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Introduction/scope

Apart from traditional services, banking also includes various types of lending, such as mortgages, and ancillary activities, such as intermediation and debt collection. The range of banking activities differs between schemes.

Fraud

The increase of internet banking has led to a rise in the number of banking fraud complaints. Many schemes spoke of various 'mule' scams, where a customer unwittingly involves himself in the transfer of stolen money through the use of his bank account. Sometimes a scam can involve the customer being paid an amount owed by way of a fraudulent cheque. The cheque is cashed, but it is not until some time later that the customer realises the cheque was fraudulent.

Points to consider:

- Did the firm fail to comply with anti-money laundering legislation?
- Payments to the mule account are often made in good faith and therefore the firm may not deem them recoverable. However this is not an equitable outcome for the customer.
- Is there industry guidance or specific legislation which covers this area?
- Should it be solely governed by the banks' terms and conditions?

Where a fraudulent cheque is paid into a customer's bank account, the main problem was the customer's perception of the cheque system. Often customers mistakenly believe that once the proceeds from a cheque have been credited to their account, the monies have cleared and are rightfully theirs. However, it may take some time for a bank to determine whether a cheque is fraudulent, by which time the customer may have released goods to the fraudster under the belief that the goods had been paid for. In the USA there is a period of two years in which to return an unpaid, forged or altered cheque. The UK cheque clearing cycle will shortly be revised so that a cheque cannot be returned unpaid after day six of the clearing cycle, even if it is subsequently found to be fraudulent.

Customers often blame the bank for failing to advise them of the situation at the outset. However, in the normal course of events, it is unlikely that the bank will be found responsible for the loss, especially when a customer has relied on an ATM to check the status of a cheque or has made a general non-specific enquiry to the bank.

However, this is unlikely to be the case where a customer asks the bank for specific advice when paying the cheque into their account. It was agreed that customers, and in some cases bank employees, generally have little understanding of the cheque clearing system. Banks should provide clearer warnings to customers about

- whether a cheque is cleared for value (the money is available for withdrawal but there is a risk that the cheque may be returned unpaid) or
- cleared for fate (the money is available for withdrawal and the cheque will not be returned unpaid).

There has been an increase in the number of complaints involving card fraud to the Financial Ombudsman Service. Typical complaints are that a bank considered the customer was somehow involved in the fraud. The general ignorance of many customers about their rights in law was highlighted as well as the tendency for some card issuers to exploit this. This type of complaint usually involves decisions about the honesty of the complainant, often by way of personal statements and the use of audit trails. The introduction of *chip and pin* has been helpful in providing comprehensive audit trails.

It was apparent there are some common scams and fraud patterns in different countries, such as the pattern of fraudulent cheques drawn on an Irish bank.

Irresponsible Lending

Schemes reported the number of debt related complaints had increased in recent times. Complaints arise when a bank proactively increases a customer's credit limit - known as credit creep. The decision is often based on a customer's repayment history as opposed to personal circumstances. Banks are obliged to consider all information held about a customer when determining a credit increase. Schemes also spoke of credit churning, where existing debts are rolled up into a new loan.

The particular concerns of vulnerable customers were mentioned, such as those who are inarticulate, with a disability or earn a low income. These customers often place a greater level of trust in a bank; some customers take an automatic credit increase as the bank's answer to resolving a debt problem. There can be a dilemma in assessing the degree of customer responsibility that the borrower should accept and the degree of corporate responsibility that the lender should accept.

Sub-prime mortgage lending intermediation was also discussed as a current banking hot topic. An increase in house prices and personal debts could encourage collusion between customers and intermediaries, enabling the customer to borrow more money than their real circumstances warrant. Complaints can be about the intermediary or the lender. An intermediary acts as an agent for the customer and in some cases advises customers on how to complete the application form so that it will meet lender criteria. In other cases a customer may sign a blank application form and leave it for the intermediary to complete, or sign a false declaration of which the intermediary is aware. Although the customer could be viewed as responsible as they are part of the syndicate, the Australian Court of Appeal has ruled this is not always the case.

Privacy

A delegate from Standard Bank of South Africa said that in cases of fraud, they request access to a customer's computer to determine whether the customer's account has been compromised. He said that whilst customers were usually happy to provide their computer to a law enforcement agency, customers were less happy to provide it to a bank. Others considered it more appropriate for law enforcement

agencies to make requests for a customer's computer. Some banks in New Zealand made it conditional for the bank to obtain a customer's computer in order for the bank to provide a refund to the customer but the ombudsman did not consider this action was appropriate.

Other issues

- The UK Financial Ombudsman Service has received 135,000 complaints about unauthorised overdraft current account charges. The Office of Fair Trading is taking a test case to the High Court to get answers to important legal questions about these charges. The ombudsman will then take the Court's decision into account when considering these complaints – outstanding complaints have been put on hold in the meantime. It had also received an increasing number of complaints about credit card default fees, mortgage exit fees and mortgage arrears fees.
- The same scheme has also had an increasing number of complaints about debt collection arising from its growing consumer credit jurisdiction. This is an unusually wide area as anyone asked to repay a debt, ie a spouse, partner or family member, can refer a complaint.
- Delegates thought that any rules and industry guidance were often unhelpful when dealing with banking 'hot topic' complaints as it was difficult for any guidance to remain up to date. The publication of case studies, such as those produced by the UK Financial Ombudsman in *ombudsman news*, was agreed to be helpful to other schemes.