it is in their self-interest to do so. Under the current regulatory and market structure, banks have made significant sums of money from punitive models and are not sufficiently investing in complaint handling processes. Change not only requires a consumer orientation but relies on either enhanced competition or regulation.

Lack of competition is currently failing to pressurise banks into taking complaints and their causes more seriously. Weak competition stops consumers voting with their feet and switching in retail banking is too low to exert an influence as it has with other financial services. Moves are afoot to improve competition. That offers hope for complaint handling to become an effective tool in two ways:

- The evidence shows consumer loyalty increases both when consumers feel they are treated well and when they have a complaint effectively resolved¹
- Effective and comparable publication of complaint data could well be a determining factor when consumers shop around for a new provider and could therefore hit the bottom line of financial services providers

Until competition improves, we argue that stronger enforcement, alongside better co-ordination, is needed between the various regulatory (and Ombudsman) bodies. Only then will there be a real deterrent to treating customers unfairly in the complaints process. Regulation is a legitimate and effective tool in consumer protection. It would appear for example, that as a result of regulatory pressure from the Treating Customers Fairly (TCF) initiative banks have amended many processes; improving the overall customer experience. However, as of yet, this has failed to stop unfair products and improve complaint handling. To achieve these goals we call for the regulatory authorities to:

- Work quickly and effectively to share, analyse and then use information from complaints evidence to address the cause of complaints
- Improve their knowledge of the quality of complaint handling processes and adopt standards to drive best practice, with potential enforcement action against the worst offenders

The challenge is to tackle the source of the complaint (product design and charging) as well as the complaint process itself. Banks will realise it is in their interests when the bottom line is affected – either through fines from enforcement action for poor complaint processes or increased rates of switching.

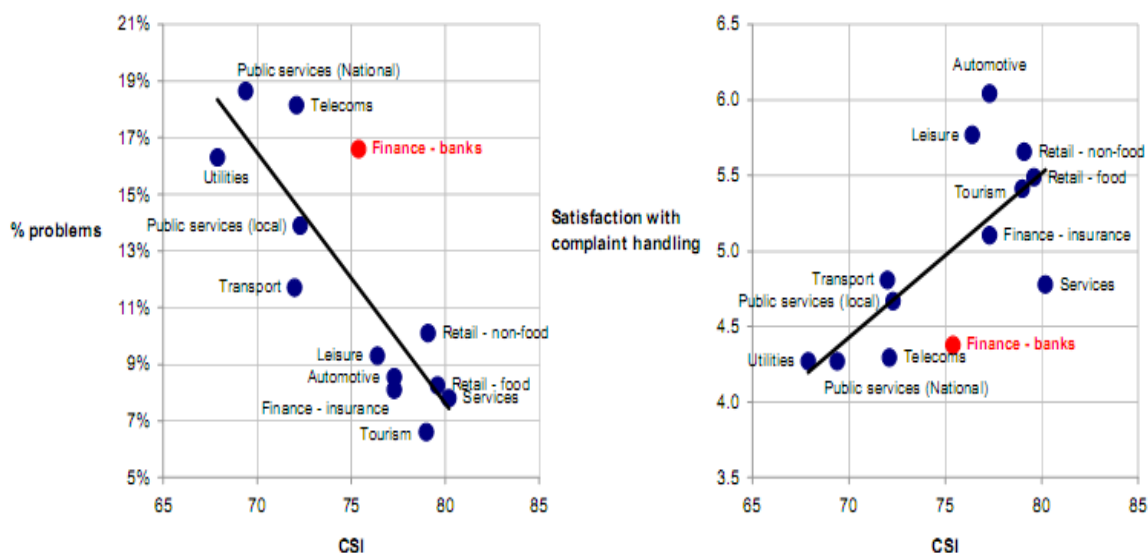
For the regulatory authorities to help them realise that good complaint handling is in their long term interest it should focus its efforts on these two activities.

¹ *Complaint Handling: Principles and Best Practice – Report for Energywatch* by the Centre for Utility Consumer Law, April 2007

Competition as a tool to improve complaint handling

Competition remains weak in the retail banking sector – meaning consumers are unlikely to shop around following a problem or a complaint. It is instructive to compare banks with insurance companies. According to the Consumer Satisfaction Index (CSI) research (graph below) insurance companies have slightly higher levels of satisfaction, generate far fewer complaints and handle them far better than the banks. Poor complaint handling and a high percentage of problems are not therefore universal to financial services. The reason insurance appears more consumer orientated in our view is the far higher competitive pressures insurers' face. According to our recent research² switching rates in home insurance are over three times higher than in the Personal Current Account (PCA) market. Consumers are used to switching based on comparing the cost or value of insurers' products, particularly online or on the telephone, and this influences the economics of customer service.

Comparing customer satisfaction with problems and satisfaction with complaint handling



Source: UK CSI 2010, p10

Competitive pressure forces suppliers to improve their performance, minimise complaints and improve complaint handling or risk losing custom.³ That competitive pressure simply does not apply in the retail banking world. Hence the Financial Services Authority (FSA) predicts that without regulatory intervention firms would reduce their investment in complaint handling.⁴ Our upcoming report on consumer switching has found the younger and lower socio-economic groups are less likely to switch or think about switching in the PCA market. This is a problem because according to the Office of Fair Trading (OFT), charges from unauthorised overdraft withdrawals are '*disproportionately high among relatively young and financially constrained consumers*'.⁵

² Consumer Focus paper on *Switching in the Personal Current Account market*, upcoming

³ *Complaint Handling: Principles and Best Practice – Report for Energywatch* by the Centre for Utility Consumer Law, April 2007

⁴ FSA, *Financial Risk Outlook 2010*

⁵ OFT, *Market Study, Personal Current Accounts 2008*, p69.

Thus, those who could benefit most are least likely to even think about switching and nor are they as likely to even complain.⁶

Loyalty increases with good complaint handling

Academic and consumer research is clear that strong, responsive and reactive complaint handling processes make good economic sense for firms. The evidence even shows loyalty goes up after a complaint if it has been handled well. In a competitive safe environment there are significant cost benefits to companies in customer retention, and a good culture and complaint process may lead to improved financial performance.⁷ How they treat their customers now will affect the bottom line in the future. Investment in customer services, fairness and complaint handling is not a wasted resource.

Complaints league tables

We look forward to the publication of data on complaints as a means to enhance competition and inform consumers which banks are best at avoiding and also resolving complaints. Consumers need information to guide their choices and businesses should have sufficient motivation to treat their customers fairly. A culture of publishing and analysing complaints to identify emerging risk and as a window on the industry is vital. We note there are several banks who already compete on the quality of their customer service and we would hope this qualitative difference would become more crucial to market purchasing decisions in the future. If enhanced competition does take hold the TCF regulatory programme offers real hope for creating a market that rewards treating customers fairly. The evidence below on the TCF initiative shows banks can achieve real gains in customer focused service if they choose to do so.

Regulation of products

It is clear that regulation can have a strong impact in improving the banks' behaviour towards their customers. UK CSI research shows customer satisfaction has slightly gone up in retail banking during the recession and banks have shown an overall '*strong performance*'⁸ in terms of customer satisfaction. This supports our own research that suggests customer satisfaction is relatively high for banks with a satisfaction rate of 71 per cent among consumers going up to 96 per cent of those who had not thought about switching.⁹ The FSA emphasis on promoting the TCF principles therefore seems to have had an effect and banks are capable of improving their performance.

Nevertheless, the CSI research above supports the view that the number of complaints generated and the standard of complaint handling remain a problem despite overall high satisfaction levels. Consumer Focus's Consumer Conditions Survey also showed that 8 per cent of consumers had a poor experience of the professional and financial services market compared to 4.4 per cent for the 45 markets over all. The industry came second only to the energy sector in terms of poor or average consumer experience when complaining.¹⁰ According to the financial ombudsman service (FOS), complaint contacts are expected to rise next year.¹¹

The research available does show that changes to behaviour and consumer orientation have been made through regulation in the TCF program. An as yet unpublished piece of

⁶ *Complaint Handling: Principles and Best Practice – Report for Energywatch* by the Centre for Utility Consumer Law, April 2007

⁷ *Ibid*, p36-38

⁸ UK Customer Satisfaction Index, January 2010, p3 <http://bit.ly/aoLXJ0>

⁹ Upcoming Consumer Focus paper on consumers attitudes to switching in retail banking

¹⁰ Consumer Focus, *Consumer Conditions Survey and financial services*, 2009, p1

¹¹ FT article, *Flood of customer complaints hits banks*. 13/05/2010

research has shown that the TCF initiative has empowered those within each firm who promote placing resources into customer satisfaction and consumer experience. Such improvements include better communication, clearer factsheets and more concern about the customer interaction with the bank throughout the product life.

However the research shows the TCF programme has been less successful challenging more fundamental practices that we would consider are unfair in the basic design of revenue models, marketing and product design. Where banks make significant revenue out of disputes, complexity, mistakes or problems – ie overdraft charges, late payments on credit cards etc. or payment protection insurance (PPI) the banks have incentives to continue these products and practices even though they are a significant source of complaints.

While this consultation wishes to look purely at complaint handling processes, the complaints data show that it is the fundamentals of unfair product design that needs to be challenged, since unfair products form the bulk of the complaints received by the banks and the FOS. The discussion paper acknowledges that more than half of the cases ever referred to the ombudsman service, since it was formed, have related to just six financial products. Complaint contacts about PCAs are up 30 per cent year on year, they are higher than for all other products, and PCAs are the second most frequent cause of cases coming to the FOS for a decision behind PPI.¹² Of the PCA cases, 60 per cent relate to charges – mostly from those in financial hardship.¹³ The problems are therefore well defined and a feedback culture should act in response to these.

Banks would not appear to be learning from the complaints received to feedback into their products and practices despite other successes from the regulatory impact of TCF. Consequently regulators need to act to encourage banks to amend their operating culture in the consumer interest. Consideration needs to be given to getting rid of the cause of complaints and designating certain products as unfair and not fit to be sold.

Philosophically, it appears the FSA now shares our view. Hector Sands recently stated:

*'Historically, the FSA's approach to conduct was, as with prudential, essentially reactive. Too often, it focused on high-level systems and controls analysis merely reacting to crystallized risk and consumer detriment. It also focused, as has been the approach across Europe, on disclosure, sales processes and suitability. Both elements thus avoiding product and price regulation. There are significant limitations to this approach. Critical among these was the inability to spot and prevent major risks from crystallising, resulting in damage to consumer and market confidence and ultimately consumer harm.'*¹⁴

¹² Financial Ombudsman Service *Ombudsman news Feb/march 2010*, p18-19

¹³ <http://bit.ly/artnXf> p33

¹⁴ Hector Sants, UK Financial Regulation: After the Crisis, Speech of 12 March 2010

Regulation of complaint handling

Enforcement action by regulators on the quality of complaint handling has traditionally been weak. The FSA has recently made a start in this area. In its recent review of complaint handling in five banking groups the FSA has demonstrated beyond doubt that the issue of quality needs urgent attention.¹⁵ It suggests 36 per cent of all complaint files received poor quality handling.¹⁶

We believe the regulators must put far greater effort into capturing this kind of information, including capturing consumers' own views. Without high quality capturing of the consumer experience at all stages of the complaint process it is easy for the banks to evade censure for low quality, problematic and unhelpful processes. As well as capturing information regulators also need to analyse it effectively and then act upon it to challenge systemic failures in the banks' processes. Alongside the positive step of publishing complaints data the FSA should provide more information during the course of an investigation about whom it is investigating and the reason for the investigation. *Reputational regulation* is a useful tool and incentive as well as providing information to consumers to guide their choices.¹⁷

As long as consumers remain reluctant to switch or complain only strong and active regulatory pressure and enforcement action on unsafe products sold or unfair complaint handling can change the status quo. Otherwise the banks will continue to gain significant revenue from the unfair treatment of their customers and the majority of complaints simply will not be handled fairly.

Q2. Do you have any analysis or evidence which suggests that the effectiveness of Chapter 1 of DISP could be improved? If so, which elements might be reviewed?

Chapter 1 of the FSA Handbook: *Dispute resolution: complaints* (DISP) should, at least, set out minimum standards and reflect established principles for good complaint handling. We welcome the planned review of the DISP as an opportunity to ensure it achieves this goal.

Visibility and accessibility

We believe the FSA should ensure the DISP meets international standards as defined in the ISO10002 on *Quality management – Customer satisfaction – Guidelines for complaint handling in organizations* 2004. Currently, we do not believe this to be the case.

DISP 1.2.9 through to 1.2.15 refers to visibility on complaint handling processes but it is a very limited requirement in relation to accessibility. ISO10002 refers to '*information and assistance in making a complaint should be made available in whatever languages or formats that the products were offered in... so that no complainants are disadvantaged*'.¹⁸ The complaints process should be easy to understand and use and information should be in clear language and different formats and assistance in making a complaint should be available.

¹⁵ <http://bit.ly/aW4Udr>

¹⁶ FSA, *Review of complaint handling in banking groups*, April 2010, p11

¹⁷ The FSA refers to the Financial Services and Markets Act 2000 as limiting disclosure in this respect

¹⁸ ISO10002 ISO10002 on *Quality management – Customer satisfaction – Guidelines for complaint handling in organizations* 2004, p3

Accountability and objectivity

We believe the duty should be on the firm to inform the consumer in all its communications and complaint information about the availability of external review by the FOS. Under 1.2.15 it remains at the whim of the firm to send the FOS details at that stage. We do not believe that is sufficient or meets best practice. Under the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 energy companies are compelled to tell the complainant about the energy ombudsman at day one of the complaint as well as at deadlock. We believe the DISP should be updated to reflect current practice in the energy sector.

We see no reason why information is not collected on those matters resolved by COB on the business day following receipt (DISP 1.3.3 (2)). This could be useful information with regards overall complaints and the ability of firms to respond proactively to complaints. It would detail how well firms are meeting their duties to be responsive – as set out in paragraph 4.4 of the ISO.

Responsiveness

Elements of responsiveness set out in 1.4 should be strengthened. ISO10002 states *'receipt of each complaint should be acknowledged to the complainant immediately'*. We do not believe five days constitutes an immediate acknowledgment. Additionally, ISO10002 states *'complainants should be addressed in accordance with their urgency'* however the DISP does not encourage an assessment of the individual circumstances of a complaint or its urgency or significance. We would also like to see a duty for the complainant to be kept informed more frequently of the progress of the complaint through the complaint handling process. The DISP should compel firms to send the first update after four weeks, then every two weeks thereafter. Finally, we would like to see guidance as to the reasons that would justify delaying the response beyond four, six or eight weeks and also the reasons for delay should be ones that relate specifically to the individual's case. It should be within the FOS's powers to consider the impact of the delay if the case comes before it for a decision.

Record keeping and reporting

Complaints need to be recorded and reported in a way that is meaningful to consumers. ISO10002 states that *'Accountability for and reporting on the actions and decisions of the organization with respect to complaint is clearly established'*¹⁹. If regulators want consumers to act on complaint information then what is presented to them should be useful for purchasing decisions. Since most consumers understand brands for example Halifax, or Lloyds within the Lloyds Banking group plc then that is the best means of differentiating firms' complaints.

Where appropriate we would also consider it reasonable to report the institution by those that share a complaint handling process. For example, it is reasonable to include Halifax and Bank of Scotland together if they have a shared process for complaint handling since they have been integrated over a number of years. We do have a concern with the legal entity publishing where for all practical purposes, there is no integration between the different parts of the organisation. For example, we see no reason to include Lloyds bank with Bank of Scotland when their branding, systems and complaints processes are not integrated.

We are concerned that the FSA has decided not to publish information on complaints resolved between one day and the final eight week cut off.

¹⁹ Ibid.

Since the FOS data shows a significant number of consumers are deterred from pursuing a complaint during the complaint process, many consumers may cease to pursue a complaint before the eight week period but remain dissatisfied with the process.

We are aware the FSA captures information with regards speed of resolving complaints at four week intervals. We believe the FSA should undertake work to further capture and then publish the speed with which complaints are resolved between the one day / eight week cut off points.

Furthermore, deterrents need to be implemented those complaints where the firms had not given either a final decision in eight weeks or had not passed the details of the FOS to the consumer. Consideration of an award to the consumer in these cases may encourage consumers to sustain their complaint and it will also incentivise firms to resolve complaints more quickly.

The proposals above would bring the DISP in line with international standards but further improvement is required to achieve best practice in complaint handling. The TCF initiative states that firms must use complaint data proactively to ensure complaint systems continually improve. In particular, we would like to see an additional requirement to act upon complaints information. Consumer Focus's predecessor energywatch best practice standards in complaint handling provide further guidance. It includes establishing effective company protocols, how to incorporate fairness and consistency within company processes, and how to give active consumer support and empowerment. It sets out how to build organisational ownership and commitment, and how consumer involvement can ensure systems pick up complex complaints and those involving vulnerable consumers

Q3. Do you consider that improvements could be made to how information is exchanged and used between the regulators and the Ombudsman

We feel the organisations responsible for complaint handling should work hard to capture, share, analyse and act upon both key issues – unfair products and poor complaint handling processes. As the consultation makes clear, a range of potential sources will allow the regulators to capture developing problems within firms, or with products. Regulators should act quickly when a problem is identified and not rely on overly narrow processes, or overly narrow criteria for action. This will be aided by ensuring the information given by the banks is increasingly consistent, meets strict and enforceable criteria and goes through rigorous collection and analysis processes, so that questions are asked about the meaning of the information collected rather than just collecting information for the purpose of collecting information. In question 4 we also suggest what wider information should be gathered to better inform regulators of consumer detriment.

There is real potential to use the *Wider Implications Process* to turn information sharing into effective regulatory action. Systematic evidence of unfairness – such as PPI – should not be left to the FOS to adjudicate case by case. One of the fundamental principles of TCF complaint handling is using complaints data and FOS decisions to feedback within the company processes to remedy similar cases and also to not force the consumer to go to the FOS where the banks' know they will lose. The expectation should also apply to the regulators and the FOS, that the feedback process will lead to changes and thus stem the complaints in particular areas.

The FSA should institute a process to engage the firms in resolving systematic issues quickly. If this is not done the FSA should take enforcement action against the firms building on Hector Sands's statement so that there are clear financial incentives to act fairly that in turn drive a culture of treating customers fairly.

Where there is evidence of industry wide mis-selling and poor product design the FSA should be willing to use its full range of powers much more quickly – including S404 of the Financial Services and Markets Act.

Q4. Are there additional cost-effective steps that the FSA, OFT or the ombudsman service could take in order to identify new and emerging risks?

In answering this question, we want to outline the role complaint handling has in understanding how consumers are treated by providers and as indicators of broader problems that should be addressed as part of the feedback response to complaints. We know that the problems of unfair products underpinning complaints has a much wider impact. Research shows complaints are simply the tip of the iceberg when it comes to problems experienced by consumers.

Personal experience, socio-economic status, empowerment etc. all play a role in determining if consumers feel a complaint is worthwhile. According to Van Ossel²⁰ around 9 per cent of all those who are dissatisfied complain, while Goodman and Grimm suggest between 4 per cent and 2 per cent of those with problems pursue a complaint.²¹ According to Lunt in a report for the OFT a major reason for low complaint numbers is the negative psychological effects to complainants of complaining.²²

Other research shows that those from lower socio-economic groups complain far less than on average. Both the Scottish Consumer Council (one of our predecessor bodies) and the European Commission have found the likelihood of making a complaint is increased with the level of education.²³

Thus, relatively few who are affected complain and of those that do according to the FOS many are actively put off by the attitude, information and delay of the banks who have an explicit incentive to actively discourage complainants. FOS data shows that of the consumer contacts it received as initial enquiries and complaints and who did not pursue their complaint, 41 per cent let the matter drop due to the difficulty of dealing with the financial firm involved.²⁴ It would also appear banks are failing to comply with the timelines in the DISP. The evidence from the FOS suggests that of the decisions it makes, 39 per cent of complainants about banks (the highest of all categories recorded) had not received a final response, even though their complaint had already been waiting longer than eight weeks and only 18 per cent of cases the FOS received said they were told about the FOS services by the company less than was previously the case.²⁵ While such data is not definitive it does indicate a trend to deter complainants from pursuing their case.

The problem is how to capture the difficult issue of consumer detriment. Regulators and the Ombudsman alike should be pro-active in capturing information through a range of analysis – including social science, social psychology, behavioural economics and mainstream data gathering. All should inform their work on consumer detriment in the complaints process.

²⁰ Van Ossel, G, Stremersch, S and Gemmel, P 'Customer satisfaction and complaint management' in B van looy *Services management: An integrated Approach*, London, Prentice Hall

²¹ Goodman, J. And Grimm, C. (2005) *Beware of trained hopelessness*, TARP, ICCM Weekly, 20 October.

²² <http://bit.ly/aWavBA>

²³ Quoted in p28-29, *Complaint Handling: Principles and Best Practice – Report for Energywatch* by the Centre for Utility Consumer Law, April 2007.

²⁴ Financial Services Ombudsman, *Annual Review*, 2010, p21

²⁵ Financial Services Ombudsman, *Annual Review*, 2010, p24

Specifically, we believe the FSA needs to put greater effort into capturing consumers who have had problems but who have not pushed the decision through the established processes. Pro-active research on their problems and their view of the complaint process would achieve two things. Firstly, it would allow consumers to access fair, impartial and prompt redress if, after due consideration, their cases have merit.

This could involve pro-active contact using the FOS or bank data on complaint cases left unresolved to assess the quality of the complaint handling and decisions about the substance of the complaint in these cases. Secondly, it would provide the regulator with a fuller picture against which to assess the banks' compliance with their TCF duties and new and emerging risks.

Q6. What further role might consumers play in identifying new and emerging risks?

Consumers' problems can be a bell wether for systemic problems. Good communication between consumers and regulators and analysis and use of information available are essential in order to properly utilise these early warning mechanisms, as well as to ensure balance in the market and improve standards. Greater consumer engagement in customer charters, development and monitoring of complaint handling process, policy development, consumer research, monitoring and reviews informed by consumer views and experience, and consumer representation on internal (institutions and regulators) decision-making bodies are all areas where consumers can play a role.

However, it is likely that consumers will need to be assisted, encouraged and supported to do this and there are significant blockages at the regulator's level, particularly in the FSA, to this participation. The OFT utilises broad stakeholder groups, working groups between industry and consumers/consumer groups, a consumer research base including qualitative market surveys, and regular monitoring and review systems such as that used in the licensing process. The FSA is considerably more limited in its consumer engagement, information gathering and participation and is often regarded by consumer groups and consumers alike as impenetrable. The recommendations of the consumer engagement review need to be implemented as a matter of priority to reflect and reinforce the FSA's changing role.

The DISP procedures themselves do not promote the importance of assessing consumer complaints, analysing root causes or using them to identify wider problems and referring them for organisational review. The formal requirements end at closure (whether there has been resolution or not) and reporting. Given that there is often a disconnect or separation between initial complaints handling/customer experience areas of an organisation and the management of the organisation, both procedures and regulatory supervision need to directly promote active monitoring, review and change in response to issues raised by the complaint process. The FSA's recent review of complaint handling in banking groups has found very low levels of senior management engagement in most of the banks assessed and poor quality root cause analysis²⁶ indicating that the process is largely a statistical and reporting exercise, and it is not being used to improve systems as a whole. It is surprising given the resources devoted to complaint handling that there is little appetite for extracting value and deriving the benefits from the process.

Neither does the DISP promote accessibility (despite this being one of the key BS ISO principles for complaint handling). Complaint processes can be used in some cases to deter complaints and therefore will act to limit information and consumer input to an organisation. Similarly, if a complaints process is mainstreamed it may exclude certain segments of the population and the perspectives that they bring. High complaint

²⁶ Financial Services Authority, Review of complaint handling in banking groups, April 2010

numbers may be an indicator of an excellent complaint process rather than a problem and complaints should be encouraged. Consumers do their own cost/benefit analysis of whether it is worthwhile pursuing a complaint. Automated options systems and handling by external call centres impact complaint resilience.

Q8. Would such a committee process improve the handling of emerging issues and mass claims?

Jurisdictional divisions and limitations across the regulators and the FOS cause confusion and mitigate against a broader systemic analysis. Some of the criticisms of banks in the FSA's review of complaint handling, such as failure to contextualise and analyse complaints may equally be applied at regulator level. Similarly some of the regulatory rules detract from the ability to analyse, such as the failure to require reporting of close of next business day complaints, although the banks are blamed for not taking these into account in their root cause analysis. More information and consistent collection, analysis, and monitoring of information across the regulators and FOS is needed to overcome the problems with the jurisdictional split and the different approaches and standards that apply.

Alternative Dispute Resolution has a role in raising complaint standards and service standards generally but it is important for the role to be defined, or if in the case of the FOS the role is limited to passing on information, real responsibilities attach to the regulator in relation to how these matters are dealt with. But this alone will not assist with prevention. Matters need to be identified far earlier than through an individual complaint process to the FOS, where the damage has been done and costs are accruing.

The lack of group action processes means the need to deal with broader issues rests with the regulator. A regulator, when given a power, needs to use it, or if concerned about its limits, test it. Restitution orders, the wider implications process and S404 all provide tools to deal with emerging risks and mass claims but have been left under-utilised and there are numerous cases, such as the overdraft charges case, PPI, and endowments, where consumers have suffered and the public purse has had to sustain costly individual and legal actions as a result. Where the regulator/s perceives limitations in this area these perceptions need to be backed up by evidence and consultation and then appropriate referrals for Parliamentary intervention need to be made.

Q9. What are the factors that should be taken into account when identifying mass claims?

The wider implication process has itself been limited because of the inability of the regulators to deal with past problems, leaving individuals to pick up the costs of seeking redress on systemic issues that have been already been identified. Under the wider implication process the bodies would consider matters involving:

- a large number of consumers
- a large number of businesses
- the financial integrity of a large business
- interpretation of FSA rules or guidance from the FSA or OFT
- a common practice by businesses

The proposed process for consideration of issues that are widespread by the co-ordination committee appears more limited, requiring a number of firms, 5,000 or more complaints **and** the underlying cause of complaints being similar.

Widespread and harmful practices can occur within one firm (and all its subsidiaries) and if not stopped may spread to other firms. And does the FOS really have to deal with 5,000 complaints on a similar issue before it is recognised as a broader problem? Are resources really that abundant that a similar case can be tried 5,000 times before there is action to deal with it efficiently? The number of complaints on their own cannot be relied upon as the sole source of evidence of a problem. If low values are involved then consumers may not complain at all or may not take the matter further than the internal complaints process. Without a collective action process there is the potential for mass harms to go without redress or reform.

The factors that need to be considered should include whether there has been a broad impact, intervening would be in the public interest, is it likely to deliver a more efficient form of redress in relation to a similar practice or product, the likelihood of individuals pursuing the matter separately and the cost to them and the State in doing this, the need for certainty rather than a series of individual rulings, unjust enrichment, and the likelihood that consumers who have suffered harm will not be compensated.



Consumer Focus response to the review of consumer complaints (emerging risks and mass claims)

If you have any questions or would like further information about our response please contact Oliver Morgans, Senior Policy Advocate, by telephone on 020 7799 7965 or via email: oliver.morgans@consumerfocus.org.uk.

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