

'EU banking reform: treating the symptoms or providing the cure?'

The Financial Services Consumer Panel believes that innovation in UK retail banking has generally been to the exclusion of transparency in cost, and a lack of effective competition in the market. We acknowledge innovation: in the 1980's we had the launch of free-in-credit banking and more recently packaged, fee-based accounts and the use of smart phone technology. Yet all of these innovations have been saddled with opaque, and for many consumers, unfair charging structures.

That said, we recognise the industry has taken positive steps, such as the recent annual summary of charges statement. Yet, such disclosure does not, of itself lead, to greater choice, transparency and fairness. It may help treat the symptoms, but it can never provide the cure. Which is why we as a Consumer Panel have tended to look towards Europe as a catalyst and driver for more substantive change in the interests of all banking customers in the UK.

There is much happening in the EU banking space, and the Panel has been fully engaged with all of the relevant European Commission consultations and worked closely with the European Consumers' Organisation, 'BEUC'.¹ Last week the Commission published its '*Roadmap towards a Banking Union*', proposing a transfer of supervisory tasks to the ECB² as a single supervisory

¹ <http://www.beuc.org>

² European Central Bank.

mechanism, with the ultimate goal of a single rulebook.³ We will need to consider carefully the full implications of these proposals, but for the purpose of today's discussion I would like to focus on the Commission's proposals and thinking around:

- **Better access to banking services;**
- **Switching personal current accounts (PCAs) between banks;**
- **Transparency of fees;**
- **Alternative dispute resolution (ADR) and online dispute resolution (ODR);**
- **Revisions to MiFID, the new MiFIR⁴ and PRIPs⁵; and**
- **IMD2 in relation to packaged bank accounts⁶.**

In relation to what proposed changes might mean or ultimately lead to in practice for UK consumers, I will be looking through a '*prism*', that separates out **value, access and redress**. The Consumer Panel believes that the personal current account market should provide good value for money with fair, transparent and proportionate charging structures. We believe that access to banking should be universal and not illusory or restricted for some. And that when things go wrong, as they sometimes do, there is a fast, free and effective remedy to put things right.

Better access to banking services was a key part of the EC's consultation on bank accounts earlier this year.⁷ On the 25th July, the EC published its summary of responses to this consultation.⁸ This is a contentious issue at the EU level. The European Parliament voted in favour of Jurgen Klute's own-initiative report in favour of basic bank accounts becoming a legal right, effectively putting

³ http://ec.europa.eu/internal_market/finances/docs/committees/reform/20120912-com-2012-510_en.pdf

⁴ Markets in Financial Instruments Directive, and Markets in Financial Instruments Regulation.

⁵ Packaged Retail Investment Products.

⁶ Insurance Mediation Directive.

⁷ http://ec.europa.eu/internal_market/consultations/docs/2012/bank_accounts/bank_accounts_consultation_en.pdf

⁸ http://ec.europa.eu/internal_market/finservices-retail/docs/policy/ba_summary-2012_07_25_en.pdf

pressure on the Commission when it comes to review its own Recommendation this year.

From the summary of consultation responses it is fair to say the industry and a number of Member States argued there were no major obstacles for consumers to access a basic account, and that all was rosy in the garden. Many European consumer groups disagree and want to see legislative action, but the Consumer Panel is not convinced that a legal right to basic bank account of itself is a panacea to the problem of financial exclusion. That is not to say that we do not recognise there remain obstacles for some consumers, or that more needs to be done for cross-border migrant workers who may not have their banking history in another country taken into account. But rather, we think that the problem of access to banking services – and financial inclusion itself - is a more complex problem, which requires a holistic solution, as opposed to a ‘one size fits all’ approach.

The UK Financial Inclusion Taskforce was set up in 2005 to monitor progress towards the shared goal of halving the number of people without a basic bank account in Britain. The baseline figure, from 2003, reported 2.8 million adults without a basic bank account, and as we know that figure had dropped to 890,000 adults by 2008. The shared goal had been met; and the proportion of the unbanked in the UK was amongst the lowest in Europe.⁹

Successful uptake was in part due to stimulating demand, which included the 2006-7 *Now Let's Talk Money* campaign and the 2008-11 *Financial Inclusion Champions* initiative. These programmes have now closed, but they are proof that resources and initiatives are required to stimulate demand.

The Taskforce itself was not persuaded that a compulsory universal service

⁹ <http://www.fininc.eu/gallery/documents/other-documents/update-of-eurobarometer-tables.pdf>

obligation (USO) would guarantee financial inclusion, not least because in countries with a USO levels of banking exclusion remained higher than in the UK. The ‘unbanked’ are not necessarily the same as the ‘never-banked’.

Some people prefer cash budgeting and mistrust banks because of a past bad-banking experience. Being trapped in a cycle of monthly bank charges and fees is part of the problem, not the solution, for financially distressed consumers. We have to acknowledge that there are those who do not wish to use banking services, would not benefit from them, and who should not be forced to do so; rather the alternatives to mainstream banking should be better explored and developed.

For example, in 2006 ABCUL introduced its current account specifically to meet the needs of low-income members.¹⁰ One of its objectives was to help customers who may have been put off opening a bank account because of fears about cost, or dealing with an organisation, which they did not feel comfortable with. The account provides access to payment services, ATMs, and debit cards in exchange for a fixed monthly or weekly fee. Research into the use of this type of account indicates it has contributed to an increase in financial inclusion amongst its target audience.¹¹

The danger of introducing a EU mandatory requirement for banks to provide a basic bank account is that we all think this solves the problems of those who are unbanked and financially excluded. It won't. We need a much more sophisticated response, tailored to meet the individual needs of consumers.

A worrying illustration of this problem is the restricted access to banking services that basic bank account customers of both Lloyds and RBS now have

¹⁰ Association of British Credit Unions Ltd: <http://www.abcul.org/home>

¹¹ *The Credit Union Account*, Liverpool John Moores University, April 2008: <http://www.abcul.coop/media-and-research/research>

in the UK. Such customers are no longer entitled to use any ATM in Britain or Northern Ireland to access their funds, and instead are restricted to their own bank's machines. The irony of the fact that it is our two taxpayer bailed out banks who are undermining public access to banking services has not went unnoticed, and we support the Treasury Select Committee's call for these restrictions to be lifted.

The approach of Lloyds and RBS is very worrying, not least if followed by other UK banks. **The prize at risk here is the viability of the LINK system, and if we are not careful we could be sleeping walking into the beginning of the end of free access to cash from ATMs in Great Britain and Northern Ireland.** That would be hugely regressive and discriminatory not only for only rural customers across the country, but for those on lower incomes too. The legal right to a basic bank account would not help with this type of exclusion. It would be a massive retrograde step if we lost free and universal access to ATMs - one of the jewels in the crown of British banking – and we sincerely hope both Lloyds and RBS will change their policy here as a matter of urgency to provide better access to banking for their basic account holders.

We should also be aware of the very serious challenges that the 2012 **Welfare Reform Act** poses for access to banking in the UK. From next October, most benefits will be replaced by a '**Universal Credit**', to be paid directly into a person's bank account, monthly in arrears as a single payment. The intention is to encourage people to manage their own budgets, yet not everyone has access to basic financial services, and many people have limited financial capability skills. The National Housing Federation estimates that around 15% of tenants do not have a bank account and have no access to direct debits to pay their rent.¹² **Alarm bells should be ringing now if we are to address this obvious chasm between policy and practice.**

¹² http://www.housing.org.uk/policy/welfare_reform/direct_payments_to_landlords.aspx

We welcome the work undertaken in the UK on **switching personal current accounts (PCAs) between banks**. The industry has promised to introduce a new free guaranteed seven-day switching service by September 2013 – and there can be little doubt that the prospect of EU legislative reform in this space has acted as a positive driver for change.

Research in 2010 by Consumer Focus in the UK found that only 7% of consumers had switched their PCAs in the previous two years.¹³ 75% of customers had never considered switching, while 17% had been put off by worries around cost, inconvenience, and fears of errors in switching. Such fears were not misplaced. Of those who had switched between banks 44% had experienced difficulties including direct debits going wrong.

Accordingly, the Consumer Panel welcomes the industry's embracing of a new switching process, which takes on board the Independent Commission on Banking's (ICB) to guarantee that:

- The customer will receive whatever they need to operate the new account, like a debit card, PIN and chequebook within those seven working days;
- The customer's new bank will arrange for all their incoming and outgoing payment instructions to be redirected from the old account to the new one;
- The customer's balance will be transferred to the new account;
- Any payments sent to the old account on or after the seventh working day will be automatically "caught" and moved on to the new account;
- The old current account will be closed at the end of the process.

We welcome the proposed guarantee that customers will not suffer if there are

¹³ Oliver Morgans on behalf of Consumer Focus, *Stick or twist?* (2010)
<http://www.consumerfocus.org.uk/publications/stick-or-twist>

any bank errors during the process of switching. Free and easy switching between banks is an essential component of effective retail banking competition in the EU. Yet, how easy it will be to switch a ‘packaged account’? With one in five adults in the UK now holding a packaged account this is a major issue.¹⁴ Bundled products such as travel insurance, mobile phone insurance, roadside recovery and concierge services may not be switchable. **How will the industry overcome these hurdles?**

Are portable PCA numbers the solution? This is attractive in Europe, as it would facilitate EU-wide switching. We appreciate comparisons between mobile phone numbers and bank account numbers are not technically correct, yet there is widespread support for the underlying principle. For example, last week Which? published a poll that showed 59% of consumers would consider switching if they could keep their account number.¹⁵ **While we support the industry’s forthcoming seven-day switching guarantee as a big step in the right direction, we believe the final destination of trouble-free switching is portability.**

The EC has consulted on whether the transparency obligations in the Payment Service Directive¹⁶ should be amended to improve the **transparency of fees**. We think a move towards standardisation of core terms to facilitate comparison would be helpful. That said there are limitations on the ability of such an approach in providing better value for money for customers. To give two examples.

Firstly, the Payment Service Regulations do not prevent banks from setting overdraft charges that bear no relation to the actual cost of unauthorised

¹⁴ Financial Times, 27 July 2012, ‘FSA clampdown on packaged accounts’: <http://www.ft.com/cms/s/0/b25bdccc-d7f1-11e1-80a8-00144feabdc0.html>

¹⁵ <http://www.which.co.uk/news/2012/09/keeping-bank-account-number-would-boost-switching-say-consumers-295702/>

¹⁶ 2007/64/EC.

transactions. The move to daily charges has had little progressive impact, while there is some evidence the industry is now making more money out of overdraft charges than before the credit crunch.¹⁷

Research by Which? in August this year found that many customers were being charged as much as £900 per annum for going overdrawn for only two days without permission per month.¹⁸ **We believe a systemic cultural change is necessary to deliver better and fairer value for all customers.**

Secondly, transparency doesn't prevent packaged accounts from being sold to consumers with '*useless insurance policies*'. Research for the Financial Times last year found that less than 1 in 10 people who paid monthly fees for their current account regularly used their bundled services.¹⁹ And from next year, banks will be required to check eligibility for insurance policies sold with packaged accounts, which should help to ensure better value and quality for money.

If I can turn now to the Commission's proposed Directive on **alternative dispute resolution (ADR)** and Regulation on **online dispute resolution (ODR)**. For some time we have been concerned about the fragmentation of cross-border ADR in financial services. We broadly support the Commission's proposals although we do have some concerns.

We support a presumption of transparency in publishing information about complaints and dispute resolution processes and we hope the proposed Directive and Regulation do not undermine the significant progress the FOS²⁰ has already

¹⁷ Financial Times, 24 August 2012, *Banks' overdraft charges soar*: <http://www.ft.com/cms/s/0/40568de2-eb98-11e1-b8b7-00144feab49a.html>

¹⁸ <http://www.which.co.uk/news/2012/08/free-banking-is-just-a-myth-says-which-293625/>

¹⁹ Financial Times, 27 October 2011, *Packaged bank accounts targeted by the FSA*: <http://www.ft.com/cms/s/0/c38c56bc-00c3-11e1-930b-00144feabdc0.html>

²⁰ Financial Ombudsman Service.

made in its publishing of firm-specific data and ombudsman decisions. We hope the Directive will be amended to make it clear that Member States may retain compulsory jurisdiction rules in sectors such as financial services. The Panel supports the proposed 90-day resolution period except for complex cases. We would like to see some guidance in the Directive on the definition of ‘complex cases’ to ensure this provision was not misapplied.

Also, at the moment, current proposals in **PRIPs** and the **IMD2 Revision**²¹ would undermine the work of the FOS by making its decisions no longer binding on firms, when accepted by customers. We understand that the wording for these proposals came from DG SANCO and the legal service, and that this was not their intention, rather, the intention is to ensure that civil law rights remain unaffected. We are hopeful that this text can be corrected.

EU law reform also brings with it the potential for creating a loophole in the forthcoming across the board ban on commission fees from the UK RDR. While the **Revisions to MiFID**²² and **IMD2** will make provision for a ‘carve out’ to enable the UK to ban commission fees, passporting could allow advisors and product providers from out-with UK to be exempt from the RDR. **We see the Rapporteur’s proposal to delete the MiFID Article 24 text, which would ban commissions, as a significant consumer protection opportunity missed.**

The proposal in Article 74 of the MiFID revision for publication of sanctions without undue delay is welcome as is the ECON report proposal to amend article 75 to double the potential pecuniary sanctions against a natural person from €5m to €10m. **In relation to passporting to undertake cross-border services, our general concern is that we want to retain existing UK consumer protection – access to the FOS and effective redress and**

²¹ *Insurance Mediation Directive*: http://ec.europa.eu/internal_market/insurance/consumer/mediation/index_en.htm

²² *Markets in Financial Instruments Directive*: http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

consumer protections.

Articles 24 of the IMD2 Revision ties in with MiFID, and will require all insurance sales to be undertaken ‘honestly, *fairly and professionally in accordance with the best interests*’ of the customer. Significantly, Article 25 will introduce a suitability and appropriateness test for all sales by agents, brokers, or authorised firms, including execution only, as presently drafted. We welcome these changes as a counterbalance to preventing future misselling of insurance products.

I started this morning by talking about the principles of **value, access and redress**. The Consumer Panel wants to see a right to **straightforward outcome products** sold on an **informed choice** basis, within a market with **effective competition** at a **fair and transparent price**; with **free and speedy redress** when things go wrong.

We don’t think there is a panacea or one regulatory lever that can be pulled to make this happen. Yet, we do think the European Union is often the key driver and catalyst for nudging the industry in this direction.

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