



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

285 McLeod Street, Suite 200, Ottawa, ON K2P 1A1

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Financial Consumer Agency of Canada
Supervision and Promotion Branch
427 Laurier Avenue West, 6th floor
Ottawa, ON K1R 1B9

BY EMAIL to: FCAC.Consultation.ACFC@fcac-acfc.gc.ca

Re: *Consultation on FCAC's proposed Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks*

Dear Consultation Secretariat Staff,

The Public Interest Advocacy Centre (PIAC) is pleased to provide the Financial Consumer Agency of Canada with our submission on the *Consultation on FCAC's proposed Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks*, which is attached.

We also request that the Agency extend the comment period for the *Consultation on a proposed Guideline on Appropriate Products and Services for Banks and Authorized Foreign Banks* (Suitability Consultation) to February 17, 2022 in order to ensure that consumers are able to participate fully in both the current Consultation and the Suitability Consultation. Our comments contain more information about this request.

Sincerely,

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Consultation on FCAC's proposed Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks

The Public Interest Advocacy Centre (PIAC) is providing the below comments to the Financial Consumer Agency of Canada (Agency) on the *Consultation on FCAC's proposed Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks*. We will refer to both the "Consultation" and the "proposed Guideline" throughout our comments. PIAC is a national not-for-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services.

Before commenting, we request that the Agency extend the comment period for the *Consultation on a proposed Guideline on Appropriate Products and Services for Banks and Authorized Foreign Banks* (Suitability Consultation). Both the current Consultation and the Suitability Consultation deal with the implementation of the new Financial Consumer Protection Framework (FCPF). The current Consultation was launched October 27, 2021 and is due December 11, 2021 and the Suitability Consultation was launched November 22, 2021 and is due January 6, 2022. These overlapping timeframes negatively impact consumers in ways disproportionate to banks because, unlike banks, public interest groups and individual consumers lack the resources to respond fulsomely to both consultations without the benefit of two independent comment periods. The Suitability Consultation comment period is also inadequate because it runs through the winter holidays and the celebration of the new year. The selected time period divides the focus of individual consumers much more than it does for banks, which are obligated to and have the resources to maintain operations throughout the holidays. The FCPF is meant to serve consumers and, therefore, the Agency must ensure consumers' participation in these consultations is not unduly restricted. For these reasons, PIAC requests that the Agency extend the comment period for the Suitability Consultation until February 17, 2022 (45 days from January 3, 2022).

PIAC will now provide our comments on the proposed Guideline. Broadly speaking, we support the Agency's efforts to set clear and much needed expectations for banks regarding their internal complaints policies and procedures under the new FCPF. That said, we also suggest ways to better communicate features of the FCPF that are highlighted in the Consultation, but are absent from the proposed Guideline.

The Guideline needs to highlight the FCPF's consumer protections

PIAC notes the proposed Guideline provides information on areas not covered by CG-12, the Agency's current complaint handling guidance for Federally Regulated Financial Institutions (FRFIs). We commend the Agency for including additional expectations regarding systemic issues, redress and reimbursement policies, and how to deal with complaints when consumers do not provide their name. However, PIAC recommends, given that the proposed Guideline will apply only to banks and not other FRFIs with different legislative and regulatory requirements, that the Guideline include specific reference to the new FCPF features highlighted in the Consultation, which require banks to:

- “establish complaint-handling policies and procedures that satisfy the Commissioner of FCAC;
- deal with each complaint within 56 days following the day it is received;

designate an officer or employee in Canada to implement complaint-handling policies and procedures;

designate officer(s) or employee(s) in Canada to receive and deal with complaints;

refrain from using misleading terms with respect to complaint-handling procedures, including any term that suggests that the procedures, officers or employees are independent of the bank (e.g., “ombudsman”);

create records of all complaints and retain them for 7 years; [and]

report quarterly to FCAC regarding complaints that their designated employees or officers receive during the quarter.”

By including specific reference to these legal requirements, the Agency will not only provide the banks with an additional reminder of their obligations, but will also give consumers an accessible version of this information. What follows is our comments on ways to improve the Guideline so as to provide banks and consumers with more information on the expectations around each of these FCPF features.

[Establish complaint-handling policies and procedures that satisfy the FCAC Commissioner](#)

First, the proposed Guideline notes that a bank is responsible for ensuring its complaint-handling policies and procedures are satisfactory to the Commissioner, but does not include, as part of this requirement, an expectation that a bank use a methodology for determining redress and reimbursement that produces fair and consistent results for complainants. PIAC is concerned that banks may, if not provided with an expectation otherwise, provide different levels and types of redress or reimbursement to their customers based on the imputed value of the customer or the customer’s determination in seeking a remedy rather than by objectively weighing factors relevant to the complaint. PIAC, therefore, recommends that the Agency amend paragraph 21 of the proposed Guideline as follows:

Complaint-handling policies and procedures should ensure that a bank can provide its consumers with redress and/or reimbursement for financial and non-financial complaints in a manner that is in keeping with, and based on, the circumstances of the complaints **and that produces consistent results across similar complaint circumstances.**

PIAC supports the Agency including the expectation that banks provide both financial and non-financial redress and reimbursement to complainants, which is an improvement from CG12, but asks that the Agency provide a list of examples demonstrating what may constitute appropriate redress and include with this list an expectation that an apology alone, even one made publicly, does not constitute appropriate redress.

Second, PIAC supports the Agency including the expectation that banks address systemic issues, but again asks the Agency to include more specific guidance to ensure banks effectively follow-up on systemic issues. We recommend paragraph 19 of the proposed Guideline be amended as follows:

A bank's complaint-handling policies and procedures should include mechanisms for identifying and remedying any recurring or systemic problems by:

- **determining and documenting** the underlying reason behind the complaint and taking corrective action, where appropriate. **When a bank determines corrective action is not required it must document this finding and the reason for not taking corrective action.**
- tracking and analyzing the causes of individual complaints to identify the root causes that are common to various types of complaints.
- **determining and documenting** whether such root causes may also affect other processes, products or services **and taking immediate action to remedy these effects.**
- **determining and documenting** which other consumers may have potentially suffered detriment from such root causes, **notifying these consumers, and providing these consumers with redress or reimbursement.**

We understand that these expectations, related to reimbursement/redress and systemic issues, are not legally required under the FCPF, but we still believe that strong, clear language will better assist banks in developing best practices in these areas, which, in turn, may improve trust between banks and consumers and benefit the Canadian financial system more broadly.

Deal with each complaint within 56 days following the day it is received

Third, the proposed Guideline does not reference s.14 of the *Financial Consumer Protection Framework Regulations* which states: "For the purposes of paragraph 627.43(1)(a) of the *Act*, the prescribed period for dealing with a complaint is 56 days after the day on which the complaint is received." This timeframe is a significant change from CG-12's expectation that banks resolve complaints "90 days following receipt of the complaint at the second level of complaint handling." The new regulation changes not only the length of the prescribed period, but also the date on which the period runs. PIAC supports both of these changes and believes they will improve procedural fairness for complainants. The Agency may consider it unnecessary to repeat legal requirements in the Guideline, but PIAC recommends the Agency explicitly reiterate these requirements rather than merely referring to the "prescribed period", especially since the Guideline will be written in more accessible language than the *Bank Act* and regulations.

Fourth and related, the proposed Guideline states in paragraphs 26 and 27 that a first point of contact employee must refer a complaint to a designated complaint-handling employee within 14 days of receiving and being unable to resolve a complaint. We strongly recommend that the Agency explicitly state that this period is included within the 56-day prescribed period, so as to not inadvertently create a conflicting information that banks may exploit.

Refrain from using misleading terms with respect to complaint-handling procedures, including any term that suggests that the procedures, officers or employees are independent of the bank (e.g., "ombudsman")

Fifth, we recommend the Guideline include a reference to s. 627.43(2) in the amended *Bank Act*, which states: "An institution shall not use any misleading term with respect to its procedures or designated

officers or employees, including any term that suggests that the procedures, officers or employees are independent of the institution — such as the term “ombudsman” or any other term with a similar meaning — or any prescribed term.” PIAC strongly supports the government’s inclusion of this requirement in the *Bank Act*. As stated above, the Guideline will be written in more accessible language than the *Bank Act* and regulations and, therefore, the Agency should include all the consumer protection provisions relevant to internal complaint handling. As such, we recommend the Agency add this requirement that banks not use misleading language just after paragraph 13 in the Guideline.

Create records of all complaints and retain them for 7 years

Sixth, PIAC recommends that the Agency include more robust record-keeping expectations. Banks are tasked with being both the respondent and the adjudicator in the internal complaints handling process. The record of complaint is a critical tool for consumers who may need to rectify an inadequate and inherently-biased bank decision through independent, third-party adjudication. We, therefore, ask the Agency to ensure banks are properly encouraged to maintain thorough records.

The proposed Guideline states at paragraph 46: “A bank must maintain a record of all the complaints it receives, including any in which the consumer is not named and any received by, or in relation to, a third-party.” PIAC recommends that this paragraph contain the requirements specified in s.627.44 of the *Bank Act* that a bank retain this record for at least 7 years and that the record contain:

- “(a) if the complaint was made in writing, the original version of the complaint;
- (b) if the complaint was made orally,
 - (i) the recording or a transcript of the recording if the complaint was recorded, or
 - (ii) the details of the complaint if the complaint was not recorded;
- (c) the name of the person who made the complaint;
- (d) the name of the person who requested or received from the institution the product or service to which the complaint relates;
- (e) the contact information provided by the person who made the complaint;
- (f) the date on which the institution received the complaint;
- (g) a description of the nature of the complaint and the product or service to which the complaint relates;
- (h) the date on which the complaint was resolved if, in the institution’s opinion, it was resolved to the satisfaction of the person who made the complaint;
- (i) a description of any actions that were taken by the institution to attempt to resolve the complaint;
- (j) a description of any compensation provided to the persons referred to in paragraph (c) or (d);
- (k) confirmation that the institution provided the information referred to in paragraphs 627.65(a) to (c) to the person who made the complaint, if the institution did so; and

(l) any prescribed information.”

PIAC recommends that the Agency also include an expectation that the record of complaint contain all correspondence to and from the complainant and a list of all offers to settle made by the complainant and the bank, including any conditions attached to these offers, in hopes of tracking and ultimately reducing low-ball offers. We clarify that these expectations would not impose any additional burden on the bank to disclose internal correspondence or decision-making strategies. These expectations would merely ensure that there would be a complete record of correspondence accessible to third party adjudicators in cases where the complainant is unable to maintain complete records themselves, due to time, resource, or other constraints.

The Guideline should also explicitly state that the full record of complaint is to be released to an external complaint body (ECB), the complainant, or the complainant’s representative following consent from the complainant. A similar expectation is present in CG-12, which states: “when a consumer escalates a complaint to a FRFI’s external complaints body, and once the consumer provides the external complaints body with consent for the FRFI to release information about the complaint, the FRFI provides the external complaint body with all the information that relates to that complaint.” Including this expectation in the Guideline will better enable consumers to hold banks accountable through an ECB where a bank’s internal complaints handling system fails to provide adequate remedy. Extending this expectation to give complainants direct access to the record related to their complaint would help consumers decide whether the best course of action is to further communicate with the bank, take their complaint to an external complaints body, litigate, or abandon their claim.

[Report quarterly to FCAC regarding complaints that their designated employees or officers receive during the quarter](#)

Seventh, the Agency should include clear guidance on the limited circumstances when a bank may determine a complaint has been, in its opinion, “resolved to the satisfaction of complainant” for the purposes of maintaining the record of complaint, reporting quarterly to the FCAC, and providing information to consumers via the bank’s website.

We recommend that the Agency amend paragraph 23 so that it provides the following options for dealing with a complaint: “closed – no contact from complainant within set period”; “closed – complainant withdrew complaint”; “closed – complainant accepted offer”; and “resolved – complaint resolved to the satisfaction of the person who made it.” The Agency would need to include that the latter determination requires the bank to obtain written confirmation via the complainant’s signature on a document written in plain language that the complaint was resolved to the satisfaction of the person who made it.

As a consumer advocacy organization, we believe information on the reason a complaint is closed and whether the complainant was satisfied with its conclusion are incredibly important. However, we believe that the existing options to “close” or “resolve” a complaint do not adequately capture these different realities. A complainant may accept an offer for the bank to reimburse 99% of their loss, but still not necessarily be satisfied with the resolution of the complaint. The Agency should expect the bank to explicitly ask complainants whether they are satisfied with the resolution and only report the complainant’s satisfaction when the complainant provides confirmation of such satisfaction.

Conclusion

PIAC eagerly awaits the implementation of the FCPF on June 30, 2022 and supports the Agency's development of the proposed Guideline meant to ensure banks and authorized foreign banks are held to higher standards flowing from the FCPF. To that end, PIAC recommends the Agency use stronger language to describe its new expectations related to reimbursement and systemic issues and include more explicit references to the FCPF consumer protections relevant to internal complaints handling. We also recommend that the Agency take additional steps to improve record-keeping expectations to better facilitate independent, third-party adjudication and include in the Guideline the expectation that banks only record, report, or publish a complaint as having been resolved to the satisfaction of the complainant when the complainant confirms this to be true in writing.

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