



FINANCIAL SUPERVISION COMMISSION

DEPOSIT TAKING (BANKS)

THEMED VISIT PROGRAMME 2011-12: COMPLAINTS HANDING – SUMMARY FINDINGS

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1. Introduction

- **Financial Services Rule Book (“Rule Book”)**

The Commission has a regulatory objective to secure an appropriate degree of protection for the customers of persons carrying on a regulated activity. The Rule Book contains some important provisions in relation to the management of complaints. It is important that banks observe high standards of integrity and fair dealing, and have robust processes to ensure that complaints from customers are recorded and any appropriate remedial action is taken promptly. In order to fulfil our responsibilities, the Commission carried out themed on-site reviews of certain banks’ complaint management processes with a particular focus on record keeping, adherence to procedures, timely identification and resolution of issues, and management information.

Any business that deals with the public might expect to receive complaints as a part of their normal day-to-day activities. The Commission has taken the view that the number of initial complaints received by a bank is not a material statistic for supervision purposes, as banks will have different size customer bases. However, concern would be raised if initial complaints are not recorded, or resolved promptly; when a complainant’s individual issue is resolved but the systemic or control failure which caused the complaint is not addressed; or when the treatment of complainants gives rise to further complaints.

From a commercial perspective, banks would be expected to direct sufficient resources to deal efficiently with customer complaints in order to identify control failures and avoid potential losses, to retain customers, and to prevent reputational damage.

The Commission does not seek to intervene in commercial disputes between banks and their clients. However, many of the complainants who have contacted the Commission directly in the past have done so, not to affect a resolution, but primarily to ask for assistance in getting a bank to acknowledge and deal with a complaint. The number of such requests has noticeably fallen following the review.

The purpose of this feedback is to highlight the Commission's key findings from the complaints handling on-site reviews that have taken place between May and December 2011.

2. Key findings

2.1 Identification and logging of complaints

2.1.1 General observations

During the review, it was observed that most banks used a similar definition for complaints, e.g. 'any expression of dissatisfaction'.

Some banks categorised different types of complaint, e.g.:

- Policy – where the customer is unhappy with a policy decision that has been made by the bank (e.g. standard charges or interest rates that have been correctly applied under the terms and conditions of the product).
- Bank error¹ – where the customer has suffered due to an operational mistake (e.g. charges levied in error; instruction not actioned, etc).
- Customer understanding – where the customer's expectations have not been matched by the service received (e.g. where a payment has taken longer to be received than was anticipated).
- Justified / unjustified – categorised according to whether the bank believes the client has cause for complaint. Justified complaints usually correlated to those where a bank error had occurred.

¹ Bank errors that had been identified by banks, but where no customer complaints had been raised, did not form part of our review.

- Regulated complaint – these were usually seen as a separate category, and handled by a dedicated team (e.g. relating to investment business, regulated mortgages, etc).

In some instances, banks also logged customer queries and / or compliments using the same recording and classification system.

To enable a bank to comply with Rule 8.29, all customer-facing staff must understand the bank's definition and classification system for complaints, have received training to enable them to identify complaints, and also training in the appropriate procedures to follow on receipt of a complaint. Staff should understand the distinction between clients asking for information and those raising a complaint.

In some banks, any member of staff who might receive a customer complaint is authorised to deal with the recording and resolution of that complaint; in others, customer facing staff who had identified a complaint were able to pass the complainant's call, details, or correspondence to a dedicated complaints handling team.

2.1.2 Written complaints (including emails)

It is a Rule Book requirement that all complaints made in writing should be identified as such and recorded in a complaints register. During the visits, it was apparent that not all such complaints had been readily identified or recorded. In some instances, it was evident that a customer had raised a definite complaint more than once before it had been recorded as such. The Commission considers that the time lapse between original receipt of a complaint by any employee of the bank (or person contracted on behalf of the bank) and the entering of the complaint details on the bank's complaints register should not exceed one working day.

2.1.3 Complaints in person or over the telephone

A number of banks also logged complaints on their complaints register that were received by a means other than in writing (e.g. by telephone or in person).

Some instances were seen where complaints were not recorded on the complaints register, (even though significant bank errors had occurred), because the complainants had notified the bank by telephone. These complaints were not then brought to the attention of an employee with authority to deal with them in a timely manner. Although it is not a Rule Book requirement to record such complaints on the complaints register, if remedial action or compensation is required this must be taken promptly, regardless of the means of contact (refer to Rule 8.29 (2) (c)). It is recommended, as best practice, that any complaint that relates to a bank error is

recorded on the complaints register on receipt, regardless of the method of communication.

2.2 Complaint handling procedures

All banks that were part of the review had procedures in place for complaint handling (Rule 8.29 (2)); in most cases banks had both internal and customer facing procedural documents (leaflets / brochures).

2.2.1 Ombudsman

Complaint handling procedures for staff must include reference to the Isle of Man Financial Services Ombudsman Scheme where applicable, and should be available to all staff dealing with complaints for Isle of Man based accounts (Rule 8.29 (3)). Where complaints are not being handled in the Isle of Man, but relate to Isle of Man sited accounts, details of the Isle of Man Scheme must be referenced within the procedures, not details of the UK Ombudsman. This was not evident in all banks.

Complaints leaflets / brochures for Isle of Man sited personal customers should include the right to refer to the Ombudsman in certain circumstances. Leaflets / brochures for corporate clients should indicate that the Ombudsman service may not apply.

2.2.2 Refunds / compensation

In some cases, differing levels of redress were observed within the same bank. To ensure consistency, banks' procedures and training should provide complaint handling staff with clear guidance and parameters for the payment of refunds and compensation. The Commission does however recognise that there may be circumstances where banks may offer refunds / compensation to particular customers based on their business relationship. When such situations arise, the business rationale should be formally documented.

Procedures for staff should include the authorisation process that is to be followed when processing a refund, compensation, back-dated interest, gesture of goodwill or ex-gratia payment. They should also include who can mandate each level of payment; and how a record is retained of the authorisation. Mandates should clearly specify the maximum amount that can be authorised and the nature of the transactions that can be authorised.

2.2.3 Risk escalation

Procedures for staff should include the requirement to escalate the matter to senior management and/or the Risk function in certain circumstances. Notification must be

provided as appropriate to the PII insurer (where applicable) and also the Commission in certain circumstances, e.g. following breakdown of administrative or control procedures (Rule 8.17), staff disciplinary action (Rule 7.10), legal cases where the amount exceeds £500,000 (Rule 7.18), etc.

2.3 Management of customer issues

2.3.1 Timing

During the review, it was noted that complaints were not always being investigated promptly or thoroughly, nor was remedial action always undertaken in a timely manner.

In a small number of cases, instances were also seen where simple complaints were not addressed within the 12 week timescale prescribed by the Rule Book. Some complex complaints had not been resolved within this timescale, but were being addressed.

Complaints should be brought to the attention of an officer or employee of the bank with authority to deal with complaints without delay. The Commission is of the opinion that complaints arising due to a bank error should be brought to the employee / officer's attention within one working day of receipt.

If complaint handling is dealt with outside of the Isle of Man, appropriate processes should be in place to enable the complaint handling staff to receive details of customer complaints promptly and to have immediate access to the necessary systems and relevant departmental staff to resolve the issues in a timely manner.

2.3.2 Acknowledgement

Where an in depth investigation is required, it is recommended that banks provide an initial acknowledgement to customers to confirm that their complaint is receiving attention, and indicate the timescales within which it is expected to be resolved, or when a further update should be expected. Banks should also consider including the name and contact details of a person that the complainant can contact, who will take ownership of their complaint. The Commission observed a number of instances where timescales had not been provided to complainants, or where banks had failed to adhere to the dates initially advised.

2.3.3 Offer of redress

Where a complainant had suffered an inconvenience due to an error by a bank, it was clear that the first priority was to rectify the situation, e.g. refund a payment made in error; apply back-dated interest; amend incorrect data; provide the service

requested; etc. In some instances, the amount that the complainant believed to be due to him / her did not correspond with the figure conceded by the bank. The Commission did not seek to enter into any evaluation of such disputes.

Most banks also had a system for making financial awards (or similar gestures) to compensate clients who had suffered any inconvenience. The awards were variously designated as a 'gesture of goodwill', an 'ex-gratia payment' or 'compensation'.

A complainant should be notified of the outcome of an investigation in writing (see the guidance to Rule 8.29 (1) (f)). This is not required where the amount of the required redress is minimal and the complaint is being resolved at the first point of contact (e.g. refund of payment charges).

In order to determine whether a customer has accepted a bank's offer in resolving their complaint (whether in rectification or as compensation for inconvenience), and will not pursue the matter further, the practice seen in some banks was to issue a letter to a complainant advising them that if no response is received within a specified timeframe the case will be considered closed, and the offer deemed to be accepted (see also 2.3.8 below).

The bank's records should be updated to show that an offer has been made, and whether the offer has been accepted, (by agreement or by tacit consent) or rejected. Records should also evidence what level of potential liability is still in dispute and / or remains outstanding.

2.3.4 When the first attempt to placate a complainant has failed

Once an initial investigation of the complaint had taken place, and a first attempt had been made to remedy the situation, a number of different systems were observed for handling complainants who remained unsatisfied. The complaints were generally escalated and procedures undertaken by a different or more senior member of staff, and included: re-opening of the original (closed) complaint; creating a new record in the same or a separate register; creating a new record in the register with the categorisation of 'stage 2' complaints (initial complaints being categorised as 'stage 1'). Whatever system is used, a clear process should be in place to escalate a complaint through the stages, and the customer should be advised of the expected timeframe. The complaints register should be updated at every stage and records linked so that the activity can be followed through. Again, this was not evident in all banks.

2.3.5 Final offer

Instances were seen in some banks of complainants continuing to express dissatisfaction, and banks providing responses and offers on an ongoing basis, without a final cut off date. Except for extremely complex cases, the Commission expects that complaints will be dealt with promptly and, at most, within 12 weeks of initial receipt. If the complainant has not accepted the bank's attempts to remedy the situation by this date, the complainant should be provided with notification of a final offer (this was also described by some banks as a 'deadlock' letter).

Where a final offer of compensation is made, it should be made clear to the customer that this is a final offer, and the bank will not consider any further reimbursement, i.e. the matter is not open for negotiation. If banks are certain that any relevant investigation has been completed fully, they may choose to make the first offer their final offer (for further information on stages for dealing with complaints see 2.3.8 below).

Where a final offer is made, eligible complainants should be informed of their right to revert to the Ombudsman if they are still not satisfied (as explained in the current guidance to Rule 8.29). Non-eligible complainants should not receive this information.

2.3.6 Unresolved issues

Where customers remained dissatisfied following a bank's final offer (or when no resolution was forthcoming), there were a number of other avenues that were taken by complainants which were seen during our review:

- Ombudsman (where applicable)
- Financial Supervision Commission
- Court action
- Head office / office of the CEO or MD of the group
- Media

In some cases where complaints were referred to one of the above parties, the bank had failed to acknowledge or deal with the original complaint in a satisfactory way.

2.3.7 Client satisfaction

A number of banks followed up on complaint cases by undertaking customer satisfaction surveys. In some cases, the information obtained from the survey assisted banks in understanding client issues and ensuring that the complaints process had been followed correctly. Although some customers gain comfort from

such attention to their level of satisfaction, when customers were surveyed and their complaints had not been satisfactorily resolved, they re-visited the issues and in some cases raised further complaints.

Instances were seen where banks had addressed an issue that gave rise to a complaint, but it was apparent that the level of customer dissatisfaction was such that the customer may have subsequently terminated the relationship with the bank. Customer retention processes did not form part of the Commission's review.

2.3.8 Moving to a one stage resolution process

During our visits it was evident that the majority of banks were using a two stage resolution process in dealing with complaints. This process is such that a bank will issue a first resolution contact with a complainant that provides them with a specified time period (often 8 weeks) to consider a bank's response, and that if a bank does not hear from a complainant within this time period, the complaint would be closed. This method, however, can create the re-opening of complaints (in some cases more than once), before a final response is issued. It can also create the situation where complaints may not be fully investigated or lower offers of redress are provided at the first resolution point.

In the UK there is a move towards expecting banks to issue complainants with one resolution response (i.e. a final resolution at first point of contact). In order to make this work, complaints must be investigated fully and staff trained appropriately. The final response letters (or equivalent by telephone etc) should also be clear and at least include the following:-

- Synopsis of the complaint
- Confirmation and explanation of decisions and whether the complaint has been upheld
- Information about any compensation / refund / goodwill offered
- Referral rights (to Ombudsman if appropriate)

The use of a one stage resolution process is designed to reduce re-opened cases, and help ensure that a full investigation is conducted, and that the communication to the client is clear and well explained.

2.4 Record keeping

2.4.1 Checklists

A number of banks made use of standard checklists to record complaints and track progress, which was noted as good practice by the Commission. However, instances were seen where there were several versions of a checklist in use. Where a standard checklist is used, procedures should be embedded to ensure consistency.

2.4.2 Complaints register²

In some banks, where types of customers, products or projects were being dealt with by very compartmentalised processes, different complaints registers were maintained for each type of customer or product, e.g. corporate / personal / PPI. Where more than one register is maintained, the details recorded should attain the same standard.

The complaints register must include all of the information required by Rule 8.29(4)(b). This may be in summary form, with full details held elsewhere. The Compliance Officer is responsible for ensuring that the register is maintained (Rule 8.19). Although all banks maintained some form of register, in a number of cases the registers did not meet the requirements of the Rule Book.

The complaints register may not be the only place where a complaint is recorded. Where details of complaints are held on several different systems, the information recorded, again, should be in concord. The information contained in the complaints register and other systems should be accurate and updated promptly following any complaint related activity.

Complaints records should show the rationale for any decisions, e.g. where a decision is made to refund a charge to one customer, but the bank declines to do so for another, it should be clear what factors were considered in each case. This would demonstrate observance of the principle of treating customers fairly (refer Rule 6.7(1)(a) and Rule 8.4(2)(c)). Instances were seen by the Commission of refunds of valid standard charges to individual customers due to a complaint, but customers that had not complained continued to incur these charges. In the absence of a business rationale relating to the particular cases where such refunds were applied, this does not appear to the Commission to constitute fair treatment of all customers (also see section 2.2.2 above).

² For this purpose a register can also be considered to consist of information that is stored in a database used for the management of complaints and can be extracted from that system if required.

Complaints that have been received via the Ombudsman should also be recorded on the complaints register.

Records should show who authorised any complaint-related payments, and how this was mandated, i.e. the thresholds that applied to the authorisation.

Where instructions and agreements relating to complaints are sought by telephone, in the absence of automated call recording, a formal and thorough record of discussions should be made and recorded against the relevant complaint.

2.4.3 Management of systemic issues (root cause analysis)

Most banks' complaint investigations included a 'root cause analysis' to identify the underlying source of a complaint and the Commission encourages this approach. In many cases, these were categorised according to the area of the bank that the complaint was perceived to originate from. Where a complaint could be attributable to more than one department, the Commission observed instances where time was wasted in attempts to avoid the blame, with complaints passed from department to department before any resolution was attempted.

When the cause of a complaint was due to a bank error, although the individual issue was addressed, instances were seen in some banks where no action was taken to prevent the same problem from affecting other customers, e.g. an individual staff member continuing in a role despite lack of competence or requiring further training; charges not refunded that had been incorrectly levied against a tranche of accounts due to system errors.

Where there is an underlying failure or weakness in a bank's systems, procedures, staff training or competence, a bank must resolve the issue for the complainant and (to observe the Rule Book requirement for high standards and fair dealing, and to comply with Rule 8.29(2)(c)) must take steps to prevent the same issue from affecting other customers who may not have complained.

In some cases, resources to address underlying problems were allocated according to the number of complaints in a specific area, i.e. using trend or root cause analysis data and customer satisfaction surveys. This practice may result in issues that initially affect a smaller number of clients remaining unresolved.

Where action is taken to address the underlying problem, it is recommended that the originating customer complaint in the complaints register is updated.

2.5 Monitoring

Monitoring and sampling of complaints should be conducted to ensure that these are being handled correctly and consistently. Monitoring should, amongst other things, identify whether refunds or compensation have been authorised within the appropriate mandates.

2.6 Reporting to the board (and senior management for a branch)

For the purposes of good corporate governance, information and statistics regarding complaints should be reported to the board or senior management on a regular basis. This should include the following information:-

- number of complaints (where different categories are used, the number for each category and / or root cause);
- information on the quality and timeliness of resolution;
- the amount paid out for compensation, ex-gratia payments, refunds, and back-dated interest;
- the amount of any anticipated payments due or in dispute that have not yet been agreed; and,
- where root cause analysis has identified a systemic failure, details of the issue.

Where a business in the Isle of Man is segmented, the report should include data from each segment and provide the Resident Officers / Board with a holistic picture for business in the Isle of Man.

Significant issues arising from complaints should also form part of the report to the board / senior management, e.g. those requiring legal opinion, reputational impact, regulatory or Ombudsman involvement.

3. Action taken by the Commission

The Commission does not consider that there have been any major issues identified that would cause a significant threat to its Regulatory Objectives (as set out in the Commission's published Supervisory Approach). Individual banks have been required to take action where applicable. The Commission has already provided feedback to banks and expects banks to take note of the findings and good practice points explained above.

The Commission found it useful to observe and review banks' complaint handling processes, including sampling complaints cases, focused on retail and small business customers. In relation to the findings above the Commission may consider

providing further guidance to banks on complaints handling either specifically for that subject or as a wider review of conduct of business practices.

4. Our priorities for 2012 / 2013

The Commission's review of complaints management processes in banks was undertaken as part of its Regulatory Objectives to ensure the protection of consumers of banks. The Commission is planning further work in 2012/2013 in relation to structured deposits, including how banks deal with, and communicate to, customers. Following this review the Commission expects to look at its guidance for banks to ensure it remains appropriate for how banks conduct certain types of business and deal with their customers. Guidance on complaints management may therefore be considered appropriate to consider as part of this work.