

SUBMISSION FROM THE BANKING STAKEHOLDER GROUP OF THE EBA

Joint Committee Consultation Paper on draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors: (JC / CP / 2013-03)

Consumer trust and confidence is critical in the retail finance sector (in terms of services and products and the firms supplying them). In this context, the BSG welcomes the Joint Committee Consultation Paper on draft guidelines for complaints-handling in the ESMA and EBA sectors. BSG believes that the credibility, and consumer awareness, of effective complaints-handling procedures is a factor in inculcating consumer trust and confidence. BSG also supports the aim of promoting supervisory convergence across sectors to the benefit of firms and national authorities as well as consumers.

We judge that the key objectives of the guidelines should be: (1) to minimise the degrees of divergence between national approaches to complaints-handling procedures; (2) to develop a single set of complaints-handling arrangements irrespective of the type of product (banking, insurance, investment), the type of firm supplying a product, and the nationality or geographical location of the institution; (3) to facilitate firms developing and standardizing internal procedures for handling complaints across the board; (4) to develop a consistent supervisory oversight of procedures and at least a minimum standard of supervisory convergence across the EU, and (5) to strengthen consumer protection, trust and confidence.

The BSG is in general agreement with the recommendations in the Consultation Paper though would strengthen it in some parts as indicated in the following paragraphs.

Question 1: Do you agree that complaints-handling is an opportunity for further supervisory convergence? Please also state the reasons for your answer

Yes, we agree that complaints handling is an opportunity for further supervisory convergence. In addition to the justification given in the consultation document, we believe further supervisory convergence is necessary for the following reasons:

Consistency between sectors: Consumers should be entitled to the same, high standard of consumer protection regardless of whether the firm is in the banking, securities or insurance sector. There are differences in the regulatory provisions for complaints-handling between the securities and banking sectors, and also among Member States. A unified regulatory view should help to ensure a consistent approach to complaints-handling across the different sectors and strengthen consumer protection.

The need to improve standards of complaints handling: To give an example from the UK, a review of complaints handling by the Financial Services Authority found "poor standards of complaint handling within most of the banks" they assessed.¹ Following enforcement action, three banks were fined a total of £4.8 million. The UK's Parliamentary Commission on Banking Standards concluded that the major banks had a "poor track record when it comes to complaints handling." The Commission concluded that this was "clearly demonstrated by the high uphold rate by the Financial Ombudsman Service, especially

¹ <http://www.fca.org.uk/static/fca/documents/fsa-review-of-complaint-handling-in-banking-groups.pdf>

when it comes to handling customer complaints regarding Payment Protection Insurance. This is unacceptable and has clearly contributed to customers' lack of trust in banks."² In Spain, there has been a growing number of complaints and the Ombudsman has criticised the way these complaints are handled.³

Ensuring adequate conduct risk provisions: Weaknesses in complaints handling could delay the payment of redress to consumers and result in inadequate provisions for conduct risk.

Preventing widespread consumer detriment: Proper systems of complaints handling should ensure that management information (MI) is gathered on the sources and reasons for consumers' complaints. If this MI is analysed correctly it can be used by firms to identify weaknesses in their systems and controls and to take action to prevent similar detriment arising in the future.

Again, the UK experience can be instructive in that transparency of complaints data has been shown to increase senior management focus on complaints handling and a greater focus on reducing the reported number of complaints: The UK regulator introduced publication of complaints data in the second half of 2010, requiring all firms which received more than 500 reportable complaints to publish their complaints data. In early 2012, the Financial Services Authority reviewed the publication of complaints data. Highlights from the research included⁴:

- Trade associations agreed that firms are more focused on complaints.
- Firms were increasingly taking actions to address the causes of complaints.
- 76% of firms used complaints data to compare against peers and 59% to review their own complaints performance.
- Consumer groups say firms used complaints data to demonstrate performance and what they are doing to improve performance.
- 42% of firms thought the coverage was fair, with only one firm considering it to be unwarranted.
- Only 6% of firms judge that consumers are more likely to complain due to this but consumer groups think it does encourage those to complain who have cause to complain, as it proves that complaints will be dealt with.
- While increasing consumer awareness was not a direct objective of the initiative, consumer research suggested the publication of complaints data had begun to make an impact amongst the general public. 22% of consumers claimed to be aware of the complaints data, 38% of whom said they used it when choosing a new financial services provider.

² <http://www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf>

³ <http://www.elmundo.es/mundodineroy2009/05/26/economia/1243329414.html> ;

<http://laeconomiadelosconsumidores.adicae.net/?articulo=1881>

⁴ <http://www.fca.org.uk/static/fca/documents/discussion-papers/fsa-dp13-01.pdf>

Question 2: Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.

We have the following comments on the 7 guidelines:

Guideline 1 - Complaints management policy

We agree with the purpose of Guideline 1, but believe it could be strengthened by requiring senior management to keep their complaints-handling function under review and for there to be regular audits of the processes and the implementation of internal procedures. To encourage the process of senior management ownership and monitoring the guidelines should also highlight the need for enforcement action against firms and senior management in the event of failings. It is also important that consumers are allowed to submit complaints free of charge, rather than being charged an explicit fee for submitting a complaint.

Finally, we suggest the removal of the brackets and the "e.g" from section (b)

We therefore recommend the following amendments:

1. Competent authorities should ensure that:

- a) A 'complaints management policy' is put in place by firms. This policy should be defined and endorsed by the firm's senior management, who should also be responsible for its implementation and for ensuring that the firms gather sufficient management information to monitor compliance with it.*
- b) This 'complaints management policy' is set out in a written document as part of a 'general fair treatment policy'.*
- c) The 'complaints management policy' is made available to all relevant staff of the firm through an adequate internal channel. Staff directly or indirectly involved in the handling of complaints should receive appropriate training to enable them to deal with complaints fairly.*
- d) In the event of failings in the way a firm has been handling complaints the supervisory authority should take enforcement action against the firm and the senior management members who failed to properly set or monitor the policy.*
- e) The 'complaints management policy' should allow consumers to make complaints free of charge.*

Guideline 2 - Complaints management function

We agree with the text of this guideline, but believe it should be expanded to include the role of the complaints management function in preparing reports and management information for senior management.

2. Competent authorities should ensure that firms have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

a) The complaints management function should prepare reports and management information for senior management detailing the main types of complaints, the responses given and the root causes of the complaints

Guideline 3 - Registration

We agree with the text of this guideline, but believe it should be expanded to require the details of the complaints to be stored for an appropriate period of time.

3. Competent authorities should ensure that firms register, internally, complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure electronic register).

(a) The details of the complaints on this register, including the response, should be stored for an appropriate period of time.

Guideline 4 - Reporting

We believe that the text of this guideline should be revised. This should be done to improve the transparency of the complaints data which should enable problems of rising complaints to be identified earlier. It will also provide stronger incentives to firms to improve practices to prevent complaints arising and improve complaints handling. Finally, consumers may want to take into account complaints data when choosing a financial product or service.

4. Competent authorities should ensure that firms provide information on complaints and complaints-handling to the competent authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.

(a) Competent authorities should publish the aggregate data received from the firms, breaking this data down by the complaints by the broad product category and type of firm. Data should also be published showing the percentage of complaints upheld in favour of the consumer and the percentage settled within any time limit set by the deadline.

(b) Competent authorities should also, where justified by cost-benefit assessment, require the publication of complaints data by individual firms, including a breakdown by product category.

Guideline 5 - Internal follow-up of complaints-handling

We believe that the following should be added to ensure that firms also consider the position of consumers who have also been affected by a similar root cause but have not yet complained.

5. Competent authorities should ensure that firms analyse, on an on-going basis, complaints-handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks, for example, by:

a) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;

b) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and

c) Correcting, where reasonable to do so, such root causes.

d) Considering whether the root causes may have also caused detriment to other consumers, including those who have not submitted a complaint.

e) Where reasonable to do so, contact those consumers to advise them that they have, or may have, cause for complaint, review the advice or service provided to those consumers and to provide redress where justified.

Guideline 6 - Provision of information

We recommend that the text be amended to also require the written information about the complaints handling process to be made available on the firm's website.

6. Competent authorities should ensure that firms:

a) Provide written information regarding their complaints-handling process, in an easily accessible and visible manner on the firm's website, on request and when acknowledging receipt of a complaint.

b) Publish details of their complaints-handling process in an easily accessible and visible manner on the firm's website and in other ways, for example, in brochures, pamphlets, contractual documents.

c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:

(i) details of how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed);

(ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the availability of a competent authority, an ombudsman or alternative dispute resolution (ADR) mechanism, etc.).

d) Keep the complainant informed about further handling of the complaint.

Guideline 7 - Procedures for responding to complaints

We mainly agree with the text of this guideline, but recommend that it is changed to require the final response to a consumer's complaint to always be provided in writing.

7. Competent authorities should ensure that firms:

a) Seek to gather and investigate all relevant evidence and information regarding the complaint.

b) Communicate in plain language, which is clearly understood.

c) Provide a response without any unnecessary delay or at least within the time limits set at national level. When an answer cannot be provided within the expected time limits, the firm should inform the complainant about the causes of the delay and indicate when the firm's investigation is likely to be completed.

d) When providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), include a thorough explanation of the firm's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, ADR mechanism, national competent authorities, etc. Such a decision should be provided in writing.

Submitted to EBA and ESMA on behalf of the Banking Stakeholder Group

David T Llewellyn

Chairperson

7th February, 2014