

**Consumer Council  
Submission to LegCo Panel on Financial Affairs  
'Consumer protection in the banking sector'**

**Introduction**

1. The Consumer Council is pleased to provide further comments to the Panel on consumer protection in the banking sector following the previous meetings of the Panel on this subject in 2002.
2. Members have indicated that the specific area of discussion for the current meeting is to update the Panel on the initiatives undertaken by the Hong Kong Monetary Authority (HKMA) and the banking industry to strengthen the self regulation of market conduct and enhance the mechanism for handling consumer complaints, the statistics and trend of consumer complaints, as well as HKMA's review on its role for protecting banking consumers.
3. In this context, the Council's submission updates Panel Members on three major areas of concern that have arisen in the Council's previous submissions:
  - a) marketing conduct in the banking sector;
  - b) the role of HKMA in enhancing consumer welfare; and
  - c) the expansion of consumer credit information shared between credit providers.
4. See attachment for statistics on consumer complaints.

**Marketing Conduct**

5. A Council survey in late 2002 uncovered areas of concern over certain sales practices of financial institutions in marketing investment and insurance schemes.
6. In the present low interest economic environment, consumers are increasingly turning to alternative savings and investment products for capital preservation and higher interest yields. To cater to this growing demand, financial institutions have been active in the selling of a diversity of investment and insurance products to the retail customers. The Council has found that problems occur if front-line staff do not possess the necessary training and knowledge to provide sufficient information and give sound investment advice. Some may also be under pressure to meet sales target or motivated by the commissions from the transactions.
7. The problem appears to be made all the more acute when such marketing is directed to the more vulnerable customers – the elderly – who have little or no knowledge in investment. There have been cases where elderly customers (usually term depositors) were persuaded, allegedly with high pressure sales tactics, into buying investment funds unsuitable for their purpose. The survey, and complaints lodged with the Council, have also found an incidence of misleading claims and information being given to customers, which commonly include the following:
  - a) Inappropriate marketing of wholelife insurance products to clients as savings products. (While wholelife insurance provided a higher insured amount there were less savings as compared to endowment insurance).

- b) Insurance savings plans being marketed as savings products claiming the insurance was free. The truth was that the insurance cost was incorporated in the premium.
  - c) The cost of early surrender of policies not being disclosed to consumers. A large portion of the premiums paid in early years were used to pay for the sales commission and the administrative fees of insurance companies. Thus, upon early termination of the policy, the surrender value was extremely low and consumers usually incurred loss.
8. When it released the details of its survey in December 2002, finance institutions were urged by the Council to:
- a) provide sufficient training to front-line sales staff to ensure they act in a professional manner in providing fair and objective recommendations to customers; and
  - b) put in place internal monitoring procedures to ensure their staff act in accordance with professional codes (such as the Code of Banking Practice) and in the best interest of customers.
9. In addition, the Council noted in its response to the HKMA consultation on *Supervision of Regulated Activities of Securities and Futures Commission Authorised Institutions* that investors may not be aware of the new requirements in that Authorised Institutions and their staff involved in regulated activities are required to register with the Securities and Futures Commission and that the HKMA will remain the front line supervisor for these institutions. The Council also noted that investors may not know they have to deal with relevant individuals when placing orders. Therefore, the Council recommended that guidance measures should be provided to ensure that investors:
- a) know they have to deal with relevant individuals; and
  - b) know the persons they are dealing with are relevant individuals operating under appropriate supervision.

### **The Role of the HMKA in Enhancing Consumer Welfare**

10. The Council welcomes the efforts of the HKMA and LegCo members to improve protection for consumers in the banking sector. The Council considers that given the Government's sector specific approach, the HKMA as the banking regulator should have the ultimate power to censure certain conduct that violates a code of conduct dedicated to protecting, and enhancing consumer welfare, thereby maintaining consumer confidence in the sector.
11. This role should encompass oversight of both marketing conduct (i.e. misleading and deceptive conduct and other unfair conduct) and anti-competitive practices.
12. An important issue in this regard is that the HKMA's current statutory role is that of
- a) keeping the Hong Kong dollar stable;
  - b) managing Hong Kong's official reserves;
  - c) promoting the safety of Hong Kong's banking system; and
  - d) developing Hong Kong's financial infrastructure.

13. As such, there is no explicit mandate for HKMA to protect consumers from unfair marketing conduct or restrictive business practices that distort competition and it does not have the power to obtain information from authorized institutions in order for it to pursue investigations into such conduct. For HKMA to properly fulfill a role in protecting consumer welfare against unfair marketing conduct or restrictive business practices, this lack of power would need to be addressed.
14. In addition, HKMA and other relevant regulatory bodies would also need to ensure there is supervisory cooperation and harmonization of policies and procedures across the different functional areas (banking, securities, and insurance).
15. On the basis of the experience gained under these arrangements, consideration can be given at a further stage towards gauging whether the limited consumer protection role taken on by HKMA should evolve further where it is specifically mandated to have such a role.
16. Whilst the Council supports the above arrangements, it would like to stress that the sectoral approach raises problems due to the fact that market participants will be regulated depending on what bureaucratic sector they belong, rather than on what markets they are contesting. As noted above, banks are now operating in markets outside their traditional areas, such as retailing insurance, investment advice to consumers, and share broking. It is for this reason that the Council's first preference is for the one authority to administer a general competition law, and a general consumer protection law that has application across all markets regardless of the nature of the participant.

#### **Expansion of consumer credit information shared between credit providers**

17. The Council has long expressed concerns at the proposed expansion of the information data base on consumer credit details shared between financial institutions. Notwithstanding the Council's concerns, the expansion is due to go ahead, and in the process of discussion with the Council a number of Council requests were met by regulators and industry; as follows.
  - a) Set up quantifiable benchmarks to measure outcomes/benefits to consumers upon expansion of the credit information database;
  - b) Limit non-credit based information such as employment information to be shared;
  - c) Draw consumers' attention to company policy with regard to the collection of credit data and the right to opt-out upon application for credit facilities, not in 'small print';
  - d) Increase transparency in the credit scoring system by disclosing information on the scoring formula and providing consumers with an explanation about the scores. (Credit reference agency (CRA) will produce an information leaflet on the general description of the statistical model used in derived a credit score and the type of information used in the scoring algorithm);

- e) Include a notice of consumer dispute in the credit report;
  - f) Make submission of CRA compliance audit report to the PCO as a routine measure instead of upon request.
18. However, a number of proposals put forward by the Council remain for further consideration.
- a) Examine the nature and future role of credit reference agencies (i.e. whether they should operate as private, for profit companies);
  - b) Provide consumers with the means to opt out of data sharing at the time of making application for credit;
  - c) Improve data updating frequency such as a shorter reporting cycle;
  - d) Provide a free certified copy of payment history to consumers who choose to opt out upon full repayment of their accounts
  - e) Specify a time frame that credit providers should inform the borrower of the opt-out arrangement, instead of 'as soon as reasonably practical';
  - f) Obtain consumer consent for disposing of credit information to credit providers or credit reference agency;
  - g) Provide consumers with a free copy of their credit report every 12 months, so that they can ascertain whether access to their credit report through the reporting year is legitimate, and that information in the report is complete and accurate (The current company, Transunion Information Services Limited has been reported as considering to allow those consumers whose credit applications have been refused and who are able to produce a refusal notice from a bank, to access their credit data free of charge);
  - h) Define clearly the meaning of 'review' to prevent abusive access (PCO defines the conditions under which credit providers can have access but the credit providers still have complete control over meaning of 'review' determining when to decide that the conditions will be triggered. But credit providers are required to give prior notification to customers of their intention to make a "review" access to their credit reports);
  - i) Make available a register of recognized credit providers for public inspection;
  - j) Impose mandatory minimum statutory damages to consumers in case of a credit reference agency's non-compliance;

消費者委員會  
Consumer Council

財經服務的投訴

Complaints received against Financial Services

		<u>2001</u>	<u>2002</u>	<u>1-2/2003</u>
ATM	自動提款機	38	21	1
Auto-Pay	自動轉賬	15	5	1
Coin Exchange	輔幣找換	2	1	0
Current Account	支票戶口	26	27	2
General Service Charges	一般服務	20	30	3
Money Transfer	滙款	13	18	3
Mortgage	按揭	115	111	16
Personal Loan	私人貸款	48	108	11
Saving Account	儲蓄存款	106	85	11
Service Charge For Overseas Cheques	海外支票	2	1	0
Time Deposit	定期存款	12	9	0
Credit Card	信用卡	509	551	64
Overdraft Facilities	透支	5	2	1
Combination Account	綜合戶口	3	7	2
Internet Banking	網上銀行	2	4	3
Others	其他	75	99	22
Total	總計	991	1,079	140