Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Consumer Panel Position Paper - Banking Culture

Introduction

In 2015, the Financial Services Consumer Panel commissioned research to identify how individual bank customers and micro-enterprises[1] define a good banking culture. This followed several studies of UK banks, including the report by the Parliamentary Commission on Banking Standards (PCBS). In its final report[2], the PCBS said:

> *"Future Governments and Parliaments have important roles in ensuring that reform is sustained. In particular, this will mean:*
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> - *holding regulators more meaningfully to account for their decisions, while avoiding knee-jerk assumptions either that regulators are acting as an unnecessary constraint on the actions of bankers or that regulators are culpable for every standards failure; and*
> - *resisting the arguments from opponents of reform who will claim that any further change to banking will represent an upheaval too far or that risks have been eliminated and "this time is different".*
>
> *The banking industry can better serve both its customers and the needs of the real economy, in a way which will also further strengthen the position of the UK as the world's leading financial centre."*

The Financial Services Consumer Panel sought to establish whether or not the reform promised by banks to address the concerns of the PCBS is now happening from the consumer's perspective, to understand better the impact of bank culture on customers, and to define what culture would best serve consumers and the real economy.

Background

There is general agreement that much has gone wrong with banking culture in the last ten years. Cultural shortcomings lay at the heart of the behaviours that led to:

- The banking crisis in 2008;
- The series of mis-selling scandals including PPI, investment products, packaged bank accounts and interest rate hedging products; and
- Rate-rigging in relation to both LIBOR and foreign exchange.

There is evidence to show significant cultural failings at many UK banks. The PCBS said:

> *"Remuneration has incentivised misconduct and excessive risk taking, reinforcing a culture where poor standards were often considered normal."*

[1] Micro-enterprises have an annual turnover of less than two million euros and fewer than 10 employees
[2] Parliamentary Commission on Banking Standards, First Report of Session 2013-14, Volume 1, Summary and Conclusions and Recommendations

The LIBOR and FOREX scandals are further examples of cultural failings, where banks colluded to manipulate rates for their own financial gain.

So great were the cultural shortcomings of the UK's major banks, their chief executives were forced to acknowledge them. In several cases those CEOs went on record to say that the only way to address the fundamental breakdown of trust between banks and their customers was for the banks to change to put customers at the heart of their businesses[3].

Despite this zeal for change, uphold rates for complaints at the Financial Ombudsman Service remain high, at 39% of all banking and credit complaints in 2014/15[4], demonstrating that some firms are still not taking complaints seriously and dealing with them appropriately at the earliest opportunity.

These cultural shortcomings are endemic across much of the banking sector and have led to poor outcomes for large numbers of consumers. They have also led to massive costs for the industry in the form of compensation (more than £30 billion for mis-selling alone), fines and other redress. These costs are of course ultimately borne by banks' shareholders and customers.

In its 2015/2016 Business Plan[5], the FCA said it would conduct a thematic review on culture change programmes in retail and wholesale banks, in particular to find out if these programmes were driving the right behaviour. As with all other thematic reviews, this would have resulted in a report in the public domain, enabling consumers to understand the findings, and act on them if they so wished. In the event, the FCA decided to use supervisory tools to pursue the issue of culture with individual firms on a confidential basis. As the Panel discussed in its *Consumers as Co-regulators* paper[6], consumers could help make financial and other sanctions bite harder were they to shun miscreant firms. Such action could give firms a clearer incentive to improve behaviour. However to act in this fashion, consumers need the information about firms' conduct and quality of service to be made public.

Also in 2015, the Competition and Markets Authority (CMA) conducted a retail banking market investigation[7], and identified significant incumbent advantages in the personal current account market. In relation to business current accounts, the CMA found that some banks are offering above-average pricing and below-average quality and yet still gaining market share. One of the problems challenger banks face is that the competition, the established big banks, have strong existing networks and established lines of communication with the influencers and policymakers in HM Treasury, the regulators and Parliament.

The Banking Standards Board (BSB) and the Chartered Banker: Professional Standards Board (CB:PSB) are working towards raising ethical standards and customer focus in the banking industry.

In January 2016, Alison Cottrell, Chief Executive of the Banking Standards Board, said:

> *"The industry has a collective challenge to demonstrate that it can manage itself appropriately and focus on the customer, setting standards especially where you most want them"*.

[3] http://www.rbs.com/news/2014/02/a-new-direction.html
[4] http://www.financial-ombudsman.org.uk/publications/ar15/resolved.html#a5
[5] http://www.fca.org.uk/news/our-business-plan-2015-16
[6] https://www.fs-cp.org.uk/sites/default/files/consumers_as_co-regulators_final_0.pdf
[7] http://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk?utm_source=CMA+web+alerts&utm_campaign=8188e07d46-Phase_1_merger_case_updates9_24_2014&utm_medium=email&utm_term=0_78995c6c53-8188e07d46-257916905#full-provisional-findings-report

The Consumer Panel remains sceptical about whether "top down" programmes of cultural change will have the practical effect of altering ingrained behaviours and delivering better outcomes for consumers.

Alongside this paper, the Consumer Panel is publishing "Banking culture – a customer perspective", the research report it commissioned from the Personal Finance Research Centre at the University of Bristol. The aim of this research was to provide an understanding of what a positive banking culture looks like from a personal and micro-enterprise customer standpoint and to identify some practical measures to improve it.

What do we mean by "banking culture"?

A "culture" is usually defined as a distinguishing set of customs, traditions and values. In the corporate world "culture and values" has come to mean not just that, but also the way in which an organisation goes about its business in order to achieve its vision and business objectives. Banks are much like other businesses when it comes to agreeing and acknowledging their "culture and values". However, the nature of the services that banks provide makes their culture and values particularly significant to their customers.

If culture can be said to drive behaviour, and behaviour to drive conduct, then it is easy to see why cultural shortcomings have had such a widespread and significant impact on the way banks act towards their customers. It sometimes appears that, far from behaving in a professional manner towards their customers, banks and their staff have adopted behaviours which put their individual and corporate interests ahead of those of their customers. The research shows that these behaviours are visible to customers.

Merely ensuring that a bank has the "right" culture will achieve little unless the culture is embedded across all of the bank's functions, in particular, remuneration, performance appraisal and promotion. It is for this reason that the FCA's continuing work on bank culture is so important.

What do customers understand by "banking culture" and how do banks measure up to their customers' expectations?

The bank customers who participated in the Panel's research understood what is meant by bank culture at an individual firm level, and could distinguish it from customer satisfaction or service standards. Whilst price was important to them, it was not everything; a positive culture also mattered.

They saw a positive bank culture as one that, first and foremost, puts customers' needs at the centre of what the organisation does. This means going beyond the minimum standard expected by regulators and giving their customers the best product or service for their needs. In other words they didn't just expect their banks to avoid doing the wrong thing – they expected them actively to do the right thing by their customers.

Whilst many were broadly happy with the service they received from their banks, there was still the perception that poor culture would remain. They recognised that the culture of a bank is driven from the top, but must permeate down through the bank, to be expressed to consumers through their frontline staff. Participants said that their overall experiences of doing business with banks did not live up to the positive culture they believed should exist.

For participants, the areas where the gap between customer expectations and reality was greatest were:

- *Accessibility* – it was often not possible to access services, products or help in a way that suits customers' needs;
- *Putting customer needs before profit* – most felt the opposite currently applies;
- *Flexibility to treat customers as individuals* – the systems-driven approach of banks militates against this; and
- *Taking responsibility when things go wrong* – PPI loomed large in customers' minds; and the fact that banks did not volunteer redress until forced to do so.

Participants also felt that banks fell short of customer expectations in the following areas:

- Being open and transparent in all dealings with customers;
- Being proactive in meeting customers' needs;
- Going beyond what the regulations require; and
- Doing what they say they will.

Some, but by no means all, participants thought that there had been a small shift towards a more positive banking culture in recent years. But the general consensus was that this was not, on the whole, a voluntary shift, but had occurred in response to pressure from regulators.

Micro-enterprises as bank customers

The Panel has been particularly concerned about the impact of bank culture on micro-enterprises. It has worked closely with the FCA to understand better the impact of banks on those customers who contribute to the "real economy".

The CMA identified a low level of account switching in its recent investigation. Our research tried to identify how bank culture plays into this. It found that micro-enterprises believe the added complexities that exist with a business account are a significant barrier to changing provider, from even the most unsatisfactory business relationship. In order to change banks, micro-enterprises need to know they will have an allocated business banking manager, someone to organise the switch, lower/more transparent charges, and the confidence that the bank will get it all right. Given that banks have scaled back their resources for micro-enterprise relationships, participants were not confident these requirements would be met.

For micro-enterprises, changes in practices at banks since the financial crisis, such as the loss of business banking managers, are a negative step. As a result, bank staff often do not know the needs of their business customers or the importance of cash flow to the success of a business, leaving business banking customers feeling their custom is not valued.

Micro-enterprises also voiced concern about the transfer of costs from banks to the "real economy". Too much time is spent queuing at branches or waiting for call centres to respond. Banks are not meeting businesses' expectations when things go wrong, and are failing to take responsibility for solving problems.

Overall, micro-enterprises have perceived no positive culture change in their banks. In fact, following the financial crisis of 2008, they have noticed only negative changes: bank staff are now unable to work to the needs of the customer, do not know the customer's business and do not listen to them.

What effective steps can be taken to improve banking culture *to the advantage of bank customers*?

The Consumer Panel's research shows that bank customers are not unrealistic in the expectations they have of banks. Whilst banks continue to fail to meet reasonable customer expectations in a number of areas, these areas seem reasonably easy to fix if banks would just heed what their customers are saying and be honest when they say they want to put customers at the heart of their businesses.

In November 2015, Robert Jenkins, Senior Fellow at Better Markets, and previously a member of the Financial Policy Committee at the Bank of England, said:

> *"Is there any wonder that the public has lost faith in finance? Restoring accountability is vital to restoring a sense of fairness. It is also key to reducing recklessness. For the first line of defence in financial risk-taking consists of the attitudes and practices of the risk-takers on the front line. If they do not know the difference between right and wrong; if "wrong-doing" is left unpunished, much less rewarded, then we deserve what we get."*

The Panel believes that the "Treating Customers Fairly" regime has not delivered fair outcomes to either consumers of banking services or the UK taxpayer. While the FCA's "roadmap" of rules, apparently provides clear guidelines for firms, in the absence of a moral compass, firms have too often failed to follow it. The banker/customer relationship needs special recognition and protection by the adoption of a statutory duty of care[8] to be owed by bankers to their customers. A duty of care would oblige providers of financial services to avoid conflicts of interest and act in the best interests of their customers. It would also engender long-term cultural change in financial services providers, bringing much-needed clarity to the rules governing the relationship between firms and their customers. If properly supervised and enforced, an obligation for banks to act in their customers' best interest would be a pro-active measure to prevent mis-selling from occurring and address other poor behaviour towards customers.

Customers recognise that bank culture is driven from the top down, but is expressed to customers primarily through bank staff. It is therefore essential that the leaders of our banks ensure that their culture change programmes and aspirations get from the top to the bottom of their firms. Every aspect of their organisation needs to be reviewed to ensure that it promotes a customer-centric culture throughout all levels of management. A "duty of care" on all staff would accelerate this process and translate high ideals into a meaningful transformation that will produce a worthwhile result in the interests of their personal and business customers.

Conclusion and recommendations

It is in the interests of both consumers and the economy for trust in financial services providers to be restored. Banks now need to look for themselves at how their culture manifests itself to their customers.

The Panel concludes that:

- There are significant failings in the prevailing bank culture in many UK banks;
- This has a negative effect on customers, and ultimately the UK economy;
- Senior bankers acknowledge these failings and wish to address them as part of their attempts to re-establish the trust and confidence of bank staff, bank customers and regulators;

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[8] https://www.fs-cp.org.uk/sites/default/files/fscp_position_paper_on_duty_of_care_2015.pdf

- Bank customers understand what is meant by bank culture and its importance in ensuring their fair treatment – they want banks to improve their cultures and the ensuing treatment of customers; and
- The FCA, as conduct regulator, acknowledges the importance to banks' customers and the wider UK economy of ensuring that banks' cultures are improved as an integral and essential part of the re-building of trust in the UK banking sector[9].

The Panel has developed a set of indicators that could be used to measure a bank's culture from the perspective of personal and micro-enterprise customers, and to enable changes to be tracked over time. We call on banks, the BSB and the CB:PSB, among others, to use indicators to track changes in bank culture, and ensure that consumers really are at the heart of banks' culture change programmes.

Accordingly, the Panel recommends that:

1. Banks, the BSB and the CB:PSB should adopt indicators based on those identified in the Panel's report, and use these to track changes in bank culture;
2. The FCA should focus on the practical and transparent ways in which culture can be used to drive the right behaviours, for example, by monitoring these indicators to ensure that the consumer interest is taken into account;
3. The Government should bring forward an amendment to the Financial Services & Markets Act 2000 (FSMA) to require the FCA, as part of its consumer protection objective, to make rules specifying what constitutes a reasonable duty of care that financial services providers should owe towards their customers; and
4. Research is commissioned into the financial impact of bank charges and processes on micro-enterprises.

The Panel also urges the FCA to look at work carried out in other countries on bank culture. For example, in the Netherlands, the regulator says it can now see banks and insurers paying more attention to changing conduct and culture[10] following the adoption of certain measures, including a duty of care, since 2008.

The indicators contained in the Panel's report are a readily available way to ensure that the work being done to improve bank culture is achieving the desired effect and should be adopted as the Panel has suggested above.

If consumers don't notice a positive difference in the way banks treat them, then the banks, the Banking Standards Board, and the FCA will have let consumers down again.

[9] http://www.fca.org.uk/static/channel-page/business-plan/business-plan-2015-16.html#c3
[10] https://www.afm.nl/en/nieuws/2014/okt/brochure-verandervermogen

Annex A – Proposed indicators

Suggested measure	Value(s)	Channel(s)
1a. I am able to choose how I contact or do business with my bank 1b.My bank restricts how I contact or do business with them to ways I prefer not to use	Accessibility	All channels
2a. When I visit a branch I can be served by a member of staff if I choose to 2b. When I visit a branch staff are not available to help me	Accessibility	Face-to-face contact
3a. When I visit a branch I can quickly get to speak to a member of staff who can help me 3b. When I visit a branch I have to book an appointment in order to see someone who can help me	Accessibility	Face-to-face contact
4a. When I telephone my bank I can get to speak to someone who can help me without going through lots of menus first 4b. When I telephone my bank I have to go through lots of menus in order to speak to someone who can help me	Accessibility	Telephone contact
5a. When I telephone my bank I can get straight through without waiting 5b. When I telephone my bank I am kept holding on the line	Accessibility	Telephone contact
6a. It is always very easy to find the information or service that I am looking for on my bank's website 6b. It is always very difficult to find the information or service that I am looking for on my bank's website	Accessibility	On-line

Suggested measure	Value(s)	Channel(s)
7a. The information I receive from my bank about a new product's terms and conditions is always clear and easy to understand 7b. The information I receive from my bank about a new product's terms and conditions is always difficult to understand	Open and transparent	All channels
8a. The information I receive from my bank regarding changes to an existing product is always clear and easy to understand 8b. The information I receive from my bank regarding changes to an existing product is difficult to understand	Open and transparent	All channels
9a. The staff at my bank are always able to access all relevant information relating to my circumstances when I contact them 9b. The staff at my bank are never able to access all relevant information relating to my circumstances when I contact them	Treat customers as individuals	Telephone and face-to-face contact
10a. The staff at my bank always listen and respond to my needs when I contact them 10b. The staff at my bank are always process driven and don't listen and respond to my needs when I contact them	Treat customers as individuals	Face-to- face contact
11a. The staff at my bank always listen and respond to my needs when I contact them 11b. The staff at my bank always read from pre-prepared scripts when I contact them	Treat customers as individuals	Telephone contact

Suggested measure	**Value(s)**	**Channel(s)**
12a. My bank's systems are flexible enough to deal with difficult or unusual situations 12b. My bank's systems are inflexible and cannot deal with difficult or unusual situations	Sensitive in difficult situations	All channels
13a The staff at my bank are always sensitive and understanding in difficult or unusual situations 13b. The staff at my bank are never sensitive and understanding in difficult or unusual situations	Sensitive in difficult situations	Telephone and face-to-face contact
14a. My bank always lets me know about better products or rates 14b. My bank always leaves me to find out about better products or rates by myself	Proactive Customer needs before profits Go beyond what have to do	All channels
15a. I feel that my bank values my custom 15b. I feel that my bank is more interested in attracting new customers than valuing my custom	Customer needs before profits	All channels
16a. My bank regularly goes beyond what it needs to do in terms of customer service 16b. My bank does the minimum it can get away with in terms of customer service	Go beyond what have to do	All channels
17a. When things go wrong, my bank takes responsibility for sorting the problem out 17b. When things go wrong, I have to keep chasing my bank to sort the problem out	Take responsibility Proactive	All channels

Suggested measure	Value(s)	Channel(s)
18a. My bank keeps a good record of the information relating to my problem so I don't have to repeat myself 18b. I have to repeat the same information each time I speak to someone about my problem	Take responsibility Treat customers as individuals	All channels
19a. My bank always resolves problems in the timeframe they promise 19b. My bank never resolves problems in the timeframe they promise	Take responsibility Do what they say they will	All channels
20a. My bank always delivers what it promises 20b. My bank never delivers what it promises	Do what they say they will	All channels
21a. I believe that if the bank has made a mistake, it will automatically correct it and give me a refund without needing to complain 21b. I believe that the bank will only refund me once I have made a complaint	Take responsibility Proactive	All channels
22a. I get a consistently high level of service from whichever member of staff at my bank I speak to 22b. The level of service I receive from my bank is very dependent on which member of staff I speak to	Invest in staff	Telephone and face-to-face contact
23a. Whenever I contact them, the staff at my bank are always friendly and helpful 23b. Whenever I contact them, the staff at my bank are never friendly or helpful	Invest in staff	Telephone and face-to-face contact
24a. Whenever I contact them, the staff at my bank know what they are talking about 24b. Whenever I contact them, the staff at my bank appear to have very limited knowledge	Invest in staff	Telephone and face-to-face contact

Annex B - Introducing a Duty of Care for financial services providers

What is a duty of care?

The Financial Services Consumer Panel proposes that the Financial Services & Markets Act (FSMA) should be amended to require the Financial Conduct Authority (FCA), as part of its consumer protection objective, to make rules specifying what constitutes a reasonable duty of care that financial services providers should owe towards their customers.

Whilst falling short of a full fiduciary duty, a duty of care would oblige providers of financial services to avoid conflicts of interest and act with the best interests of the customer in mind. A duty of care already exists for other sectors, notably for legal and medical professionals through the Solicitors Regulation Authority's Principles[11] or the General Medical Council's Good Medical Practice Guide[12].

Why do financial services providers need a duty of care?

The financial services industry has a long history of poor treatment of consumers. Clearly the law does not protect customers of financial services firms as it should. Massive fines do not appear to have any significant impact on firms' behaviour, but they do add to costs for consumers.

The Panel believes a statutory duty of care is necessary because the current regulatory approach of ensuring firms 'treat customers fairly' enshrines a weak duty to the consumer, further weakened by the legal principle that consumers should 'take responsibility for their decisions'. The 'consumer responsibility' principle fails to take into account the imbalance in power between firms and their customers, information asymmetries, and low levels of consumer financial capability.

Accordingly, the Panel believes consumers can only reasonably be expected to take responsibility for their decisions where firms have exercised a duty of care, in line with FCA rules.

How would it work?

The Panel proposes an amendment to the Financial Services & Markets Act 2000 (FSMA) which would require the Financial Conduct Authority, as part of its statutory objectives, to make rules specifying what constitutes a reasonable duty of care which financial services providers should exercise towards their customers.

The exact scope of the rules under the duty of care in FSMA would be for the FCA to decide, subject to its normal consultation procedures. The Panel envisages that the rules could allow for a flexible interpretation of the duty of care, depending on the complexity and the risk of the product being sold. The more complex or risky the product, the more stringent the duty of care on the provider to ensure the product is suitable and that the customer understands the risks.

The FCA would have to dedicate resources to supervision and enforcement of the duty of care, to ensure that it is taken seriously by firms and followed in practice.

What difference would it make?

The Panel believes that its proposed amendment to FSMA would engender long-term cultural change in financial services providers. It would bring much-needed clarity to the rules governing the relationship between firms and their customers. If properly supervised and enforced, an obligation for banks to act in their customers' best interest would act as a pro-active measure to prevent mis-selling from occurring in the first place, and address other poor behaviour towards customers.

A duty of care could also help the Financial Ombudsman Service (FOS) decide what constitutes a fair and reasonable settlement in a consumer-business dispute. Moreover, as a measure of last resort, the legal changes sought by the Panel would confer on consumers a statutory right to pursue damages for negligent firm behaviour through the courts. This would also focus the minds of firms with a history of mis-selling to treat their customers better.

The Panel recommends that the Government should find an appropriate legislative vehicle to put the Panel's draft clauses to Parliament.

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[11] http://www.sra.org.uk/solicitors/handbook/code/part2/content.page.

[12] http://www.gmc-uk.org/guidance/good_medical_practice/duties_of_a_doctor.asp