



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to the Lending Code Review

September 2010

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General comments

The complexity of the regulatory system is exemplified in the Lending Code review, which outlines the conduct of business rules for credit but has reference to Consumer Credit Acts, Financial Services (Distance Marketing) Regulations 2004 and the UK Cards Association best practice guidelines.

For a consumer there is a quagmire of rules and guidance without a lot of clarity about their application and how they can be enforced.

Furthermore, this review comes during a period of reform in financial services generally and also on the supply of credit with the BIS Consumer Credit and Personal Insolvency review soon to go to consultation.

We are concerned the Code as it stands fails to protect consumers from unfair treatment. Evidence suggests consumers' concerns around credit are not being addressed by subscribers' internal complaint handling procedures or through the Code's enforcement mechanisms. Complaint numbers to the Financial Ombudsman Service (FOS) are extremely high on credit issues with credit cards the third most complained about product and current accounts second, where most complaints relate to overdraft charges.

The uphold rate by the FOS for credit cards is far in excess of its average uphold rate suggesting unfair treatment is systematic not just in the supply of credit but also in handling credit related complaints. Evidence for that comes not only from the FOS uphold rate but also from the recent Financial Services Authority (FSAs) Complaint Handling review¹.

This review of the Code must address its weaknesses as a mechanism for ensuring fair outcomes from the consumer perspective. In particular, reforms must centre on ensuring the Lending Code meets best practice criteria as set out by the Office of Fair Trading (OFT) Approved Consumer Codes criteria. Currently, the Code fails to:

- Build an understanding of evolving public policy challenges (by looking at complaints data, regulatory enforcement information and consumer research) to ensure the Code's objectives and its detail meet consumers' needs
- Build effective monitoring mechanisms. The Code review should offer mechanisms to proactively engage with consumers using focus-groups, in-depth interviews or social networking sites to assess satisfaction. The methodology and results need to be transparent, objective and provide a comprehensive assessment of performance
- Analyse the consumer journey and how their complaint feeds into monitoring and enforcement
- Get independent involvement judging breaches and develop effective sanctions
- Offer a high quality consumer friendly complaints procedure

In our response we set out in detail where we believe the text needs updating based on what consumers require from the Code.

¹ **FSA Complaint Handling paper**, <http://bit.ly/9uFtqz>

Detailed comments

Key commitments

Commitment 2 should add “are kept appropriately informed before, during and after the *point of sale*”.

Commitment 3 about regular statements should not be limited to “*as appropriate*”. Customers should be notified in advance about changes to interest or terms and conditions.

The Key Commitments also need to integrate wider principles present in the financial services industry eg, the key commitments from the FSA Treating Customers Fairly (TCF) initiative. That includes:

- Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly
- Where consumers receive advice, the advice is suitable and takes account of their circumstances
- Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect
- Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint

Communications and financial promotions

General points:

The OFT Irresponsible Lending Guidance states that the fair treatment of borrowers includes not targeting them with credit products that are unsuitable for them and that vulnerable consumers should not be targeted or exploited.² The first TCF principle set out above also reflects that duty. The Lending Code should ensure it reflects these rights and prescribes specific behaviour and processes from subscribers to ensure compliance with these principles. No consumer should receive financial promotions which:

- a) are inappropriate for them, since to lend to them would constitute irresponsible lending
- b) promotes irresponsible borrowing

Specific remarks:

15. ‘*Customers are given appropriate information at the right time*’ A third of bank revenue from current accounts derives from penalty charging.³ That means a consideration of the nature and size of penalty charging is vital for consumers to assess the value of an account. We believe that any advert for current account products should also contain information to consumers about the charges they will face for going into unauthorised overdraft.

² <http://bit.ly/cIOzaL>, p18-19

³ OFT, 2008 Market Study, p1

As charges have become more complicated in recent years this should offer at least one basic scenario for consumers to understand the nature of charging on each account.

It is of great concern that a common sense definition of what a consumer believes they are paying for products or services, which is clear and transparent and able to be quantified at the agreement stage, has not been established. The market does not operate when complexity of pricing is such that prices cannot be easily compared and where the upfront cost charged bears little relationship to the costs incurred.

22-25. The requirements around consent to pass on information to third parties and consent (or withdrawing consent) to receive marketing information do not seem sufficiently rigorous to ensure consent is gained from the consumer for their information to be shared.

26. The customer should be given the opportunity to opt out of receiving marketing information **with every communication**. That is the norm with many other forms of marketing. For example, providers of text message or email marketing offer consumers the option in each communication to no longer receive the marketing by 'unsubscribe' in a few simple steps.⁴ The DMA rules on Mobile Marketing Best Practice Guidelines should be replicated within the Lending Code.

Credit reference agencies

General points:

In our recent report on payday lending⁵, some of the interviewees referred to feeling that it was unfair that they should be unable to get mainstream credit because of a credit rating that was based on their previous not their current situation.⁶ A credit reference should reflect the updated situation in which the consumer finds themselves and should be judged solely on their ability to repay the loan.⁷

From our work in this area it has become clear that many poorer consumers are extremely good money managers but judged high risk on the basis of income alone.⁸ We believe that is not fair. Low credit scores should be reserved for those with a poor credit history and whose overall circumstances would continue to present a real and present risk of default. The poor should not be categorised as high risk simply on the basis of wealth but their ability to repay taking into account their income and expenditure and track record of money management.

Specific remarks:

34. The search itself should not impede a customer's ability to get credit elsewhere and so this needs to be removed. In addition multiple searches should not affect a consumer's credit rating. The Treasury Select Committee recently commented on the anti-competitive nature of multiple searches impacting on a credit rating.⁹ The Lending Code needs to reflect their concerns.

35. This information can be given out **only if**: there is a serious default and the relationship has broken down and the amount owed is not being disputed.

⁴ Mobile Marketing Best Practice Guidelines, p7 <http://bit.ly/bGAHg4>.

⁵ <http://consumerfocus.org.uk/g/4lt>

⁶ Ibid. p32

⁷ Consumer Focus, Response to High Cost Credit review, p4

<http://consumerfocus.org.uk/g/4m4>

⁸ Opportunity Knocks, High Cost Credit Review, On the Margins

⁹ Treasury Select Committee report, *Credit Searches*, 2009-2010 <http://bit.ly/cbOBUX>

36. We believe the first sentence should be removed.

37. The Code says that the lender can pass on information when the amount owed is not being disputed by the customer, but says that dispute must be 'genuine, reasonable and unresolved' – who decides that?

It should be the case that if the amount owed is disputed by the customer there can be no notification to the CRA. In these circumstances the matter should be referred through the firm's complaint procedure and/or attempt to be conciliated.

39. If the customer does not give permission to share information about the day-to-day running of their account, there are 11 other ways of permission being implied on the basis of the Information Commissioner's guidance, including through the terms and conditions in an opening pack. That is not sufficient protection or choice from the consumer's perspective and it needs amending. Permission must be sought in relation to each disclosure.

41. This misrepresents the ICO guidance and should be removed.

42. This should be given automatically.

Credit assessment

Specific remarks:

43. This refers to the requirement on lenders to assess whether the customer can repay a loan before paying it. This is basically about assessing affordability. The Irresponsible Lending Guidance requires lenders to lend 'in a sustainable manner' which is about looking at applicants in the context of all of their debts rather than just the debt they are applying for. In our response to the Irresponsible Lending consultation we referred to affordability being about the impact of the loan on the borrower's 'overall financial well-being'¹⁰. We also called for lenders to be required to obtain evidence of income and expenditure. The code should reflect these points.

Finally, the paragraph should be clearer that all extensions of credit in loans, overdrafts, increased credit limits or other borrowings should be initiated by the customer. It is inappropriate for consumer's to be 'pushed' credit.

44. All information used in the assessment should be made available to the customer with notification of the assessment. The Lending Standards Board review on credit assessments suggested subscribers were giving template responses when credit applications were rejected¹¹. We expect tighter guidance and clearer enforcement to ensure accurate information is given to the consumer. The customer should also have the opportunity of providing evidence to dispute any information in the assessment and the assessment will be reconsidered.

47. This states that if the income to repay a loan takes into account the income of another person, the loan should be made on a joint and several basis.

This is presumably to protect the lender because then they can pursue both of them if the loan is not repaid, but it does also ensure that the other person knows the loan is being taken out and their income is being taken into account. It also says that there are circumstances when it is appropriate to provide a loan on a sole basis, this should be spelled out.

¹⁰ <http://consumerfocus.org.uk/g/4m5>, p7

¹¹ Lending Standards Board, *Themed review of compliance with the Lending code's provision on credit assessment*, <http://bit.ly/aAGjAK>

Current account overdrafts

General comments

We have significant concerns about the operation of overdrafts and the changes we suggest below would assist with consumer protection and enhance competition.¹²

As our report *On the Margins* noted, the current structure has significant detrimental consequences. Over half of the interviewees had previously had accounts and many of them had closed the account themselves, or had them closed by the bank, because of a build-up of debt via overdraft or penalty charges.¹³ We do not believe banks serve all segments of the population by offering such product design.

We believe competition could be enhanced by offering greater consumer choice. If an unauthorised overdraft facility is available this should only be made available on an opt-in basis. This would allow consumers greater control, enhance their choice and improve the market place.

In addition, we would like to see simpler charging structures. *Keeping the plates spinning*, reported a perception among the interviewees that banks offered overdrafts with the intention of getting people into debt as the terms and conditions were not fully explained.¹⁴ In contrast, one of the features that consumers like about payday loans was the clarity about what they had to pay when. Greater clarity across other products would enable consumers to better compare across all types of loans. This is also supported by the OFT High Cost Credit Review research which found that when information was presented clearly and/or in a way that drew attention to particular information and where that information was easy to compare across products, consumers made better decisions.¹⁵

The Competition Commission also noted in reference to Northern Ireland that:

'We believed that, as a result in particular of the barriers to searching and switching that customers face arising from the undue complexity of charging structures and practices and lack of clarity of terminology, customers may be paying higher charges or levels of debit interest, or receiving lower levels of credit interest, lower levels of service, or there may be less innovation, than would be likely to occur in a well-functioning market.'¹⁶

¹² Refer also OFT 2008, *Current Account Market Study*, Competition Commission, 2007, *Personal current account banking services in Northern Ireland market investigation* <http://bit.ly/c2wAoG>

¹³ Consumer Focus, *On the Margins*, p12 <http://consumerfocus.org.uk/g/4lj>

¹⁴ Consumer Focus, *Keep the Plates Spinning*, p33

¹⁵ <http://bit.ly/bASDPy>, Annex A p29-30

¹⁶ <http://bit.ly/c2wAoG>, p10

Specific remarks

Pre-sale information

52. Pre-sale, the customer has to be provided with information about interest but not charges, which seems a significant omission. See paragraph 15 for further details.

53. '*Where relevant*' should include each and every time a consumer faces an overdraft charge as well as prior to the contract. Details also need to be included on the bank's website in an easily navigable location.

Point of sale and post-sale information

55. We recommend another provision under paragraph 55 for banks to help consumers face-to-face with opening an account and after they had opened the account explaining the functionality, most notably around penalty charges.¹⁷

Increases in overdraft are to be initiated by the customer only. This paragraph should make this clear.

56. If payments are presented that cannot be paid, the customer will be notified by email, text or phone in sufficient time to be able to rectify the situation. The lender should have to give the customer an explanation when they refuse the overdraft and, even if it is not the main reason, they should have to tell them if it is a credit scoring issue, because there might be a mistake on their credit record and/or they might be able to take steps to improve it.

Information about interest/charges

58. Such information should also be in any communication with a potential or current customer for example, in monthly statements, promotional material and on the firm's website. This should also provide details of where consumers can compare alternative products (*money made clear* website¹⁸). The OFT report in 2008 proved consumer's do not expect to go into unauthorised overdrafts therefore, information is potentially appropriate at any and every point. There is a duty for the banks to at least be transparent about the nature, variability and size of these costs in all communication.

60 and 61 – changes should be notified 30 days in advance to be consistent with the notice required for other terms and conditions.

Remove 63, consumers should still be kept informed.

Remove 64-66 and replace with:

64. All possible fees and charges associated with the contract are to be notified in advance of entering the contract and either quantified, or details about how the charges are quantified with reference to objective criteria should be provided.

65. Where charges are not contingent they shall be notified individually and as a total cost figure in advance of entering into the contract.

Additionally, all charges associated with an unauthorised overdraft facility shall be notified at the time of entering into the contract, at the time of opting in and at the time they are incurred.

¹⁷ Consumer Focus, *On the margins*, p35-36

¹⁸ www.moneymadeclear.org.uk

Furthermore, if payments are presented that cannot be paid, the customer should be notified by email, text or phone in sufficient time to be able to rectify the situation and prior to any penalty charge.

Credit Cards

General comments

This section of the Code will need to be updated to reflect the reforms coming out of the Credit and Store Card review. We expect the reforms to be unambiguous and clearly set out in this document. In particular, subscribers' new duties towards consumers with regards re-pricing, credit card cheques and unsolicited credit increases need to be clear. There is scope for the provisions to go further and reflect best practice and we encourage this approach wherever possible.

Specific remarks

Pre-sale information

69 – Introductory deals should be clearly identified, alongside the length of the deal, the end point of the deal and how the terms can vary. Furthermore, all other ancillary charges must also be brought to the attention of the consumer within this box. Currently, we believe charges such as balance transfer '*handling fee*' remain poorly advertised in credit card literature and should be displayed more prominently. The Lending Code and UKCA best practice need to be amended accordingly, especially for those products where a zero per cent interest free period is the main attraction.

71 - On the internet, the summary box information only has to 'be available' on a click through, that indicates that it would be possible for someone to bypass it. Given that it is meant to be prominent on any written material, it should be set up on the internet in a way that would oblige customers to look at it.

Point of contract information

74 – We also believe the text which displays the interest free period needs amending. Currently, credit card bills state purchases are interest free '*up-to / or a maximum of (for example) 59 days if you pay your balance in full and on time each month*'.¹⁹ In reality, very few purchases will ever be interest free for 59 days and this undoubtedly confuses consumers. A better way to express this idea in this example is '*interest free for four weeks after you receive your next statement if you pay your balance in full and on time each month – (31 to 59 days)*'.

78 – This should also be on every written communication to the customer.

79 – It is difficult to understand what this means from the consumer perspective. Any change in interest rate should be clearly communicated to the consumer. What, why, when and how the interest rate change will occur and what are their rights are to accept, challenge or reject this change.

Risk based re-pricing

80. We do not believe 12 months is long enough before a re-pricing nor is it reasonable to re-price every six months.

¹⁹ <http://bit.ly/9d1Kq6>

81. This section will obviously be updated following the BIS review to give consumers more time and a greater level of communication to reject a re-pricing and pay off the credit card. We expect the Lending Code to reflect this new reality.

In addition the Code needs to ensure compliance on this point. The BIS review found a low level of compliance with the Statement of Principles. We would expect the Lending Code to undertake a lot more consumer engagement, mystery shopping and enforcement action on the Principles to ensure the Lending Code is a useful vehicle for consumer protection.

The first step would be for credit card firms to explain as a statutory function why the rate is being increased in all cases, not just when the consumer asks. The bank should also offer the consumer the option of challenging that if it is based on credit score deterioration. The level of re-pricing should be shown to be based on actual cost or predicted risk increase.

82 – Or has made three consecutive payments on or near the minimum permitted showing distress or potential vulnerability.

84. In Consumer Focus's payday lending research, *Keeping the plates spinning* the interviewees felt that companies were too quick to give credit and to increase credit limit amounts.²⁰ There was a belief that the companies offer credit that is disproportionate to people's income and borrowers were encouraged to increase their credit limit through marketing. The Lending Standards board should therefore undertake much more mystery shopping and monitoring to ensure subscribers' compliance.

This assessment should be based on 'ability to repay', not just income. See our points above on credit reference agencies' assessments.

85. This will need to be updated following the Credit and Store Card review. All information allowing consumers to reject a credit limit increase should be written in neutral language and should not implicitly persuade the consumer to accept the credit limit increase. For example, it could lay out the dangers of doing so.

86. '*Through any means of communication they so choose*'. We believe it is for the consumer to up their credit limit.

91. How often is 'periodically' in terms of reviewing consumer accounts? Some guidance would be useful.

92. And the consumer shall be informed why it has been reduced and how they can challenge any decision, not only where the subscriber feels it appropriate.

Credit card promotional material

93. The end date should be on all correspondence to the customer prior and post its elapse. At the four to eight week warning numeric examples should be given to show how the change in terms would affect the consumer's average bill.

Credit card statements

96. As well as the cost to the consumer of paying only minimum payments.

98. The part on the allocation of payments will be updated to meet the new standards within the Credit and Store card review.

99. And the range of potential automated payment options the Credit and Store card review recommended. This option should be set out in all correspondence.

²⁰ P32.

Credit card repayments

100 – 104. This should be updated to reflect the changes in the Credit and Store care review.

Credit card cheques

These should be removed from the Code as unsolicited credit card cheques are now banned.

Loans

Declining an application

116. The subscriber should always inform the consumer in their notification why their application has been rejected not only when the consumer asks. Opportunities to challenge and appeal any decision should also be given. Again any decision should be based on 'ability to repay' not a narrow criteria based on wealth or income.

117. Re-write as '*A written explanation should be provided to the customer with the evidence on which the decision was made*'

Terms and Conditions

131. Remove paper and put '*in any*' format.

132. Add '*and the minimum notice period for changes to take effect*'.

133. Add '*or any other product*'

134. The customer should be free to close their account without giving notice any way.

Financial difficulties

145. When it is identified that a customer needs specialist assistance they should be referred to a specialist team and may also be referred to a debt recovery unit. We believe this needs further guidance. The consumer should only be exposed to debt recovery after repayment options and plans have been explored.

In our *On the Margins* report we called for bank staff to be trained on how to spot when people could be getting into difficulty and for banks to be more proactive in helping people who were having problems and also a safety net to stop a build up of charges and unmanageable debt and ongoing support from the bank when people were having difficulties²¹.

Debt collection agencies

151. One of the main problems with debt collection is the inaccuracy of data when debts are passed on to agents to collect or sold on to third parties. One way of improving this would be if there were financial penalties attached to getting it wrong – eg if the debt seller had to pay the purchaser back both the cost of the debt and of trying to collect the debt if the seller had given the purchaser incorrect information or in relation to collection agencies if the lender was liable for the debt collection practices of the agency in terms of their licence etc.

²¹ Consumer Focus, *On the Margins*, p36

To further consumer empowerment, in our response to the Irresponsible Lending Guidance consultation we recommended that where a debt has been sold on the creditor should be required to notify the borrower within seven days, including the nature of the information passed on which the consumer could then challenge if there were errors.²²

Breathing space

158. 30 days is not that long for discussions, a further 30-day extension should be granted except in exceptional circumstances, rather than only granted in exceptional circumstances.

160. If the lender has to contact the customer directly when there is an adviser dealing with their case, then they should explain why they are doing so (eg because of the adviser not being available etc)

Token offers and write-offs

165. It seems wrong that the lender can both accept a token offer and sell the debt to a third party debt recovery agent. Surely the point of accepting the offer is to suspend action for a while. We wish this paragraph to be amended accordingly.

Common Financial Statement

168. Why would some lenders choose only to use it when a customer has gone into default? The Code should try to ensure this is more than simply a last resort document.

Debt and mental health

174. Lenders may also be able to work with family members, subject to appropriate safeguards around confidentiality etc.

178. It seems unrealistic to expect the customer to inform the lender of their mental health difficulties and/or for the customer to gather the necessary evidence. It is more likely that a family member or care worker would get in touch and in those circumstances, they should be treated sympathetically and assisted appropriately.

181 and 182. We disagree that a lender can pass or sell on the debt as part of debt recovery or to take court action while it is apparent that the customer lacks the mental capacity to deal with their own affairs.

Complaints

General Comments

As suggested in the introduction, the evidence from complaints data suggests the Lending Code is singularly failing to ensure firms' behaviour corresponds to their duties set out in the Code on lending or complaint handling. The Lending Code, if it is to be of any use to consumers, must be a mechanism to bring firms to book for poor lending practices.

The FOS has specifically found a high level of consumer concern about the provision of credit. For example, credit cards are the third most complained about product to the FOS,²³ with the second most, current accounts largely involving the application of

²² Consumer Focus, *Response to OFT Irresponsible Lending Guidance*, p11.

²³ Financial Services Ombudsman, *Annual Review*, 2010, p31 <http://bit.ly/artnXf>

charges for unauthorised credit which also falls under the Code.²⁴ This evidently shows the level of concern consumers feel with credit products.

The FOS has also upheld a disproportionately high level of complaints on credit cards. The fact that FOS upholds more consumer complaints on credit cards (68%) than any other banking or credit complaint²⁵ and significantly above the average uphold rate on all complaints received, suggests the Lending Code is failing to ensuring subscribers treat their customers fairly in either the original credit contract or in the complaint handling process.

Further evidence on the poor handling of complaints by subscribers, contrary to their duties under the Code, comes from the FSA's review of complaint handling. It shows *"poor standards of complaint handling within most of the banks we assessed. This resulted mainly from weaknesses in banks' culture, particularly their governance arrangements, policies and controls. It was also reflected in our file review results"*²⁶.

- 18 per cent of the complaint files they reviewed were assessed as resulting in an unfair outcome for the complainant
- 36 per cent of the complaint files they reviewed evidenced poor quality complaint handling, particularly in terms of the quality of investigation.

It goes on: The quality of complaint handling by front-line staff in most of the banks assessed, the quality of complaint handling undertaken by front-line staff (where *complaint handling was not the main function of their role*) was poor, with inadequate investigation and poor decision-making on the outcome of the complaint and payment of redress (sometimes to the detriment of the complainant).

Finally, it would also appear banks are failing to comply with the timelines in the Dispute Resolution manual (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.²⁷

The complaint evidence suggests the Code is currently failing. Unless the review radically updates the Code to confront the issues the complaints data exposes it will remain an inadequate consumer protection tool unlikely to systematically identify and remedy evolving problems in the supply of credit.

The Code review must learn from FOS decisions and outline clear and thorough rules which ensures customers are treated fairly. It is vital consumers are offered a mechanism following their complaint to challenge subscribers adherence to the Code. The review must also ensure the Code enforces sanctions on subscribers for unfair treatment from lending and poor complaint handling with independent assessments on breaches. Currently however, the Code contains no sanctions for those firms with poor complaints procedures. Reforms must remedy this.

To make the Code a useful consumer tool the review should ensure the Code is aligned with the OFT Approved Consumer Codes of Best Practice on how complaints should feed back into the Code's design, its enforcement practices and its monitoring of compliance²⁸. This will include a clear, well-publicised consumer complaints procedure to challenge subscribers' adherence to the Code's provisions.²⁹

²⁴ Financial Services Ombudsman, *Annual Review*, p33

²⁵ Financial Services Ombudsman, *Annual Review*, p62

²⁶ **FSA, *Review of Complaint Handling***, p4 <http://bit.ly/bKHc8o>

²⁷ Financial Services Ombudsman, *Annual Review*, p24

²⁸ <http://bit.ly/bH3hOQ>, p27

²⁹ <http://bit.ly/bH3hOQ>, p27-33

Specific remarks

184. Procedures need to be well defined but also training and culture needs to support the procedures. The Code should be explicit about this requirement.

185. The role of the Ombudsman if the consumer disagrees with the subscribers' internal complaints procedure should also be explained here, through a brochure if necessary.

186. As above, the details of the FOS should be provided to the consumer so they know there is an independent and external decision making body available if they feel aggrieved with the subscribers' processes. The Lending Code places no compulsion for firms to mention the existence of the Ombudsman until a deadlock letter. The FOS Annual report suggests firms are failing to give a deadlock letter at the eight week period and that is likely to mean many consumers who would otherwise continue a complaint to the FOS are not doing so.³⁰

Information is most useful when it is relevant. If consumers were made aware at that moment that there is a fallback option, it might make them more confident to proceed with their dispute if as seems to be the case subscribers are not fulfilling their duties to delay with complaints quickly and appropriately and are not providing a deadlock letter at the right time.

187. As above, this should include giving information about the Ombudsman.

188. Subscribers should also write to the consumers within four weeks explaining why the complaint has not yet been resolved at that stage. If it turns out the delay is not for a legitimate reason, this should be taken into account by the FOS if it reaches that stage.

The Lending Standards Board should closely monitor compliance with this point since the FOS report and FSA complaints handling show the deadlock letter and details of the FOS simply are not being provided.

189. If the Code does not have any enforcement powers what is the point in the Code having provisions? This needs to change for the Lending Code to retain consumer support moving forward.

Monitoring

As has been mentioned several times throughout this paper, much greater monitoring has to take place and consumer feedback needs to be part of the monitoring process.

The OFT Code states '*Code members must be made aware that their adherence to the code of practice will be pro-actively monitored*'.³¹

Consumer complaints, both from the data published by the subscribers and the FOS, should be the first step to understand consumer concerns in order to inform the Code sponsors of undesirable practices among its subscribers.³² As the last section demonstrated, consumer complaint data suggests the Code is currently failing to ensure its members ensure fair outcomes for consumers.

The Code must analyse firms' own complaints data and liaise with the FOS to understand where subscribers are failing to treat customers fairly and update the rules, enforcement, redress and sanctions in light of this. We would like clear mechanisms to show how the Code learns from complaints data to ensure subscribers treat their customers fairly.

³⁰ Financial Ombudsman Service, *Annual Review*, p24. <http://bit.ly/9QhWpH>

³¹ OFT, *Approved Codes Core Criteria and guidance*, P33

³² As set out in the OFT, *Approved Codes Core Criteria and guidance*, p13.

Monitoring must also move beyond consumer complaints since many consumers may not know of the subscribers' or the FOS's complaints processes. Consumers may also not be aware they are receiving poor service since the nature of credit products is complex.

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 Ossel³³ 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.³⁴

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.³⁵

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.³⁶

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.³⁷

All of this shows wider monitoring of compliance is needed to remedy both the issues in the complaints received and also other consumer concerns that may not be captured through subscribers' or the FOS's complaints data. Independent audits that include mystery shopping, monitoring of press coverage, online feedback sites, and customer focus groups would provide consumers with confidence that the provisions within the code are being monitored, enforced and upheld.

The methodology and results at the very least need to be transparent and a comprehensive assessment of performance using selected indicators should be included in the Lending Standards Board Annual report. Greater independent scrutiny would help consumers to place their confidence in the Code and in its subscribers.

Following effective monitoring consistent enforcement is critical as set out by the OFT in its Approved Codes criteria³⁸. Without enforcement and sanctions that are meaningful a scheme is of marginal benefit to consumers. The threat of enforcement has to be credible.

We would like the Code review to set out in detail the enforcement criteria including its sanctions, procedures and timeframes. Consumers and stakeholders should be able to challenge firms' adherence to the Code if they believe that systemic problems. The penalties for failure to adhere to the Code should be sufficient to disincentive breaches.

³³ 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

³⁴ Goodman, J. And Grimm, C. (2005) Beware of trained hopelessness, TARP, ICCM Weekly, 20 October.

³⁵ <http://bit.ly/aWavBA>

³⁶ Quoted in p28-29, Complaint Handling: Principles and Best Practice – Report for Energywatch by the Centre for Utility Consumer Law, April 2007

³⁷ Financial Services Ombudsman, *Annual Review*, 2010, p21

³⁸ OFT, *Approved Codes Core Criteria and guidance*, p39

Consumer Focus response to the Lending Code Review

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