

'Rebuilding trust in British banking'

How do we rebuild trust in British banking? This was a question¹ that the Parliamentary Commission on Banking Standards (PCBS) considered, and their '*Changing Banking for Good*' report, published in June this year, sets out **some very clear and significant solutions.**² The Government is of course taking many of the Commission's recommendations forward in its *Financial Services (Banking Reform) Bill*, which is currently at the committee stage in the Lords.³

The Consumer Panel would argue that these reforms are at the very heart of rebuilding trust in British banking; and are fundamental to ensuring that consumers get a fair deal from their bank.

Solutions and problems start at the top. Which is why the Commission proposed a new Senior Persons Regime, replacing the Approved Persons Regime, to ensure that **the most important responsibilities within banks are assigned to specific, senior individuals.**

This is necessary so they can be held fully accountable for their decisions and the standards of their banks in these areas. The new criminal offence of reckless misconduct by Senior Persons underlines the political consensus that the buck has to stop with our senior bankers.⁴

¹ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtpcbcs/27/27ii15.htm>

² <http://www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/changing-banking-for-good-report/>

³ <http://services.parliament.uk/bills/2013-14/financialservicesbankingreform.html>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245758/HoL_Policy_Brief_-_Criminal_Sanctions.pdf

I'd suggest this new legal emphasis on senior leadership and accountability can be seen as an opportunity. An opportunity to lead by example; change past cultures and damaging practices; an opportunity to reconnect with the customer.

Complaints, and how they are managed, provide a tremendous insight into the health and governance of any organisation. One clear way to improve a customer's trust and confidence is to treat them fairly, especially when things go wrong.

Good complaints management can strengthen consumer loyalty by providing swift and effective redress where appropriate. UK banks have engaged in some excellent and positive initiatives this year – **the re-try system, the new current account switching guarantee, and the initiative on interest only mortgages with the FCA** – I will say more about some of these developments shortly. And the Payments Council is of course doing very good work on delegated payments – a sensitive area where there is a need for a safe and flexible way of delegating payments that does not compromise the security of the delegator - often elderly or disabled - or the delegate.⁵

Yet against this backdrop, we still have the hangover from Payment Protection Insurance (PPI) mis-selling – £11.5bn refunded since January 2011, with around a third of consumers' money hoovered up by claims management firms. And we have had mis-sold Card Protection Plan insurance⁶ for customers activating new debit or credit cards, and the interest rate swaps debacle for small businesses, which now has a compensation fund of £3bn, although the final bill could be much higher.⁷ **All of these very costly and damaging mistakes were to do with bad selling practices – which I would argue ultimately brings us back to where I started: culture and leadership from the boardroom.**

⁵ http://www.paymentscouncil.org.uk/files/payments_council/payments_council_response_to_hmt_consultation_-_opening_up_payments_-_25-06-2013.pdf

⁶ <http://www.fca.org.uk/news/consumer-redress-agreed-for-mis-sold-cpp-insurance>

⁷ <http://www.independent.co.uk/news/business/news/interest-rate-swap-scandal-banks-face-hidden-bill-of-up-to-10bn-to-settle-property-developer-claims-8804142.html>

Last week the FCA published data on complaints and redress for the first half of 2013.⁸ **The encouraging news is that complaints fell by half a million from the second half of last year** – with a total of 2.9 million complaints for this ‘H1’ six month period as against 3.4 million in last years ‘H2’ period.

The five most complained against firms were: Barclays, Lloyds TSB, MBNA, Bank of Scotland and Santander. The most common complaints to firms were as follows:

- PPI – representing 61% of new complaints;
- General insurance, which accounted for 11% of new complaints;
- 10% of all complaints concerned current accounts;
- While credit cards accounted for 6% and savings products 3% of new complaints, respectively.

But when we consider the latest data from the Financial Ombudsman Service - which was published earlier this month - we can see that all is not well in the handling of complaints by banks.⁹ **Complaints to the Financial Ombudsman Service about current accounts, for example, rose by 34% between 2012 and 2013.**¹⁰ PPI complaints continue to grow with a 140% increase in PPI complaints to the Ombudsman Service¹¹ in 2012/13, **with an average uphold rate of 65%**, which tells you there is something wrong as complaints are being wrongly rejected by banks.

Indeed, **the PCBS expressed serious concern with the way UK banks managed complaints.** This is what the Commission had to say on this subject, in Volume II of their report:

“The large banks have a poor track record when it comes to complaints handling. This is clearly demonstrated by the high uphold rate by the Financial

⁸ <http://www.fca.org.uk/news/the-fca-publishes-data-on-complaints-and-redress-for-the-first-half-of-2013>

⁹ <http://www.financial-ombudsman.org.uk/publications/ar13/about.html#product>

¹⁰ <http://www.financial-ombudsman.org.uk/publications/ar13/about.html#a1>

¹¹ <http://www.financial-ombudsman.org.uk/publications/ar13/foreword.html>

Ombudsman Service, especially when it comes to handling customer complaints regarding PPI. **This is unacceptable and has clearly contributed to customers' lack of trust in banks. The Commission expects to see a significant improvement in bank performance in this area**'. [at paragraph 529].¹²

If we exclude PPI, the top four subjects for complaints were credit cards, current accounts, mortgages and consumer credit. Here, we also have relatively high uphold rates – **over a third for credit cards and current accounts, over a quarter for mortgages, and 50% for consumer credit products.**¹³ The Ombudsman notes that they continue to see some businesses responding to complaints unhelpfully, aggravating a problem, which might have been easily resolved.

Concerns over the amount of complaints going to the Ombudsman Service has led to the FCA asserting that **'something was not working'** in the way firms managed their customer complaints.¹⁴ **The FCA has now launched a thematic review of complaints handling in major firms in two phases.** The first phase will consider how firms identify, record and report complaints, and will finish at the end of this year. The second phase starts in early 2014, and will consider the approach to redress and root cause analysis by firms. The FCA will conclude and make recommendations from the review in the second quarter of next year.

In announcing the complaints review, the FCA said: "We will use our new assessment approach to place greater onus on senior persons to understand how effective the complaints handling process is, and how they use the complaints experience to identify and correct the systemic causes behind customers complaints."

¹² <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtpcbs/27/27ii07.htm#a96>

¹³ <http://www.financial-ombudsman.org.uk/publications/ar13/dealt.html#a7>

¹⁴ <http://www.moneymarketing.co.uk/fca-says-banks-complaint-handling-isnt-working/1076742.article>

The Consumer Panel welcomes this review. We hope that it will provide robust evidence of what is going wrong and why. We hope this review leads to evidence-based solutions on what firms need to do to get it right for consumers. The customer experience in the complaints handling process should be seen as an integral part of the process that rebuilds trust in our banking system. **And we need to ensure that people aren't sold products they don't need, don't want, or can't use if we are to reduce the overall volume of complaints.**

I'd like to turn now to the publication of Ombudsman decisions, and what this should mean from a consumer rights perspective.

Section 230A of the Financial Services and Markets Act 2000 - as introduced by the 2012 Financial Services Act - requires the Ombudsman to publish certain determinations.¹⁵ **The Ombudsman's searchable website**¹⁶ went live in July this year **with 1,250 decisions published**, the majority of which were related to banking and credit complaints.¹⁷

The Panel has always been very supportive of this development as part of our policy on greater transparency and openness when it comes to firms who behave badly. As you may know only final Ombudsman decisions are now published as opposed to decisions by adjudicators - and there are roughly 8 adjudicator decisions to every final Ombudsman decision – for 2012/13 that equates to almost 199,000 adjudicator decisions to just over 24,000 Ombudsman decisions.¹⁸

Clearly, there may well be a greater incentive for firms to settle at the adjudication stage unless they are genuinely confident the complaint has no merit.¹⁹ **The**

¹⁵ As inserted by schedule 11 of the Financial Services Act 2012:

<http://www.legislation.gov.uk/ukpga/2012/21/schedule/11/enacted>

¹⁶ <http://www.ombudsman-decisions.org.uk>

¹⁷ <http://www.ftadviser.com/2013/07/15/regulation/regulators/fos-decisions-website-goes-live-with-rulings-EgHOH43tPxXsFYC1md3pJO/article.html>

¹⁸ <http://www.financial-ombudsman.org.uk/publications/ar13/dealt.html#a5>

¹⁹ <http://www.ftadviser.com/2013/09/11/regulation/regulators/how-fos-decision-publication-will-change-complaint->

searchable database should work in the interests of both consumers and the industry because although decisions are not binding precedents as such, both consumers and firms will be able to gauge the likelihood of success if they can consider comparable cases. This should avoid unnecessary disputes and ultimately empower consumers and the network of free charitable advice agencies advising them.

I mentioned current account switching earlier, and of course the new account switching service was launched last month, backed by a new Current Account Switch Guarantee.²⁰ The Panel welcomes this initiative **and credit must be given to the Payment Council and UK banks and building societies for developing this excellent free service,** at a cost of around £750m.

Switching is of course an issue which the European Union is very interested in. In June this year, the European Commission published its proposal for a Directive on access to payment accounts with basic features, **the comparability of fees related to payment accounts and the switching thereof.**²¹ Switching is of course an issue which goes to the heart of complaints – less so with banks, but in the telephone and utility industries we know it is a popular way for consumers to ‘*vote with their feet*’.

The rationale behind the proposal is that the **Payment Services Directive**²² does not contain any provisions concerning the comparability of fees and the manner of presentation of such information. The implementation of the *Common Principles*²³ **for Bank Account Switching was meant to be completed by the end of 2009, but remains incomplete at present. Accordingly, the Commission wants to see a payment account switching mechanism that is easy, fast and secure for consumers.**

handling-8uKjnBswX2objveUtQiCUL/article.html

²⁰ http://www.paymentscouncil.org.uk/switch_service/overview_of_account_switching/

²¹ http://ec.europa.eu/commission_2010-2014/mimica/news/2013/06/20130625_en.htm

²² 2007/64/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0064:EN:NOT>

²³ Adopted by the European Banking Industry Committee (EBIC).

And of course, UK banks have now delivered such a mechanism. **The 7 working day switch service will present a challenge to all banks to improve their customer service if they want to retain their existing customer base.**

However, **while the account switch may take place on one day, the customer's card and PIN are not required to arrive within the 7 day period.** We remain concerned this will effectively mean that some customers will not be able to access funds from their account or operate the account for the numerous daily transactions that we all engage in. **The Panel believes this is an important issue that should not be left to individual participants to vary timeframes; switching a current account on one day should mean just that - everything including a card and PIN being transferred within a guaranteed and understood period.**

The switching service is of course a voluntary initiative by the industry, **but it might be argued that the service should be enshrined in BCOB rules²⁴** given how important the ability to change banks is to consumers and to the principle of effective market competition, and particularly so if there is to be European law in this space too?

I've been asked to talk about current and emerging concerns for customers.

Over the last year, the Panel has undertaken work on a range of banking issues which we know from our consumer networks are still the source of customer dissatisfaction and complaints. I want to focus on some topical issues and I would welcome your thoughts and comments here.

Mis-directed payments is a practical problem. If a payment is made in error to the wrong third party – which can happen easily by simply getting one digit wrong – the

²⁴ <https://fshandbook.info/FS/html/FCA/BCOBS>

customer has to seek their own refund from the third party which can be very difficult or impossible in practice. If a bank makes the error the customer is entitled to a refund. Customers need to exercise care and due diligence of course, but it would be good to see the industry think about a better solution here? Why can't payments made in error be suspended from the payee's account, where possible, and a scheme be devised to enable an innocent party obtain a refund without the prospect of having to sue the third party? Given banking technology there must be a better solution than the current Stone Age solution.

The closing of dormant bank accounts is a potential area for concern. There is emerging evidence that some UK banks are now writing to their customers where there has been inactivity on accounts for 12 months. Writing to customers may not alert them if they have moved address of course – a telephone call may help? - but the key area of concern is that the industry guidance – which was confirmed by the FCA – **uses a three year period of activity as the trigger for closing a dormant account.**²⁵ This is set out in the first pledge of the industry **ten core pledges** on the *MyLostAccount* website.²⁶ Dormant accounts are a target for fraudsters and banks are right to be concerned about them, but why are some major banks not following the industry guidance?

Perhaps the most peculiar of scenarios at present is where a customer's account is forcibly closed by his or her bank because account fraud is suspected, however, the customer is often not told what the problem is, or what they can do about it. **Instead, they just discover they don't have a current account and can't open another one. We think this is wrong**²⁷ and have been working with the British Bankers Association', Stephen Timms MP and other key stakeholders to find a reasonable way forward. We believe at the very least banks should advise affected

²⁵ <http://www.mylostaccount.org.uk/ten.htm>

²⁶ <http://www.mylostaccount.org.uk/>

²⁷ <http://www.bbc.co.uk/news/business-18540832>

customers of their right to complaint to CIFAS.²⁸ At present this is not happening, and as a matter of fairness consumers should know what their basic legal rights are.

In relation to potential new mis-selling and future complaints, **earlier this year the FCA published the findings of its mystery shopping review of the quality of investment advice given by banks and building societies.**²⁹ The review was troubling as it revealed that one in four customers were given poor advice, with as many as one in ten being given ‘unsuitable advice’.

Clearly, mis-selling is continuing despite previous thematic reviews in the investment advice space, which have found similar problems. **The Consumer Panel believes that stronger action is necessary to force firms to treat their customers fairly.**³⁰ **Prevention is better than cure when it comes to complaints. Ultimately, consumers don’t want to complain in the first place, and it’s worth remembering that most people don’t complain, but they do share their bad experience with around nine people on average, so good complaints handling is essential to avoid reputational damage.**

Bank charges, particularly for authorised and unauthorised overdrafts, are a key source of complaints in the consumer world. You may have seen *Which?* this month make the point that while payday lending with its eye-watering telephone number rates of interest have been hitting the headlines almost every week – **they are in truth kissing cousins with authorised overdraft charges, with unauthorised charges being much worse than payday lending charges.**³¹ For example, borrowing £100 with an authorised overdraft will cost £30 with Halifax or £20 with some Santander accounts – whereas QuickQuid or Wonga costs between £20 and £37. Borrow the same sum on an unauthorised overdraft and it can cost £100 in bank charges!

²⁸ http://www.cifas.org.uk/dispute_a_warning_can_I_get_it_amended_removed

²⁹ <http://www.fsa.gov.uk/library/communication/pr/2013/014.shtml>

³⁰ <http://www.fs-cp.org.uk/newsroom/2013/227.shtml>

³¹ <http://news.sky.com/story/1154209/banks-defend-charges-from-rip-off-claim>

The banks defence here appears to be that they would never recommend anyone borrowing money on an unauthorised overdraft – yet if we are to have a spoonful of medicine for payday lenders, why shouldn't overdraft charges get the same treatment? Why not indeed.

The Consumer Panel examined such issues in its *Better Banking Position Paper* which we published in March last year³². We urged the FCA to use its new powers to do five key things, which are worth summarising:

- remove opaque charging by requiring transparency on the true cost of the different parts of banking services;
- empower consumers to shop around much more by switching their current account provider without any hurdles or delays;
- tackle cross-subsidisation within retail banking at the expense of financially vulnerable consumers;
- insist banks act honestly, fairly and professionally by bringing an end to the inappropriate incentive structures which reward one-off sales rather than developing long-term customer relationships; and
- make it easier for new competitors to enter the retail banking market in order to increase consumer choice.

On some of these calls, it is fair to say the FCA and the industry has made good progress – for example, there have been positive changes to the process for new banks to enter the market; there have been improvements on disclosure in relation to

³² http://www.fs-cp.org.uk/publications/pdf/consumer_banking_position_paper.pdf

packaged bank accounts; the industry itself has embraced account switching and has delivered a good mechanism for consumers; and yet fundamental problems, as I have discussed this morning, remain.

If we are to significantly reduce the high level of complaints we need to change the culture within firms. **I have no doubt that the reforms of the Banking Bill and the new consumer protection and competition duties of the FCA are key to progressive change; but at the end of the day the responsibility for change and success rests with our senior bankers.**

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