



Consumer Protection in the Banking Sector: The Need for Reform to Protect Bank Consumers in Nigeria

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By

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Abstract

The protection of consumers of financial services has attracted a lot of debates following the global financial crisis of 2007 to 2009. As a result, there have been series of reforms in a number of jurisdictions across the globe. Despite this development some countries still lag behind and Nigeria is no exception.

This study examines the problems of consumer protection in Nigeria, with specific reference to the bank consumers. The aim is to consider whether the Nigeria consumer protection regime provides “sufficient protection to bank consumers and whether it should be reformed”. The study also focuses on the role of the Central Bank of Nigeria (CBN) in consumer protection, its dispute resolution mechanism and the practical challenges. The test of sufficiency will be analysed and discussed, using ‘consistency’, ‘efficiency’ and ‘accessibility’ in order to illustrate the existing weaknesses in resolving consumer dispute. The approach in this study is doctrinal analysis. In all, the findings suggest that there is need, to reform the consumer protection regime in the banking sector and enforce laws which will address issues highlighted in the study to enable the users of banking services in Nigeria to obtain an appropriate level of protection through regulatory processes. This study, therefore, also provides a comparative analysis between United Kingdom and Nigeria, using current consumer protection framework in the United Kingdom in making proposals for the needed reforms in Nigeria.

The study thus concludes with the recommendation that the current Nigerian consumer protection regime does not offer adequate protection; hence protecting consumers require a holistic approach which includes effective consumer protection framework, enforcement, coordination and cooperation from different stakeholders.

List of Acronyms and Abbreviations

- ADR** – Alternative Dispute Resolution
- AGF** – Attorney General of the Federation
- ATM** - Automated Teller Machine
- AU** – African Union
- BDC** – Bureaux-de-Change
- BOFIA** – Banks and Other Financial Institutions Act
- BSD** – Banking Supervision Department
- CAFON**- Consumer Advocacy Foundation of Nigeria
- CAMA** - Company Allied Matters Act
- CAO** – Consumer Awareness Organisation
- CBN** – Central Bank of Nigeria
- CCMS** – Consumer Complaints Management System
- CEO** – Chief Executive Officer
- CEON** - Consumers Empowerment Organisation of Nigeria
- CGAP** - Consultative Group to Assist the Poor
- CFRN** - Constitutions of the Federal Republic of Nigeria
- CI** – Consumer International
- CIBN** – Chartered Institute of Bankers of Nigeria
- CIBN** –The Chartered Institute of Bankers of Nigeria
- CPD** – Consumer Protection Department
- CPF** – Consumer Protection Framework
- CPO** – Consumer Protection Office
- CPON** – Consumer Protection Organisation of Nigeria
- DFI** – Development Finance Institution
- DFI** – Development Financial Institution

DH – Discount House

DIS – Deposit Insurance Scheme

DMBs – Deposit Money Banks

DPM – Deposit Payment Methods

EA – External Auditor

EU – European Union

FC – Finance Companies

FCA – Financial Conduct Authority

FDAC – Food and Drugs Administration and Control Department

FGN – Federal Government of Nigeria

FH – Financial Houses

FI – Financial Institution

FIS – Financial Institution Strategy

FITC – Financial Institution Training Centre

FLF – Financial Literacy Framework

FMF – Federal Ministry of Finance

FODCOR - Foundation for Defence of Consumer Rights

FPRD - Financial Policy and Regulation Department

FS – Financial Services

FSA – Financial Services Authority

FSRCC-Financial Services Regulation Coordinating Committee

FSS – Financial System Strategy

GFC – Global Financial Crisis

KPMG – Klynveld Peat Marwick Goerdeler

KYC – Know Your Customers

LFN-Laws of the Federation of Nigeria

LLR – Lender of the Law Resort

MFBS - Micro-Finance Banks

MOU - Memorandum of Understanding

NA - National Assembly

NAFDAC – National Agency for Food and Drug Administration and Control

NAICOM – National Insurance Commission

NBA – Nigeria Bankers Association

NCA – Nigerian Communication Act

NDIC – Nigeria Deposit Insurance Corporation

NGO – Non-governmental Organisation

NSE – Nigerian Stock Exchange

OECD – Organisation for Economic Co-operation and Development

OFI – Other Financial Institution

PMB – Primary Mortgage Bank

PRA – Prudential Regulatory Authority

RGBC – Revised Guide to Bank Charges

SME – Small and Medium Enterprise

SMSE – Small and Medium Sized Enterprise

SON – Standards Organisation of Nigeria

UK- United Kingdom

UN – United Nations

UN – Unfair Contract Terms Act

WBG – World Bank Group

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Dedication

This research is a fitting tribute to my Father, Mr F.A.O. Uzokwe, in his memory, the man whose words lifted me and for his endless support and encouragement in all my accomplishments.

And to all my friends and family who have been there for me at all time.

Blessings of God Goodness (Psalm 21:3)

Declaration

I confirm that this thesis is my own work and it has not been submitted or accepted in any previously written or published for any degree. The work has been done entirely by the candidate and all the sources used have been clearly reference in the bibliography.

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CHAPTER ONE

INTRODUCTION

1.1 Research Background

The past ten years have seen increasingly rapid developments in consumer protection¹ in many countries around the world. This study considers whether the Nigerian consumer protection regime provides sufficient protection to bank consumers,² and whether it should be reformed. Nigeria has a rapidly developing financial services sector, but consumer protection provision still remains unclear or under-developed. Consequently, the current laws addressing the financial consumer issues do not provide effective, efficient and accessible measures of resolving consumer disputes and the academic literature has given little attention to this area despite its importance. In the light of the above, there is a need to examine the current consumer protection measures within the Nigerian banking sector to ensure they address the challenges of various consumers.

Nigeria being the most populous country in Africa has a population of about 173 million people.³ This great entity was officially formed through the amalgamation of the Northern

¹ Ever since the 2008 financial crisis, there has been intense discussion by international organisations, national governments and financial regulatory authorities, that a better coordinated approach to consumer protection can be achieved when it is considered as part of the legal, regulatory and supervisory framework. Consumer protection is achieved when consumers have adequate information that will help them make informed decision, avoid deceptive and unfair trade practices, and have access to redress mechanism when problem arises. See Rutledge et al. 'Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool' (2010). <http://siteresources.worldbank.org/INTECAREGTOPPRVSECDEV/Resources/GoodPractices_August2010.pdf> accessed 5 September 2016; Benston considers '*consumer protection*' to be the third putative justification for regulating financial services. See George J. Benston, *Regulating Financial Markets: A Critique and Some Proposals*, (1999) American Enterprise Institute for Public Policy and Research, 10; United Nations Conference on Trade and Development: Draft Resolution for Consideration by the General Assembly Consumer Protection, available at <http://unctad.org/meetings/en/SessionalDocuments/ditc-ccpb2015_02res_en.pdf> accessed on 4 September 2016.

² In this thesis, the term 'bank consumers' will be used to mean consumers of bank financial products and services. It is worth stating at this stage that this present thesis does not intend to deal with the entire financial services sector, such as consumers of insurance products, securities or even the micro-finance consumers, but, instead focus on the basic consumer protection issues that present many legal and regulatory challenges that surround the Nigerian banking sector. This mechanism must be provided in order to protect the end-users of the financial services and rebalance the contractual relationship that places the financial operator at a higher advantage position.

³ World Bank Report, Available at <<http://www.worldbank.org/en/country/nigeria/overview>> accessed 21 April 2016; Antoinette M. Sayeh, 'Nigeria: Financial Sector Stability Assessment' (International Monetary Fund 2013) IMF Country Report No. 13/140, 8.

Protectorate and the Southern Protectorate in January 1914 by the British government. Nigeria is rich in natural resources mostly crude oil, with an economy that is growing at the rate of 7% each year since 2009.⁴ The financial services sector has been a major hub for its economic development and has significantly contributed in the financing of businesses in all sectors of the economy⁵.

Financial services in Nigeria include banking, insurance, and other non-bank financial institutions.⁶ The banking sector has grown significantly in recent years and the past decade has seen most of the domestic banks expanding across many African countries.⁷ Despite the growth in financial services especially the banking sector, there have been allegations of unethical practices and weaknesses in the regulatory regime which set the stage for considerable losses for consumers⁸. Consumer protection has emerged as a new feature in the post-crisis framework for banking regulations in Nigeria.

Generally, the growth and development in the financial services have seen the Nigerian banking system undergo significant reforms in the last decade. One of these reforms is the bank consolidation and capitalisation of 2005 which helped many banks to broaden their banking activities.⁹ The 2008 banking crisis exposed some legal, regulatory and supervisory gaps and weaknesses in the protection of bank consumers.¹⁰ The banking sector is regulated by the Central Bank of Nigeria¹¹ (CBN) and it is noted that they do not have legal frameworks and regulations designed particularly to enforce minimum standards for redress when something goes wrong between the consumers and the financial institutions.

Consequently, the CBN carries out its prudential responsibilities under various frameworks, regulations, guidelines, and circulars which are sometimes not often well-targeted to provide adequate protection particularly for the bank consumer. The prudential regulations in Nigeria

⁴ See 'Africa's New Number One' (The Economist, 2014) <<http://www.economist.com/news/leaders/21600685-nigerias-suddenly-supersized-economy-indeed-wonder-so-are-its-still-huge>> accessed 24 April 2016.

⁵ Nasir A Dori, The Impact of Central Bank of Nigeria's Development Finance on Economic Growth and Development of Nigeria, (2016),1, Afro Asian Journal of social Sciences, pp.2-5

⁶ Central Bank of Nigeria: Available at: <<http://www.cenbank.org/Supervision/fstitutions.asp>> accessed 28 April 2016

⁷ The term 'domestic bank' will be used solely when referring to banks owned by Nigerians. For example, Access Bank, Eco-bank and Fidelity Bank Nigeria

⁸ Saunsi, Lamido, The Nigerian banking industry: What went wrong and the way forward. (2010) Being an address delivered at the convocation Square.pp.5

⁹ Antoinette M. Sayeh, 'Nigeria: Financial Sector Stability Assessment' (International Monetary Fund 2013) IMF Country Report No. 13-140, 13.

¹⁰ Sanusi Lamido, 'The Nigerian Banking Industry: What Went Wrong And The Way Forward' (Square, Bayero University, Kano, 2010), 8.

¹¹ The Central bank of Nigeria is the institution charged with regulation and supervision of the Nigerian financial institutions including bureaux-de-change and Micro-finance banks.

are mainly in the form of circulars or guidelines. For example, there are Guidelines on Bank Charges, first issued in 2004 and not revised until 2013 after the financial crisis.¹² However, there are no Guidelines on systems of redress that are designed to enforce minimum standards in the financial services sector.¹³ It is important to note that it is not a matter of having a guideline (guidelines by nature are advice that can be ignored) which could be difficult to enforce but rather to ensure they address the specific concerns that bank consumers face when purchasing financial products.

Nevertheless, the rapid development of banks' financial products and the success of the protection for these consumers depend upon a number of factors. One of these factors is often manifested in the effectiveness of the legal framework for regulation and supervision in the financial system.¹⁴ This legal infrastructure¹⁵ plays a crucial role not only in the operation of the financial market by ensuring that payment systems do not fail, but also other issues in the financial system (infrastructural elements) to create a favourable financial environment for both the financial institutions and the consumers. Consumer protection issues are increasingly important components which should be considered as a crucial element that seeks to empower consumers with proper information to make informed choices and also to provide proper regulatory and legal mechanisms for resolving consumer disputes.¹⁶ Therefore, the main research question of this study is whether the Nigerian consumer protection regime provides sufficient¹⁷ protection for bank consumers.

Nigerian financial markets are fast growing and they lack necessary legislation and regulation to take appropriate care of major consumer issues that affect confidence in those markets. The financial regulators have recognised the continuous increase in the number of Nigerians who can either buy or use financial services on a daily basis. The last decade has seen a positive increase in the Nigerian bank financial product users due to the new payment

¹² See The Central Bank of Nigeria : Circular To All Banks and Discount Houses: The Revised Guide To bank Charges –REF:FPR/DIR/GEN/CIR/03/002

¹³ For detailed discussion on the system of redress in the banking sector, see Chapter five in this study: An Analysis of the Draft Consumer Protection Framework in Nigeria.

¹⁴ See World Bank, *Financial Sector Assessment* (World Bank Publications 2005)223

¹⁵ The term 'legal infrastructure' as used in this study encompass the overall framework whether the one that allows the financial system to perform their statutory duties effectively or the one that allow the financial institutions and the customers to conclude transactions. See World Bank, *Financial Sector Assessment* (World Bank Publications 2005), 223,234

¹⁶ Stijn Claessens, Current Challenges in Financial Regulation, (2006) World Bank Policy Research Working Paper No. 4103, 41

¹⁷ In this thesis, the term 'sufficient' is defined as legally satisfactory. In this case, the study will determine whether the measures and means designed for bank consumers in Nigeria to seek justice and enforce their rights are legally satisfactory.

channels, such as the Automated Teller Machines¹⁸ (ATM), internet banking and cross border banking services. However, how these consumers should or are protected is open to question.¹⁹ Certainly, the growing number of bank consumers and the continuous introduction of different new payment channels give the impression that consumer protection measures are effective in Nigeria where financial education levels are generally low. It is the duty of the Nigerian government to decide which mechanism should be used to protect the different kinds of consumer as the financial services take a variety of different forms.²⁰ The Nigerian government has made a significant effort and shown interest in the protection of consumers in different ways in the past.²¹ However, pertaining to financial laws and regulations, there is a lack of adequate rules which often undermines consumer confidence in the financial services, mainly the absence of a comprehensive consumer protection framework which is one of the major problems afflicting the banking industry in Nigeria.²² Again, there is no effective and efficient way of dealing with complaints against financial institutions hence; there are no detailed regulations that set the standards for internal dispute resolution mechanism for Nigerian banks.

The prevailing economic conditions and developments in Nigeria have been a driving force in the government's attempts at establishing legislative mechanisms for consumer protection. The 1990s represented an era which witnessed extensive governmental intervention in the making of several consumer related decree, under the Nigeria military regime. Thus, most pronounced consumer protection policies began under the military government in 1992²³ with the Consumer Protection Council Decree, 1992.²⁴ These laws were made by military fiats without consumers and stakeholders participation, thus ignoring the welfare of the consumers. This led to regulatory gaps in the regulatory pattern of the financial institution in Nigeria.

¹⁸ Odusina A Olumide, Automated Teller Machine Usage and Customers' Satisfaction in Nigeria (2014) 14 Global Journal of management and Business Research: C Finance

¹⁹ Peter Cartwright, Consumer Protection in Financial Services (Kluwer Law International 1999), 3.

²⁰ Peter Cartwright, *Consumer Protection In Financial Services* (Kluwer Law International 1999), 3,4

²¹ The 1990s represented an era where the Federal Government of Nigeria promulgated several Consumers' Protection Decree, for example, Consumer Protection Council Act No. 66 of 1992.

²² Nelson Ojukwu-Ogba, 'Towards Effective Bank Customer Protection In Nigeria: The Legal Imperative Of The Banking Ombudsman System' (2015) 30 Journal of International Banking Law and Regulation.

²³ It should be noted that most of the existing laws on consumer protection, drugs, foods and related products were promulgated as Decrees during the military regime period from 1983 to 1999.

²⁴ Accordingly, in line with section 315 of the 1999 Constitution, the Consumer Protection Decree and all laws made as Decrees are referred to as Acts in this thesis. For example, Consumer Protection Council Act No. 66 of 1992; Cap, C25, Vol, 4, LFN 2004

This thesis examines the legal regime for consumer protection in the banking sector in Nigeria from the perspective of regulatory and supervisory regime. The regulatory and supervisory framework in Nigeria is surrounded by several institutional gaps and weaknesses including the regulator inability to enforce regulations and impose market discipline, governance malpractice within the banks²⁵ and inadequate consumer redress and access to justice among others. This study further argues that the role of such organisations is not recognized in any law. Protecting consumers in the banking sector requires a holistic approach which will encompass effective regulatory systems, involvement of the consumer-stakeholders, consumer access to justice and a comprehensive consumer protection framework.

1.2 Statement of Problem

The financial service sector in Nigeria has triggered a lot of scholarly research²⁶ in the last few years with most of the work focusing on the economic stability of the financial system. One notable fact is that the Nigerian financial industry has experienced a rapid change as a result of the technological advancement particularly in information systems and the way in which the banks and other financial services providers deal with their various customers. This provides the consumers with easy access to various choices in the marketplace but not without consequences for consumers. However, even with the defects in the protection of consumers in this sector, regulatory and supervisory framework of the financial sector is one area that is under researched. Consequently, Nigeria has no central consumer protection institution which focuses specifically on financial services industry.²⁷ As financial products continue to advance without legal foundation for overseeing, implementing and enforcing consumer protection especially in the banking sector, it becomes difficult; as a result the banks tend to make use of these gaps for their own advantage.

Regulation of banks with a view to safeguarding the financial system falls within the purview of the financial regulator (CBN). Consequently, the CBN has passed a series of financial

²⁵ Sanusi Lamido, 'The Nigerian Banking Industry: What Went Wrong And The Way Forward' (Square, Bayero University, Kano, 2010), 7

²⁶ There are numerous writings about the Nigeria Financial services sector. For example, see, Babayanju A Akanji, *Financial Reporting and Ethical Compliance: The Role of Regulatory Bodies in Nigeria* (2017) *Account and Financial Management Journal*; Ozurumba Benedict and Anyanwu Felicia, *Strengthening linkages of the financial services and real sectors of the Nigerian economy*, (2015); available at < <http://www.ajol.info/journals/jorind> > accessed on 10/10/2017

²⁷ National Financial Inclusion Strategy (Abuja 2012), 18

sector regulations over the last seven years but the laws relevant to protecting the consumers of financial products and services are either deficient or overlapping.

Currently, consumers of banks and other financial services lack sufficient protection because of the inherent gaps in the law. In Nigeria, most of the laws relating to consumer protection are promulgated as a military decree.²⁸ In the military era, laws were made by military fiat without involving consumers or other stakeholders, thereby ignoring the interests and welfare of the consumers. It is this reason that the available regulatory laws do not reflect the formation of voluntary consumer organisations (the role of such organisation is not recognised in the any laws) that provide assistance to consumers. As the World Bank Good Practices for financial consumer protection notes that ‘voluntary consumer associations and self- regulatory organizations are important pillars in the consumer protection regime.’²⁹

The last two decades have seen a major increase in the number of financial institutions and nonbanking financial institutions in Nigeria.³⁰ Some of these financial institutions are regulated while some non-banks financial institutions are not. As a result, the consumers often face several challenges such as fraud, misrepresentation, unfair terms and conditions, breach of privacy and lack of appropriate channels to enforce their rights. The extent to which these consumers are protected in the banking sector, the nature and causes of the legal uncertainty and offering possible solutions to the problem is in essence what this research work is all about.

In a banker-customer relationship, the chances that the banks will misuse the powers are only narrowed or restricted if there is effective supervision and monitoring by the authorities charged with financial services supervision in a particular country, for instance in Nigeria. Such supervision is mainly carried out by the Central Bank³¹ as in the case of Nigeria,

²⁸ For example, Consumer Protection Council Decree No 66 of 1992; now Consumer Protection Council Act No. 66 of 1992; Cap C25, Vol, 4, LFN 2004

²⁹ The World Bank ‘Good Practices for Financial Consumer Protection’ (2012), available at <http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good_Practices_for_Financial_CP.pdf> accessed on 11 October 2016

³⁰ The term nonbanking financial institutions refer to financial institutions that are not registered with the Corporate Affairs Commission or have full licences to operate as a bank.

³¹ The structures of the financial supervision differ from country to country. The structure determines which agency or institution that should be responsible for the supervision of a particular financial sector. While some countries operate unified, hybrid or twin peaks model, for example the United Kingdom, Netherlands and Australia have twin-peak; France, Italy and USA have hybrid. Nigeria operates a model of financial supervision which marks a demarcation between banking, securities and insurance. The CBN is responsible for the regulation and supervision of banks in Nigeria. See Rachel Kent (ed), *Global Legal Insights Banking Regulation* (Global Legal Group 2013) 148; Robin Hui Huang, and Dirk Schoenmaker, *Institutional Structure of Financial Regulation: Theories and International Experiences*, (Routledge, 2014) 224.

through the department of bank supervision or a specialised department as may be designated. It is perhaps mainly through these agencies or departments that the Central Bank will most effectively be able to monitor the amount of information available to consumers and to reduce inappropriate risk.

Several measures have been adopted by the CBN to solve these legal and regulatory issues in the banking sector due to the gaps created by the laws. For example, the CBN has issued Guidelines, Circulars and Directives to resolve some of these problems arising from the banker-customer relationship. Most of these CBN regulations have used the international guidelines on consumer protection such as *United Nations Guidelines for Consumer Protection*³² and World Bank Good Practices for Financial Consumer Protection.³³

However, there are substantive defects in the protection regime for bank consumers in Nigeria. Bank consumers are exposed to many risks when purchasing bank products due to a lack of clear information, disclosure requirements and enforcement of such measures by the regulators. This raises the need to have effective laws and regulations that can be satisfactorily enforced by the regulators.

This thesis will examine the legal regime for protecting bank consumers and the role of the Central Bank in protecting the bank consumers. This is because the bank consumers are often exposed to complex financial products and the current regime has not recorded substantial progress in enforcing and supervising the financial institutions. The gaps created in the regulatory sector due to regulatory failures and non-execution of the existing laws is gradually being felt by consumers. These failures were exposed during the recent financial crisis.

1.3 Research Aims and Questions

This thesis examines the legal regime for consumer protection in the banking sector in Nigeria. The purpose of this examination is to determine whether indeed, the legal regime offers sufficient protection for consumers. This purpose gives rise to the thesis research questions as shown below.

Research objective 1: To analyse the existing legal framework for consumer protection in the banking sector in Nigeria

³² United Nations Guidelines for Consumer Protection (as expanded in 1999)

³³ World Bank Good Practices for Financial Consumer Protection (2012)

The study has been inspired by the need to assess whether the financial regulators have adequate regulatory frameworks and legal measures for protecting bank consumers in Nigeria. Consumer protection in the banking sector in Nigeria looks different from other sector regulators such as electricity, depending on whether it is viewed from the perspective of law or policy. As will be examined in this study, the precise scope of legal regimes on consumer protection in Nigeria is difficult to ascertain because of the way in which the relevant provisions are scattered in various legislation and regulations. The analysis in this study will be used to determine how the regulatory and supervisory authority used its powers to protect consumers and facilitate the development of consumer protection in the financial services industry, especially the banks. As a result this particular, the research objective has, therefore, been condensed into the following research questions.

- *To determine whether the Nigeria Consumer Protection Regime is sufficient to protect bank consumers?*
- *Does the current supervisory and regulatory framework of the Central Bank of Nigeria guarantee effective consumer protection practices in Nigeria?*
- *What are the lacunas/gaps in the existing supervision and regulations of financial services for consumer protection?*

Research objective 2: To understand how consumer protection has been addressed by the CBN.

In order to understand the analysis of the existing legal framework for consumer protection in the banking sector, it is crucial to assess who is actually responsible for the regulation and supervision in the financial industry. This is actually important especially in the financial services which have four main types, namely; banking, securities, insurance and non-bank credit. An illustration of this is provided through the assessment of the CBN's guidelines which are produced to describe the CBN's approach to the use of its regulatory and supervisory powers. The research objective in this case, has been condensed into the following research questions.

- *Who is a consumer or a bank consumer?*
- *What are the roles of the Central Bank of Nigeria as regards to banks and to bank customers?*

- *How has the CBN combined this role with consumer protection in the banking sector?*
- *What are the roles of the institutions that are involved in consumer protection?*

Research objective 3: *To understand the consumer protection regime in the financial services and identify potential areas for reform.*

For the analysis of both consumer protection and regulatory measures to be meaningful, it is important to understand the existing regulatory and supervisory framework in the financial industry. An assessment could be made on how the inherent weaknesses in the enabling financial laws have hindered efficient implementation of the provisions that could offer protection to consumers. The research objective in this case, has been condensed into the following research sub-questions.

- *What is the existing regulatory and supervisory regime?*
- *How has it addressed the protection and empowerment of consumers in the banking sector?*

Research objective 4: *To understand the consumer protection initiatives currently in place in the banking sector in Nigeria*

This analysis would help us to determine whether the CBN has finally woken up to address the challenges faced by bank consumers. Given the newness of this domain, an evaluation could be made on how the new consumer protection framework would achieve its objectives. The research objective has, therefore, been condensed into the following research sub-questions.

- *What are the objectives of the Draft Consumer Protection Framework produced by the CBN?³⁴*
- *What are the weaknesses and the strengths of the draft consumer protection framework?*

Consequently, the question is asked, what the legal and institutional framework for consumer protection is in the banking sector in Nigeria. To what extent has the Consumer Protection

³⁴ See Chapter Five of the thesis for the critical analysis of the 2015 draft consumer protection framework in Nigeria.

Department in the CBN successfully carried out its mandate as the Department with consumer competence and the enforcer of consumer policy in general? The Consumer Protection Department is one of the new Departments created to enhance operations.³⁵

Therefore, the roles of the new department are also examined. The study argues that the overriding statutory mandate of the CBN has an overbearing influence on the department and that the lack of legislative powers for the new department is one manifestation of this gap. It is also argued that lack of independence of the new department and the lack of effective formal arrangement for information sharing and co-operation among multiple regulators of different sectors, further excludes some groups of consumers from having adequate access to financial services.

1.4 Scope and Limitation of the Study

This thesis focuses on the banking sector³⁶ and the financial regulatory and supervisory authorities because of their regulatory influence on the banks and the financial impact on consumers and other aspects of the economy. At the same time, it explores some aspects of regulatory and consumer protection practices in some jurisdictions for example, the United Kingdom where consumer protection has rich tradition in terms of academic debates and legal development. The scope of this thesis however, is rather different from the approaches of the existing literature on consumer protection and banking regulation in Nigeria. As opposed to the perspective of Benedict Kanyip's book which is on general consumer protection in Nigeria,³⁷ the major focus is on the legal protection of consumers within the Nigerian banking sector and not so much on the general consumer protection measures and the economic effects on households. Again, contrary to Felicia Monye's approach which is on trading standards and general consumer protection,³⁸ the aim is not to undertake a description and comprehensive analysis of all the consumer protection laws and the governmental agencies. The thesis main concern instead is to explore the legal, regulatory and supervisory framework for consumer protection in one aspect of the financial services (the banking sector). The researcher has also included a chapter on the new Central Bank of Nigeria draft consumer protection framework in order to achieve the research aims and find a

³⁵ Central Bank of Nigeria: Consumer Protection Annual Activity Report 2015

³⁶ For the purpose of this study the word 'Bank' is used to only to describe the Deposit Money Banks (DMBs) in Nigeria.

³⁷ Benedict Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy* (Abuja: Rekon Books Ltd., 2005)

³⁸ Felicia Monye, *Law of Consumer Protection* (Ibadan: Spectrum Books Ltd., 2003).

better answer to the proposed research objectives. This analysis has not been carried out in any academic literature.

As mentioned above, the study deals with the protection of bank consumers, as a result, the main part of the research will therefore focus mostly on the analysis of the relevant legislation in the area. Thus, the study tends to focus on filling the gap in literature and providing answers to the research questions.

This present study, like any other research studies have some limitations. However, it is worth noting that, consumer protection in the financial services is a new phenomenon in Nigeria, which raises two primary issues for consideration, first there is a dearth of published academic literatures, such as books, and journal articles, which examines different aspects of consumer protection in other financial segments in Nigeria. Secondly, there is a lack of case law or cases which have not been fully tested at law courts in this specific area. The fact that there are a limited number of cases that have key features that can be analysed in assessing and evaluating the actual enforcement of consumer protection law and bank supervision, help to make this study a pioneering work and a path finder in this field.

Another limitation of this study is the fact that the researcher is carrying out a research about Nigeria from outside Nigeria and there are difficulties in obtaining research materials from the financial institutions in Nigeria due to the sheer nature of banks and their regulatory agencies. The banks and the regulatory agencies' websites are not constantly updated, which makes it difficult to access some of the cases, annual and activity reports for research purposes. In this case, some of the most reliable research materials can only be obtained through field visit. However, this research has through library-based and electronic resources obtained from the Supreme Court of Nigeria library, the Banking Law Reports, overcome these challenges.

1.5 Research Significance and Contribution to Knowledge

This study identifies the challenges which the bank consumers in Nigeria face in dealing with their financial services providers, the existing dispute resolution measures and the weaknesses of the legal, regulatory and supervisory framework. One of the main inspirations to write this thesis on consumer protection in the banking sector was the Central Bank of Nigeria post-crisis reform which created the first consumer protection department. There is no national consumer protection agency that is assigned to deal specifically with financial

services sector in Nigeria.³⁹ These inadequate and insufficient measures for addressing consumer problems that exist in Nigeria are highlighted and the possible ways to address the problem are suggested.

The uniqueness of this study exists not only because it is the first to examine the consumer protection problems in the banking industry in Nigeria, but also because it is the first comprehensive analysis of consumer protection initiatives currently in place in Nigeria. Thus, the present study undertakes exploratory analysis of the 2015 draft consumer protection framework. It sheds light on how this new consumer protection framework would be the future legislation and attempts to highlight as many gaps in the provisions as possible and ways of addressing them. It also point out the areas the framework is silent about and the role of the oversight agency. There is no known published academic literature or thesis that offers such analysis and also discusses measures for effective consumer protection for Nigeria.

While this study primarily seeks to examine the legal regime for consumer protection in the banking industry and the measures used by the regulatory and supervisory agency in addressing bank consumer issues, additionally it explores the gaps in the current consumer protection measures in Nigeria. Previous studies⁴⁰ have primarily focused on bank regulation, financial crisis and general consumer protection. At present, there is no study in Nigeria that addresses the inadequacies of consumer protection systems in the banking sector and which also identify gaps in the legal protection that have been highlighted in this thesis, or set important benchmarks for further research opportunities in this area.

Furthermore, considering the fact that consumer protection in the financial institutions in Nigeria is currently developing, this research explores different ways to improve consumer protection by looking at the good practices.⁴¹ It highlights consumer concerns and how the regulators should deal with those concerns while regulating the financial institutions under

³⁹ For discussion on the National Consumer Agencies see chapter four of this study.

⁴⁰ For example, Olumide F, 'The Nigerian Financial Crisis: A Reductionist Diagnosis' (2013) 2 Afe Babalola University: Journal of Sustainable Development Law and Policy ;Ukwueze, F. O., "Protection of Consumers of Financial Services in Nigeria: A Review" *Consumer Journal*, Vol. 2, No. 1 (2006);

⁴¹ So far, however, there has been no Diagnostic Review conducted on Consumer Protection and Financial Literacy in Nigeria like in many countries around the world. The World Bank has since 2005 initiated a pilot program in consumer Protection and Financial literacy for the countries in Africa, Europe and Central Asia Region. Generally speaking, Diagnostic Review has two key objectives: first, it helps to assess the current financial consumer protection framework; second, it provides recommendations on how to improve consumer protection and financial literacy in any country. See Rutledge et al. 'Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool (2010).<http://siteresources.worldbank.org/INTECAREGTOPPRVSECDEV/Resources/GoodPractices_August2010.pdf> accessed 5 September 2016

their purview. A financial regulator that does not take proactive and reasonable measures in protecting consumers will face many challenges in maintaining the stability of the financial system and the economy in general. The study highlights why bank consumers are reluctant to seek redress and suggests ways to improve the services. The study also highlights the consumers' lack of awareness about the current development and the new redress mechanism which the draft consumer protection framework provides.⁴²

The thesis is important not only because it provides the regulators with the practical gaps in the new framework and how to address these issues, but it also helps other countries at the same level of legal development to know the Nigerian situation. Consequently, efforts to assess the existing consumer protection framework by reviewing the laws, regulation and supervision framework in Nigeria are significant because a holistic approach to tackle consumer problems in the financial services also contributes in maintaining the financial stability in the country. There is obviously need to examine the current consumer protection framework, as failure to ensure adequate measures by regulators may have opposing effects on systemic stability.

1.6 Research Methodology

The research methodological choice is based on doctrinal analysis⁴³ where a study of legal regime governing consumer protection, in particular, the protection of bank consumer is carried out. This approach was used to evaluate whether the consumers in Nigeria are adequately protected. In relying upon the existing legal rules, the study adopted a reform oriented approach⁴⁴ where the current measures for protecting bank consumer in Nigeria are evaluated.

To analyse the existing primary and secondary sources on the relevant issues in relation to consumer protection, the thesis relies on numerous Nigerian publications on different aspects of consumer protection⁴⁵ and various studies on bank regulation and supervision. Furthermore, the thesis relies on the critical analysis of the conceptual underpinning of

⁴² See Chapter five of the Thesis for a detailed analysis of the draft consumer protection framework and its provisions.

⁴³ Terry Hutchinson, 'Developing Legal research Skills: Expanding the Paradigm' (2008) MULR, 1068. Hutchinson acknowledges the importance and defines doctrinal research as one 'which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments'

⁴⁴ For a detailed discussion on research oriented approach, please see Terry Hutchinson, 'Developing Legal research Skills: Expanding the Paradigm' (2008)32, Melbourne University law Review, 1068

⁴⁵ This includes the Consumer Protection council Decree No 66 of 1992 which is considered as a main source of legislation in Nigeria.

consumer and consumer protection from the United Kingdom⁴⁶, European Union⁴⁷ and a few selected jurisdictions.⁴⁸ Other scholarly contributions about issue of consumer protection and the related concepts and theories were also examined.

A limited use of comparative legal analysis was adopted for several reasons which should be immediately noted. One of the main reasons for my adoption of a comparative method of analysis is due to the advanced consumer protection legislation in both products and ‘market of regulated services’⁴⁹ in the developed economies. My choice of the United Kingdom (UK) and Nigeria is based on four reasons. Firstly, apart from the fact that the two countries have strong historical connections; the UK has well-developed legal framework which provides advanced level of protection that is in line with the international best practice.⁵⁰

Secondly, the consumer protection in the financial services or banking sector in the UK is relatively well developed compared to Nigeria. Thirdly, although the UK and Nigeria operate the common law legal system, they have different financial regulatory landscapes and also, are at different levels of legal development which will offer a better opportunity for one to learn from the other. Notwithstanding the methodology adopted, some scholars have argued that there is ‘no point in comparing what is identical, and little point in comparing what has nothing in common’⁵¹. Dannemann however, noted that comparison involves comparing legal systems, at least to some degree, exploring both similarities and differences;⁵² thus scholars should adopt the method of evaluations and analysis that will help them answer the research questions and achieve the result.

Furthermore, Dannemann suggested that those involved in comparative enquiries should look for both differences and similarity as the purpose of their enquiry will be mainly the factor to

⁴⁶ Under the English consumer Protection Act 1987; Unfair Contract Terms Act 1977; Unfair Trading Act 1973

⁴⁷ ⁴⁷ Under the Consumer Sales Directive 99/44/EC; Art 1(2)(a); Unfair Terms in Consumer Contract Directives 93/13/EEC; General Directive on Product Safety 92/59/EEC; Directive 97/7, Art. 2(2) and Article 2 of DIRECTIVE 2005/29/EC

⁴⁸ There are various definition of ‘consumer’ in some jurisdictions for example, Canada, see Under the Canadian Consumer Protection Act, 2002; South Africa, South Africa Consumer Protection Act, No68 2008

⁴⁹ According to Micklitz, the term ‘market of regulated services’ is used to describe those markets ‘where the consumer is frequently not even called a consumer’ for example, in the financial services the term ‘investor’ is often used instead of ‘consumer’. For more discussion on ‘consumer’ or ‘investor’ in market of regulated service see Hans-w Micklitz, *The Consumer: Marketised, Fragmented, Constitutionalised*, in Dorothea Leczykiewicz and Stephen Weatherill (eds), *The Images of the Consumer in EU Law* (Oxford 2016), 33

⁵⁰ The term International Best Practices refers to adherence to procedures set out in the United Nations Guidelines on Consumer Protection of 1985

⁵¹ Gerhard Dannemann, *Comparative Law: Study of Similarities or Differences?* In Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, (Oxford University Press 2006) 384

⁵² Gerhard Dannemann, *Comparative Law: Study of Similarities or Differences?* In Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, (Oxford University Press 2006) 384

determine what their focus should be. However, my choice of methodology goes beyond how the consumers are protected under the Nigerian legal regime and looks at ‘overall provisions’ in terms of its scope too.

Fourthly, most of the Nigerian legislations are heavily influenced by the English legal system.⁵³ However, it is worth mentioning here that my intention in adopting a comparative approach is not to go fully into a pure comparative study between Nigerian legislation and other developed jurisdictions. Nor would I like to discuss all the aspects of the consumer protection framework in other jurisdictions thus due to the fact that it will not only be beyond the scope of the present research but also because until last year there has been no consumer protection framework in Nigeria to address the consumer issues in the financial institutions.

It is important for the purpose of this study, to state that in using the UK model, the focus will be more on UK financial regulation, Alternative Dispute Resolution (ADR) especially the Financial Ombudsman Services (FOS), role of the financial regulators in consumer protection and the financial compensation scheme.

More so, the reason for relying on comparative approach is to identify the likely gaps in the current protection regime in Nigeria. The importance of these comparisons cannot be overemphasized as it will enable the present research to evaluate and explore the current practices of consumer protection in order to make suggestions for further improvement or reforms, when the need arises.

1.7 Literature Review of Consumer Protection and Banking Sector in Nigeria

There has been extensive literature on general consumer protection and banking regulation in Nigeria in recent years. Monye’s new book, *‘The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes’* which was published in 2011 was the first book published in the University of Nigeria inaugural lecture series.⁵⁴ It is worth noting here that the intention of present study will not be to review the entire literature in the field of consumer protection or banking sector regulations in Nigeria. This literature review will only focus on the consumer protection and the banking sector in Nigeria. However, many of the published works on consumer

⁵³ For example the Nigerian Banking Ordinance of 1952 set the stage for the first recorded attempt to supervise banking business in Nigeria.

⁵⁴ Monye Felicia, *The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes* – 59th Inaugural Lecture of the University of Nigeria, May 26, 2011 (Nsukka: University of Nigeria Senate Ceremonials Committee, 2011).

protection and financial law or regulations have neglected the legal protection of ‘bank consumers’ and the role of the CBN in consumer protection regime. However, some of the books discussed this topic or related issues in a few sentence but not deeply. This research sets out to add to the body of knowledge those areas extant research on consumer protection law has neglected over time.

Monye⁵⁵ in 2003 published a book entitled *Law of Consumer Protection*. This book was one of the first Nigerian text books on general consumer protection which laid the basis for the contemporary understanding of overall consumer issues. However, Monye’s book was from the Sale of Goods Law perspective, however, chapter six and seven of the book focuses on civil enforcement of consumer rights under the law of tort and the law of contract respectively. The various consumer protection legislation such as the Consumer Protection Council Act 1992, were discussed in the appendix. One of the inherent weaknesses identified in the aforementioned book includes the overlooking of topical issues such, as financial services and consumer protection. In view of protection regimes in financial services, it could be argued that, at the time (2003) when the book was written the focus of consumer protection was largely on consumable products and not financial products.

Kanyip⁵⁶ in 2005 published a book entitled ‘Consumer Protection in Nigeria: Law, Theory and Policy’. The work also considers the different protection for consumers generally but chapter seven relates to consumer services, from the banker-customer relationship perspective. One notable gap identified in this work includes the neglect of the role of financial regulators in protecting consumers of banking services. The book analysed the various policies that shape the actual function of consumer protection within the framework of theories of development and globalisation.⁵⁷ However, these issues are analysed against the background of recent developments in this specific area.

*The World Bank Diagnostic Review of Consumer Protection and financial Literacy*⁵⁸ and the report of the CGAP (*Access to Finance in Nigeria: Microfinance, Branchless Banking, and*

⁵⁵ Felicia Monye, *Law of Consumer Protection* (Ibadan: Spectrum Books Ltd., 2003).

⁵⁶ Benedict Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy* (Abuja: Rekon Books Ltd., 2005), pp. 364

⁵⁷ *ibid*, 364

⁵⁸ World Bank, ‘Rwanda Diagnostic Review of Consumer Protection and Financial Literacy,’ (2013) Volume II, Available at: <http://responsiblefinance.worldbank.org/diagnostic-reviews> accessed 28 April 2016

SME Finance)⁵⁹ helped to make up the significant part of the consumer protection literature. The CGAP report proposed the need to introduce consumer protection in the financial services. As mentioned earlier, this thesis builds on the gaps identified in the legal⁶⁰ and regulatory regime for protecting bank consumers.

However, Nwobike's⁶¹ *Legal Regime for the Protection of Consumers of Financial Services in Nigeria* published in (2014) focused on different aspects of legal protectionism and administrative panels. It analysed the enforcement of consumer remedies in both civil and criminal actions, registration of service providers and liability of professionals to consumers. However, this above-mentioned work also neglected the protection of the consumer of banking, the role of the regulator, and the legal regime within the financial services.

Other scholars who have published similar works to the above-mentioned works include Ukwueze,⁶² Ekanem,⁶³ Ojukwu-Ogba,⁶⁴ Ebitu,⁶⁵ and Muhammad,⁶⁶ amongst others. In 2013, Apinega⁶⁷ contributed a chapter to a book on *Law and Principles of Consumer Protection in Nigeria*. This particular contribution focused on the Consumer Protection Council Act of Nigeria. In this work, Apinega discussed extensively the general rights of consumers, consumer remedies under the CPC Act and the rationale for consumer protection. Thus, issues such as the consumer protection through the financial regulatory regime or the protection for consumers of bank were not in focus in the aforesaid book. Ojukwu-Ogba's⁶⁸ ground breaking article on the banking ombudsman entitled *Towards Effective Bank Customer Protection in Nigeria: The Legal Imperative of the Bank Ombudsman System* was

⁵⁹ Jennifer Isern and others, 'Access to Finance in Nigeria: Microfinance, Branchless Banking, and SME Finance' (2009) CGAP, 43

⁶⁰ In the CGAP Executive Summary, it highlights the need promote consumer protection. Furthermore, it emphasis that the Consumer Protection Council Act 1999 '...does not expressly provide for the CPC's jurisdiction over financial services'

⁶¹ Nwobike J, "Legal Regime for the Protection of Consumers of Financial Services in Nigeria" available online at <http://www.jnclawfirm.com/articles.php>, accessed on 26 April 2016

⁶² Festus Ukwueze, "Protection of Consumers of Financial Services in Nigeria: A Review" (2006) *Consumer Journal*, 2 (1), 106-144

⁶³ Etefia Ekanem, 'Institutional Framework for Consumers Protection in Nigeria' (2011) 2 *International Journal of Advanced Legal Studies and Governance*, 33-48

⁶⁴ Nelson Ojukwu-Ogba, 'Banking Sector Reforms In Nigeria: Legal Implications For The Banker–Customer Relationship' (2009) 35 *Commonwealth Law Bulletin*, 675-686

⁶⁵ Ebitu Ezekiel, 'Consumer Rights, Consumer Protection and Public Policy in Nigeria: A Critical Review' (2014) 7 *International Business Research*, 12

⁶⁶ Kabiru Garba Muhammad, 'An Appraisal of the Relationship between Banker and Consumer in Nigeria' (2015) 7 *European Journal of Business and Management*, 230-235

⁶⁷ Apinega, S, 'Consumer Protection and Remedies in Nigeria: An Appraisal' in Adedeji, Adekunle and Shankyula T. Samuel (eds.) (2013) *Law and Principles of Consumer Protection: National Institute of Advanced Legal Studies*, pp.450-560

⁶⁸ Ojukwu-Ogba, 'Towards Effective Bank Customer Protection in Nigeria: the Legal Imperative of Banking Ombudsman System' (2015) *Journal of International Banking Law and Regulation*, 454-458

published in (2015), focused on the mechanism for address customers' complaints. Towards the end of 2015, the CBN developed a consumer protection framework⁶⁹ which covered some issues he addressed. His main focus was 'legal necessity of instituting banking ombudsman system'. This article also neglects financial regulatory regimes or their role in protecting consumers in Nigeria.

Furthermore, there are several academic textbooks on banking regulation in Nigeria which this thesis considers to be relevant to discuss briefly in this section. Some of these books include works by Apati,⁷⁰ Tugbiyele,⁷¹ and Goldface-Irokalibe,⁷² These books underscore the Nigerian banking sector from the economic and political perspective. The books also discuss the various challenges faced by the Nigerian banking industry, the impact of corruption and bank-customer relationship. However, protection of bank consumers is neglected in the above-mentioned books. One of the most recent works on the Nigerian banking sector focused on the recent financial crisis in Nigeria⁷³ and the failures of the financial regulators.

From the above discussion, there is a necessity to closely focus on my topic 'Consumer Protection in the Banking Sector: The Need for Reform to Protect Bank Consumers in Nigeria' because despite all the scholarly research, this study is distinctive on the legal regime for protecting bank consumers and the role of the regulatory institution. Thus, there is one of the few academic works which focuses on the legal regime for protecting financial services consumers in Nigeria. However, the analysis of the legal regime by Nwobike is not premised on any theoretical framework and this is where this study differs greatly from the earlier work. In the meantime, none of the aforementioned literature, however, proposes comprehensively a theoretical basis for analysing consumer protection problems in the banking sector, and then provides a collective proposal for reforming Nigeria's regulatory law. Furthermore, none of the existing scholarly works also compares Nigerian's consumer protection with the UK and then analyses what the two countries can learn from each other.

The literature evaluation brings the end of this sub-section but is continued with the conceptual clarification of 'consumer' in chapter two and the general overview of regulation and supervision in chapter three.

⁶⁹ See Chapter five of this thesis for a comprehensive analysis of the new consumer protection framework

⁷⁰ Apati, Seth, 'The Nigerian Banking Sector Reforms: Power and Politics' (Palgrave Macmillan2012)

⁷¹ Tugbiyele T A, 'Banking Laws and Practice' (Lagos: T. A. O Tugbiyele,2012), 321

⁷² Goldface-Irokalibe J, 'Law of Banking in Nigeria' (Lagos: Malthouse Press Limited, 2007)

⁷³ Olumide Famuyiwa, 'The Nigerian Financial Crisis: A Reductionist Diagnosis' (2013) Afe Babalola University: Journal of Sustainable Law and Policy

1.8 Research Structure

This thesis consists of seven chapters, starting with this introductory chapter and ending with a chapter dedicated to conclusions drawn from the research. Chapter One: *'Introduction'* which is the general introduction to the whole research provides a broad overview of the research and concludes with this outline. The chapter explains the research aims limitations, methodology, with a brief literature review and also offers summary of the subsequent chapters.

Chapter Two *'Conceptual Framework'* begins with an explanation of the concept of consumer and subsequently the rationale for consumer protection. It examines the background analysis of the persons who can be considered as consumers in order to know how they can be protected. In doing so, the chapter starts by examining the conceptual clarification which helped us to review some literature and analysing the basic terminology used in consumer protection laws. For example, in consumer protection law books, particularly those written in developing countries, the term *'consumer'* and *'consumer protection'* are most often clarified for better understanding of how it has been used in other jurisdictions.

Then the meaning of *'consumer'* (in a few selected jurisdictions, vulnerable consumer, bank consumer, and the role of some instruments of consumer protection and its limitations) regarding the protection of bank consumer is discussed. At the same time the rationale for consumer protection and the emergence of consumer protection in Nigeria, are explored. Hence, it is pertinent to understand the rationale for the existence of consumer protection especially in the banking section which is the focus of this thesis. To understand consumer protection properly, it has to be considered within the framework of objectives of the regulators. This study adopted, therefore, that Consumer protection is not a new phenomenon as it has been one of the main purposes of financial services regulation,⁷⁴ though most of the financial regulators do not list consumer protection as one of their key functions.

Chapter Three *'Bank Regulation and Supervision'* consequently provides the broad analytical assessment of a range of bank regulation and supervision to determine which ones enhance bank stability and consumer protection action in the banking sector. It will include the discussion and definition of terms that are often used interchangeably in most banking

⁷⁴ In the United Kingdom the Financial Services Authority has the following statutory objectives, (i) maintaining market confidence (ii) promoting public awareness (iii) protecting consumers and (iv), reducing financial crime; Financial Services and Markets Act 2000 (FSMA).

literatures, the term '*banking regulation*' and '*banking supervision*' are sometimes used interchangeably or often used for the same purpose. The study started by analysing the key terminology often used in banking supervision. This chapter also illustrates the distinction between regulation and supervision which are often used interchangeably by legal researchers and scholars.

The purpose is to identify the inherent limitations and who has the domain responsibility to address the issues that are important to financial consumers. It highlights the importance of banking supervision in enhancing the consumer protection in the financial system. Moreover, this chapter will examine briefly the banking laws to see the areas in which the law is evolving as banking practices change. This chapter also seeks to provide a clear argument regarding the theory regulation in enhancing the consumer protection in the financial system. This includes an analysis of the basic aims and objectives of financial regulation. The chapter also highlights the international effort by the Basel Committee⁷⁵ on Financial⁷⁶ supervision to establish a uniformed standard for banking supervision. The aim of this analysis is to provide a theoretical background for the focus of the study which is consumer protection in the banking industry. Nigeria consumer credit law and securities regulation are outside the realms of this work. The chapter concludes with analysis of the role of the supervisory agencies with the context of regulation.

Chapter Four '*Banks and Consumer Protection Regime in Nigeria*' conceptualises the current practices of consumer protection initiatives in the Nigerian banks. The chapter explores the historical development of the legal initiative to protect consumers in Nigeria with the establishment of Consumer Protection Council (hereafter referred to as CPC). The chapter considers consumer protection in Nigeria within the framework for regulation and supervision. The bank supervision in Nigeria will be reviewed to identify the some of the consumer protection challenges. This chapter will also look at the current reform in the Nigerian banking industry and will further evaluate which improvement is needed for the country to achieve its greater heights as a model for other developing economies. The chapter summarizes the ongoing efforts and the Central Bank of Nigeria initiatives to combat the imbalance in the financial sector. The chapter also discusses the two major initiatives for example the Ombudsman Bill⁷⁷ and the appointment of consumer protection working group

⁷⁵ Basel Committee on Banking Supervision, available at <<http://www.bis.org/bcbs/>> accessed on 01/12/2016

⁷⁶ Roman Inderst 'Consumer Protection and Role of Advice in the Market for Retail Financial Services' (2011) *Journal of International and Theoretical Economics*

⁷⁷ See Draft Office of The Nigerian Financial Ombudsman Bill, 2011

in the CBN. Consumer protection in the financial services can only work effectively if there is clear and sound regulatory and supervisory framework that will balance consumer protection with systemic stability. The research in its findings would recommend that policies, laws and regulations guiding the banking sector should not only aim at promoting efficient provisions and reliable banking sector in Nigeria but also take into account the issue of protecting banking consumers as a legitimate regulatory objective. The chapter concludes with an analysis of the role of bank supervisors and the challenges in the enforcement of consumer protection initiatives in banks.

Chapter Five '*Draft Consumer Protection Framework in Nigeria: An Analysis*' will evaluate the 2015 Draft Consumer Protection Framework in the financial services to know the objective of the policy framework and how well-suited these policy documents are within the Nigerian financial sector. It will also discuss the provisions of the framework to ascertain the scope of its application and coverage within the context of the financial services. As this chapter contains an examination of the law designed to address the inherent flaws in the system of protection for financial consumers in Nigeria, the second section will look at the areas that are not covered by the framework.

Chapter Six '*The Analysis of Consumer Protection Model in the Banking Sector in the United Kingdom and Nigeria*' involves an evaluation of the procedure for consumer protection in Nigeria and the United Kingdom. An analysis is carried out using the United Kingdom regulatory framework as a model by considering the establishment of the ombudsman services (which undoubtedly is one of the most successful achievements of the FSA) mechanism for redress in the banking sector and consumer education. This research will focus mainly on these three successful areas of the UK financial regulatory regime; also it will probe into the question of how best to protect Nigerian consumers using this experience. It is important to mention that the study is not interested in the institutional structure of the United Kingdom Financial Services Authority. While looking at the United Kingdom supervisory framework, the study will examine whether the country draws a balance between systemic stability and consumer protection. The chapter will analyse and apply the UK banking law relating to bank consumer protection.

Chapter Seven, '*Conclusion*' will summarise the thesis by bringing together all the areas covered. It provides practical proposal for reform for those involved in regulation and

consumer protection in the public sector as well as lawyers in both the public and private sectors in Nigeria. It further suggests future research opportunities.

Chapter Two

CONCEPTUAL FRAMEWORK

2.1 Introduction

This chapter provides a conceptual framework for the thesis vis-à-vis consumer protection principles which govern a person who is in need of protection against risks within the market place.⁷⁸ Consumers in the market place are often confronted with complex products and services. Additionally, they are presented with limited information with regard to these products, which does not enable them to make informed judgements or decisions about the quality or appropriateness. This chapter focuses primarily on issues which will aid in understanding the current provisions and protective measures of Nigerian legislation, with regards to consumer protection.

The objective of this chapter is to examine the concept of consumer within the context of consumer protection in Nigerian law. Particularly, the chapter provides a brief historical overview of the concept of consumer protection, and moves to distinguish consumer protection from the concept of a consumer. It considers the definition of a consumer within Nigerian legal system and *who* is considered as consumer under Nigerian law. The key content of this chapter is the discussion on whether the concept of consumer is clear enough to cover users of banking products and services. There are several other jurisdictions such as United Kingdom, South Africa and Pakistan that operate legal and regulatory system similar to that of the Nigeria. The reason for selecting these jurisdictions is that they are common law in nature like the Nigerian jurisdiction.

2.2 Consumer Protection

2.2.1 A History of Consumer Protection in Nigeria

In order to understand the legal provisions aiming at protecting consumers in the financial services, particularly the banking industry, it is necessary to appreciate the historical context in which it took place and the type of consumer law in Nigeria. Legal history will play two key roles; first, it will enable us to understand the available laws addressing consumer

⁷⁸ The concept of ‘consumer’ is considered important to be discussed in this preliminary chapter; hence, it is not beyond the scope of this thesis to understand the bases on which consumer protection is offered in the banking industry or challenges faced by consumers in their attempt to enforce their rights. For further discussion of the notion of the consumer see David Oughton and John Lowry, *Textbook On Consumer Law* (Blackstone 2000), 1

protection issues, and secondly, the slow development of consumer protection in Nigeria. Mainly, the legal developments of consumer law after the independence⁷⁹ (the 1960s, 1970s, 1990s. and to date)

The development of Nigerian policy on the consumer domain, as in many African countries, has been slow and uneven. Looking back at the legal history of consumer protection policy in developing countries, Kanyip⁸⁰ and many other legal scholars have found ‘different dates for the genesis of consumer protection’.⁸¹ During the traditional agrarian society (such as in Nigeria), the traders and buyers carry out their business directly through the barter system of exchange which is not motivated by profit but rather bases on honest trading.⁸²

Kanyip further points that, the goods exchanged are often of high quality and do not involve defective goods or services. To Kanyip, however, the trade-by-barter period involve consumers with direct access to goods they want to buy. The assumption is that consumers’ protection is not necessary because the goods or services are of high quality and buyers or consumers can inspect the goods before purchase. If this is Kanyip’s views, then it is objectionable. It should be noted that the ‘primitive societies’ that use the barter system lived communally where neighbours resolve disputes among themselves without expecting any intervention, simply because they needed to live together with each other. Secondly, they have their own way of penalising cheaters and guaranteeing the quality of good. Moreover, the goods or services which are exchanged in the barter system are often not as complex as the ones we have today. This explanation is also regarded by Kanyip as accurate in the case of legal development in Nigeria – other African countries with complex experiences of transacting businesses with Trans-Saharan traders including Europeans, North African and Arabs during this period.⁸³ Possibly, this period could have seen the development and the rise of consumer protection because of the increase economic activity through the Trans-Saharan trade route. That apart, the emphasis in the trade activities at that time was on better

⁷⁹ In 1960 Nigeria gained her independence from the British government and that marked the beginning of legal developments in many aspects of the Nigerian Legal system.

⁸⁰ Kanyip Benedict, ‘Consumer Protection in Nigeria, Law, Theory and Policy’ (Rekon Books Ltd 2004) 81

⁸¹ Eugene Majahemphini Dlamini, *Consumer Protection in Swaziland: A Comprehensive Analysis of The Law in South Africa and The United Kingdom* (2012) a PhD Thesis (Unpublished) University of Kwazulu Natal, 28; David Oughton, *Consumer Law: Text, Cases & Materials* (1991), 11, 12

⁸² Kanyip (note 4 above) 83

⁸³ Kanyip (note 4 above) 81-83

quality of goods and services in which case the issue of consumer protection may not be something of serious concern to the general public⁸⁴.

The legal origins of much of the current 'consumer protection' can be traced back to the huge influence of the colonial affiliation which maintained that legislation should follow the foundation laid by the British legal system in their colonies.⁸⁵ Consequently, the amalgamation of Northern and Southern Protectorate which officially form the great entity called Nigeria, introduced the Supreme Court Ordinance of 1914. Only with the promulgation of the Supreme Court Ordinance in 1914 did a consumer policy first come into being in the Nigeria. However, what the Ordinance did rather well was to introduce the common law and the doctrines of equity which has been applied within the domestic landscape. It is acknowledged however, that, the common law has not developed in Nigeria the way it is in most commonwealth countries. Kanyip observes that 'the application of the common law rules in Nigeria is not entirely beneficial to consumers'.⁸⁶ He argued that the Hire-purchase concept is fraught with injustice on the hirer which could even influence the decision of the court to the detriment of the consumer.⁸⁷ It appears fairly settled, however, that this law has its origins in the English common law system. However, there was no direct reference to consumer protection in the national legal system in that period and the consumer protection development was not pronounced as it was in the western world.

It was not until the 1960s and 1970s that the great increase in the promulgation of consumer protection legislation took a radical approach. Within this period, some laws relating to the consumer rights were made either directly or indirectly in Nigeria. Two noted features of this period (1960-1970) are; first, the consumer legislation was in the form of the Military Decree.⁸⁸ Second, there was no constitutional acceptance of consumer rights as fundamental rights⁸⁹ for Nigerians during this period. These shortcomings are central to this study and have been aptly discussed in subsequent chapters.

Historically, the problems caused by adulteration of goods, the need for law reform, and colonial affiliation have been described as 'a trigger for legislative intervention in consumer

⁸⁴ Kanyip (note 37 above) 81-88

⁸⁵ Kanyip (note 37 above) 81-83,

⁸⁶ Kanyip (note 4 above) 85

⁸⁷ Ibid, 85

⁸⁸ The term military Decree is used in this study to mean an order that has the force of law issued by the Head of State who is a military person not elected by the people.

⁸⁹ It is worth noting that there was no national consumer protection legislation in Nigeria in that period that recognises the principles of 'consumer rights'.

matters' in Nigeria.⁹⁰ In the short-term period between 1960 and the end of 1970, a great deal of consumer related statutes were enacted. One of the first consumer related statutes that was enacted at that period was the Hire-purchase Act 1965.⁹¹ The Nigerian Standards Organisation Act 1971,⁹² prohibited sub-standard quality products, monitors quality control and establishes a quality assurance amongst others.⁹³ Again, the Weights and Measures Act 1974 was enacted,⁹⁴ prompting the repeal of the earlier Weights and Measures Act. The government effort in promulgating laws to protect consumers culminated in the enactment of other federal statutes which were also tailed after the English legal system. Despite these legislative interventions, the Nigerian consumers still suffer at the hands of sellers or suppliers. This is because the agencies lack direct enforcement powers and resources to enforce violations of consumer rights.

The government actions in the 1990s led to changes that augured the introduction of more consumer related statutes. For example, in the interim period between 1990 and 1993 a number of consumer protection statutes were enacted. The period saw first, the enactment of the Food and Drug Act of 1990,⁹⁵ second, the Consumer Protection Council Decree of 1992 (CPC),⁹⁶ and thirdly, the National agency for Food and Drug Administration and Control of 1993,⁹⁷ (NAFDAC). The CPC Decree was possibly the first piece of consumer legislation which sought to directly protect consumers who purchase products and services in Nigeria. The CPC decree played a significant role in changing the landscape of consumer law in Nigeria by creating the Council and State Committees. The creation of State Committees was the first attempt to make the redress channel accessible to consumers at the state level. Furthermore, the Consumer Protection Council is charged with various responsibilities, amongst which is the responsibility to organise and undertake campaigns and other activities geared towards increasing consumer awareness.⁹⁸

The CPC Decree of 1992 has some attendant limitations especially in the areas of financial services. The Consumer Protection Council Decree No 66, of 1992 as earlier noted, was the

⁹⁰ Kanyip (note 4 above) 86

⁹¹ Kanyip (note 4 above) 86. The Hire-purchase Act 1965 has been amended a few times over the years.

⁹² The Nigerian Standards Organisation Act 1971 of 1971 was later repealed under Standards Organisation of Nigeria Act Cap. 412 LFN 1990

⁹³ Section 5 (1) of the Standards Organisation of Nigeria Act Cap 412 LFN 1990

⁹⁴ The Weights and Measures Act 1974, No32 repealed the Weights and Measures Act 1962

⁹⁵ Food and Drug Act Cap. 150 LFN 1990

⁹⁶ Now Consumer Protection Council Act No. 66 of 1992; Now- Cap C25, Vol, 4, LFN 2004

⁹⁷ National agency for Food and Drug Administration and Control of 1993

⁹⁸ Section 2 (e) of the CPC Decree No 66 of 1992

first legislation that sought to protect consumers who purchase products and services in Nigeria. In the context of the banking industry, there is no direct reference to financial services in the legislation, although the need to provide a speedy redress to consumers complaints is acknowledged.⁹⁹ The Consumer Protection Decree does not provide a direct right of action of civil recourse for consumers seeking redress for consumer law violations.¹⁰⁰ The CPC Decree of 1992 provides only criminal sanctions for certain unfair trading practices, which are enforceable by the regulatory agencies. However, the regulatory agencies determine what type of actions constitute ‘unfair trading practices’¹⁰¹ and made those actions criminal offences. Furthermore, such actions are punishable by fines or imprisonments but these fines are paid directly to the court fund, leaving the aggrieved consumers with no remedies.

The Consumer Protection Decree created many offences and penalties for violating its provisions.¹⁰² The offences include making false advertisements,¹⁰³ or attempting to sell or distribute any hazardous product,¹⁰⁴ involvement in providing any services or information that causes injury or loss to consumers,¹⁰⁵ and making false entries or statements in any report required to be made under the Decree.¹⁰⁶ In these cases, the Act does not expressly specify whether it has jurisdiction over the banks’ conduct or whether the consumers of banking services can rely on these provisions to seek remedies. Further, the provision of ‘data privacy’ in the Central Bank of Nigeria Guidelines on Electronic Banking obstructs the functions of the Consumer Protection council.¹⁰⁷

Accordingly, the CBN recognise the rights of consumers under the Consumer Protection Council Act,¹⁰⁸ yet, it invites aggrieved consumers to lodge complaints directly to its newly created Consumer Protection Department.¹⁰⁹ However, it is important that the concerns that bank consumers in Nigeria face are addressed. Most importantly there is a need for the current legal initiatives that will render protection to these consumers to spell out the roles of

⁹⁹ Consumer Protection Council Act No. 66 of 1992; Now- Cap C25, Vol, 4, LFN 2004, s. 2

¹⁰⁰ It should be noted that Nigeria has no Consumer tribunal or court.

¹⁰¹ For example, in terms of unfair trading practices, the Act did not define exactly what constitute ‘unfair trading practices’

¹⁰² Section 9, 11, 12, and 18- 21 of the Consumer Protection Council Act of 1992

¹⁰³ Section 20 of the Consumer Protection Council Act of 1992

¹⁰⁴ Section 9 (1) & 12 of the Consumer Protection Council Act of 1992

¹⁰⁵ Section 12 (b) of the Consumer Protection Council Act of 1992

¹⁰⁶ Section 19 of the Consumer Protection Council Act of 1992

¹⁰⁷ Section 3 (c) of the Central Bank of Nigeria Guidelines on Electronic Banking in Nigeria (August 2003)

¹⁰⁸ Section 3 (f) of the Central Bank of Nigeria Guidelines on Electronic Banking in Nigeria

¹⁰⁹ This was the procedure before the CBN issued the Circular in 2011 directing all the regulated banks to expand their existing ATM Help Desk to handle all complaints.

the regulatory institutions. The current laws and regulations contain limited provisions regarding the role of regulatory agencies in consumer protection. Research conducted in the CBN following the financial crisis in 2009, found that consumer protection is lacking in the financial services.¹¹⁰ From a financial sector perspective, the CBN Act fails to make any reference to any of the consumer protection regulatory bodies such as the Consumer Protection Council and the Subcommittee on Ethics and Professionalism, although it recognises the Nigeria Deposit Insurance Corporation (NDIC).

The advance in technology exposes consumers in Nigeria to riskier situations with little protection. Consequently, reliance on legal provisions relating to consumer protection in Nigeria is difficult as the laws are not available in accumulated and specific form. The laws are scattered in different legislation(s). For example, National Agency for Food and Drugs Administration and Control Decree No. 15 of 1993 contains provision for sale and use of food, drugs, cosmetics and chemicals,¹¹¹ while the Standard Organisation of Nigerian Act contain provision relating to standards, specifications and quality.

Thus, consumer protection measures and enforcements need to be adequate to protect these consumers. Being the primary consumer protection law, one may argue that the Consumer Protection Act of 1992 creates a framework which governs, amongst others, consumer redress, mediation and the overall regulations of the market economy, including the offences. Generally, the CPC Act of 1992 is supposed to provide protection for all consumers including those in the financial sector, and not for a selected few. There is a need to highlight and address the various challenges that the financial consumers face in the financial sector so as to provide adequate protection in Nigeria. The CBN at its 2008 annual report reaffirmed the role of the CBN in providing protection for financial consumers and propose to create a consumer protection department. The CBN expressed the need for the financial regulators involvement in the enforcement of consumer protection in the financial sector. This research is undertaken at a time when the CBN embarked on the drafting of Consumer Protection Framework in the financial sector. The rationales for consumer protection are examined in detail in the next section.

¹¹⁰ Lamido Sanusi, 'The Nigerian Banking Industry: What Went Wrong And The Way Forward' (Square, Bayero University, Kano, 2010)

¹¹¹ Section 5 (a) of NAFDAC Decree of 1993

2.2.2 The Rationale for Consumer Protection

The 20th century has seen an increase in the consumer protection law, and various reasons have been used to justify the intervention in the market place. Oughton observed that ‘a number of factors may be regarded as reasons for intervention in favour of consumers’.¹¹² First, the rapid changes in the consumer market make it is difficult for consumers to evaluate the services they receive or understand the way in which the products operate.¹¹³

Willett and Oughton suggested the second reason when they noted that ‘the most important reasons for protecting consumers is that of lack of information’.¹¹⁴ Ramsay puts it that, ‘imperfect consumer information was identified as a fundamental rationale for consumer measures.’¹¹⁵ Consumers need adequate information to make informed decision and also in order for market to function competitively.¹¹⁶ It can be argued that consumers need protection because the sellers have the information advantage over the consumers due to the expertise that is required in the development of products. As Willett and Oughton further elaborate, ‘where specific pieces of information are considered very important, legislation may provide that it must be given and that adverse consequences may follow if the trader fails to comply with this obligation.’¹¹⁷ Therefore, if for any reason, the consumers are not given adequate information necessary to operate in the market place, there may be justification for intervention to protect consumers. Willette and Oughton opined that the information which the consumer require is not just for making informed decisions but also include amongst others details of the contract, information about the trader, how to make complaints or seek redress and the risks associated with the contract.¹¹⁸

Further, in addition to the issue of information, Oughton and Lowry¹¹⁹ emphasised that another important reason for protecting consumers is to rectify the inequality of bargaining power which is deemed to exist between the consumer and the supplier of goods and services. The consumer of service adhere to the standard form contract which is drafted by the supplier who has more experience or stronger position and then accepted by the consumers who may

¹¹² David Oughton, *Consumer Law: Text, Cases & Materials* (Blackstone press Ltd 1991), 13

¹¹³ *Ibid*, 14

¹¹⁴ Chris Willett and David Oughton, ‘Consumer Protection’ in Michael Furmston , and Jason Chuah , (eds), *Commercial and Consumer Law* (Pearson 2010), 384

¹¹⁵ Iain Ramsay, *Consumer Law And Policy* (Hart Publishing 2007) 66

¹¹⁶ *ibid*, 64

¹¹⁷ Chris Willette and David Oughton (note 36 above),385

¹¹⁸ Chris Willett and David Oughton (note 36 above) 384

¹¹⁹ David Oughton and John Lowry, *Textbook on Consumer Law* (Blackstone 2000) 16

not have option due to their weaker bargaining position. Generally, this type of contract is often used by the financial institutions in their transactions with consumers who may not have acquired the knowledge and economic powers to enforce their rights. Accordingly, the government assumes that legislative intervention is necessary to ensure fair interaction between the suppliers and the consumers.

The existence of such inequalities of bargaining power is argued as being sufficient to justify regulation in favour of consumers, when the consumer is not in a position to obtain information, or does not have the ability to acquire the required information and when the cost of obtaining redress is high.¹²⁰ A further reason that has been advanced for statutory intervention to protect consumers is the failure of private law mechanisms in protecting the interests of consumers.¹²¹ This issue is discussed further in the chapter.

Nevertheless, this idea of government intervention in favour of consumers was not widely supported and welcomed among legal scholars for the above stated reasons. The Chicago school of economics opposed the idea of government intervention in consumer protection.¹²² The Chicago school argues that the legislative intervention in consumer protection is ‘an undesirable departure from *caveat emptor*’.¹²³ They believe that consumers are adequately protected through the operations of the free market without intervention and that the market can influence the operations of the producers.¹²⁴ For example, this School believes that, if consumers are not happy with the products they purchased as a result of quality or price, they will not only stop buying in the future but also inform other consumers to do so.¹²⁵ The trader on realizing the drop in sales of this product would take the option of reducing the price of the product, review the design, or may cease production of the product.¹²⁶ The Chicago School continues to argue that government intervention to protect consumers is unnecessary as the market is competitive enough to offer adequate protection.¹²⁷

On the criticism directed by the Chicago School, this view has been opposed by those who believe that consumers face numerous challenges which cannot allow them to rationally

¹²⁰ David Oughton, (note 34 above), 14, 15

¹²¹ For more discussion, see the section (2.5) - public law and consumer protection in this chapter

¹²² For more discussions about the Chicago School of Economists approach, see; Ross Cranston, *Consumers and the Law*, (1978) 18

¹²³ Cranston (note 31above) 18

¹²⁴ Cranston (note 31above) 18; Peter Cartwright *Consumer Protection and the Criminal Law: Law, Theory and Policy in the UK* (2001) 4,5

¹²⁵ *ibid*, 19

¹²⁶ Cranston (note 31above) 18

¹²⁷ *Ibid*, 21

utilise their choices in market transactions.¹²⁸ For example, a consumer in the free market economy may not be aware that he has not been given adequate information and can be affected by the monopoly of the trader if there is no regulation to curtail and adjust the way the market operates.¹²⁹ The consumer of a product purchased under monopoly is not the same as the consumer in a transparent and competitive market.

Further, in regard to the reasons outlined above, the lack of information which stresses the consumers' inability to acquire adequate information, enabling them to make informed decisions, coincides with our concern for the relationship between the financial services and consumers.

Where this is the case, it is necessary that government should intervene to regulate and protect consumers from the services providers. Unless there is legislation that takes the information concerns of consumers into consideration, providers of goods and services may not have regard to the information or give important information in the course of their transaction with the consumer. The government can protect consumers and increase their confidence by ensuring that there is regulation which mandates the traders to provide important information and that adverse consequence may follow if they fail to comply with the rules. Consequently, it could be argued that without a legal framework for consumer protection and consumer participation, the conduct of traders may put the consumers in a disadvantage position. Nigeria represents a jurisdiction without a legal framework for consumer protection in the financial services. This issue is discussed further in chapter four and five. It is important to note here that the consumers require this protection due to the complexity of the markets, their inability to seek redress, less information available in the market place, massive development in production methods and their weak bargaining position.

By way of conclusion, all the above different rationales discussed raise the issue that although there were criticisms about legislative intervention to protect consumers, the consumer seems to require such protection. Consumer protection, as a core aspect of the thesis and the conceptual analysis surrounding this is discussed in the subsequent sections.

¹²⁸ Geraint Howell and Stephen Weatherill, *Consumer Protection Law* 2nd (2005) 3, 4

¹²⁹ Howell and Weatherill (note 38 above) 3, 4

2.2.3 What is Consumer Protection

It is perhaps appropriate to begin the analysis of the concept of consumer protection by establishing the reason for protecting consumers in the market place. Having established the rationale for consumer protection, it is necessary to define the term. Ardic et al. defines consumer protection as ‘the laws and regulation that ensure fair interaction between service providers and consumers.’¹³⁰ Consumer protection has also been described as modest legal rules that ensure fairness and decency in market relations between the traders (particularly sellers and distributors) and buyer (consumers).¹³¹ More specifically, the Consultative Group to Assist the Poor (CGAP) has attempted to construe the notion in relation to the financial sector when they provide that,

*‘Consumer protection is a series of tools and policies that help both steer providers to act honestly and ethically, as well as help consumers become more proactive and informed financial decision makers’*¹³²

This definition sets out clearly the essential principles on which the concept of consumer protection is built. On the one hand, it provides a platform for the consumers to get adequate information which will enable them to make informed decisions. While we cannot definitively define the term ‘consumer protection,’ from the above definitions we can conclude that the aim of consumer protection is to provide appropriate and satisfying mechanisms for consumers in spite of their numerous challenges. The following section will discuss the concept of ‘consumer’ in the sphere of consumer protection.

2.3 The Concept of ‘Consumer’

2.3.1 The definition of consumer in law

There is no general consensus on the definition of consumer. The term consumer has been defined and used in various ways and context.¹³³ Even within the same jurisdiction,¹³⁴ there is no clear consensus on a shared definition of consumer. For example, in the UK, the definition

¹³⁰ Pinar Ardic, Joyce Ibrahim and Nataliye Mylenko, Consumer Protection Laws and Regulations in Deposit and Loan services: A Cross-Country Analysis with a New Data Set (2011) Policy Research working Paper 5536. World Bank, 1

¹³¹ Erika Budaite and Cees Van Dam, ‘The Statutory Framework and General Rules on Unfair Commercial Practices in the 25 EU Member States on the Eve of Harmonization’ in The Yearbook of Consumer Law (2008)

¹³² See The Consultative Group to Assist the Poor (CGAP) available at <http://www.cgap.org/p/site/c/template.rc/1.11.6053/>

¹³³ Peter Cartwright, Banks, Consumers and Regulation (Hart publishing 2004)3; Geraint Howells and Thomas Wilhelmsson, EC Consumer Law (Ashgate, Dartmouth 1997) 2

¹³⁴ For example, in United Kingdom the definition of ‘consumer’ under the unfair Contract Terms Act 1977 is different from the Fair Trade Act 1973.

of ‘consumer’ in the Consumer Credit Act 1974 differs from the definition in the Unfair Contract Terms Act of 1977.¹³⁵ In most cases, the national legal system defines consumer based on the purpose of that legislation.

In recent times, the modern consumer protection legislation has defined consumer as ‘an individual dealing with a commercial enterprise.’¹³⁶ For example in the UK, the Consumer Rights Act of 2015 defines consumer as ‘an individual acting for the purposes that are wholly or mainly outside the individual’s trade, business, craft or profession’.¹³⁷ This means that a consumer who deals with a supplier of goods or services must act in a way that will not jeopardise his entitlements. The term ‘consumer’ from its literal meaning is defined as, ‘a person who purchases goods and services for personal use.’¹³⁸ However, in the light of the definition, the focus will generally be on whether the main purpose of the purchase is for private use or not.

The word ‘consumer’ is a broad concept which has been defined in different consumer protection legislations¹³⁹ with divergence of interpretation vis-à-vis the activities¹⁴⁰ that fall within or outside the ambit of the act.

As Miller suggested;

“[...] the notion of consumer is that the term has tended to signify a natural individual, stripped of any of their distinctive human characteristics and identifiable solely by their activities in the market place: the consumer simply *consumes*.”¹⁴¹

As the concept of ‘consumer’ is key to a legal understanding of ‘who’ should be protected and what kind of protection is required, it is not surprising that most national legislation engages in this debate by attempting to define this term.

¹³⁵ For more discussion on this issue see, David Oughton (note 34 above) 2

¹³⁶ David Oughton and John Lowry, Textbook on Consumer Law (Blackstone 2000) 1

¹³⁷ Section 2(3) of the Consumer Rights Act 2015

¹³⁸ Onions C. T, Burchfield R. W and Friedrichsen G. W. S, *The Oxford Dictionary Of English Etymology*, <<http://dictionary.cambridge.org/dictionary/english/consumer?q=Consumer> >accessed 13 September 2016; Oughton David, Consumer law: Text, Cases and Materials (Blackstone 1991), 1

¹³⁹ See, for example, Most legislations are primarily concerned with those who buy for personal consumption and not for business purposes; the Unfair Terms in Consumer Contracts Regulations 1999, reg, 3(1), *Section 20 (6) Consumer Protection Act 1987*, Regulation 2 *The Financial Services (Distance Marketing) Regulations 2004*

¹⁴⁰ It should be noted that the first Act used ‘any person’ while the second Act used ‘any individual’ to describe a consumer thereby reducing consumer to private individuals who are involve in transactions for private purposes.

¹⁴¹ Lucinda Miller, Ethical Consumption and the Internal Market, in Dorota Leczkiewicz and Stephen Weatherill, *The Images of the Consumer in EU Law* (Oxford 2016) 284

This section reveals that in most of these national legal systems the scope of protection available under their laws is broader compared to Nigeria. The notion of consumer in the context of this study however, has a narrow meaning which is centred on the capacity in which the consumer and the provider of services or goods have transacted.

2.3.2 Who is a consumer?

The above has provided an overview of the definition of a consumer, now the thesis moves to examining *what* a consumer is. The term ‘consumer’ will be considered from two broad perspectives in this section namely the non-statutory and statutory. First, the non-statutory approach will focus on a number of contributions made by academic writers in defining the term ‘consumer’. Second, we consider the way in which the statutory provisions have attempted to define the term ‘consumer’ beginning with the Consumer Protection Council Act 1992. As mentioned earlier, many academic writers have attempted to define the concept of consumer. The subsequent section will begin with the legal scholars’ contributions in defining the term ‘consumer’.

2.3.3 Non Statutory Definition of Consumer

In developing an appropriate framework for understanding the person or entity that the law purports to protect in the market place, it is important to consider some scholars’ contribution in defining the concept of consumer. This section will present a discussion of the concept of consumer from various scholars.

Miller, et, al,¹⁴² define the consumer as ‘a private person acquiring goods or services for his or her private use or consumption’. This definition is important as it defines the consumer clearly in the private capacity of the end-user and explicitly excludes any professional or business element from the definition. In the same manner, a consumer was defined by the Molony Committee¹⁴³ on Consumer Protection ‘as one who purchases (or hire-purchases) goods for private use or consumption’. It is worth noting that the two definitions above are merely restrictive and could be criticised as follows. First, despite the fact that the definition(s) considered the private consumer of goods and services as ‘consumer,’ it seems that it excluded the non-contractual parties. Taking the above limitation into account, it could

¹⁴² John Miller, Brian Harvey and Deborah Parry, *Consumer and Trading Law; Text, Cases and Materials* (Oxford 2005) 5

¹⁴³ Miller, Harvey, and Parry (note 58 above) 4, 5; Molony Committee Report: *The Final Report of the Committee on Consumer Protection* (1962) (Cmnd 1781, 1962)

be deduced that for one to be considered as a consumer, one needs to acquire the goods or services in question through ‘purchase’. In practice it could be argued, that the effect of this limitation will be that those who acquire the goods or services through purchase are not covered.

On the other hand, a consumer was defined by Pablo Cortes¹⁴⁴ as “an individual that needs legal protection when dealing with a business owing to his perceived lack of knowledge and weak position in the course of entering into a transaction.” Based on this idea, a consumer is a private individual or entity that acquires goods and services wholly in a private capacity. A consumer is then defined from its literary meaning as, ‘a person who purchases goods and services for personal use.’¹⁴⁵ Belohlavek¹⁴⁶ opined that a consumer is economically active but not in connection with his or her profession. On the other hand, it is well-established that the law tends to protect the individual that purchases goods and services on the presumption that s/he lacks either bargaining power or information. Cartwright also observes that ‘a consumer is a private individual acting in a private capacity.’¹⁴⁷ The conceptualisation and definition of consumer in this study is precisely in line with the above definition. Peter Cartwright however, offers a word of caution not to limit the term ‘consumer’ to contracting parties, as that may exclude the final (non-contractual) users of goods and services, for example the consumer in *Donoghue v Stevenson*.¹⁴⁸ He goes so far as to suggest that the concept of consumer should be wider than traditionally imagined, in order to cover even recipients of benefits and private individuals who receive services from non-commercial state authorities.¹⁴⁹ Restricting the concept of consumer to a narrow or economic meaning (purchasers) might exclude individuals who use public services, not-for-profit organisations and financial services. In theory, such definition could exclude the individual who deposit money, borrow and invest (private investors) money in financial institutions, from the protective cover of the law.

¹⁴⁴ Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union* (Routledge 2011)10.

¹⁴⁵ Onions C. T, Burchfield R. W and Friedrichsen G. W. S, *The Oxford Dictionary Of English Etymology*, <<http://dictionary.cambridge.org/dictionary/english/consumer?q=Consumer> >accessed 13 September 2016; Oughton David, *Consumer law: Text, Cases and Materials* (Blackstone 1991), 1

¹⁴⁶ Alexander J. Belohlavek, *B2C Arbitration: Consumer Protection in Arbitration* (Juris Publishing, Inc., 2012) 9

¹⁴⁷ Peter Cartwright, *Banks, Consumers and Regulation* (Hart publishing 2004) 3

¹⁴⁸ Peter Cartwright, *Consumer Protection and the Consumer Law: Law, Theory, and Policy in the UK*(Cambridge Press 2001), 5

¹⁴⁹ *Ibid.*,

One of the key issues arising from consumer protection as legal protection, is how to determine the true nature of which ‘consumers’ need protection or what kind of ‘protection’ is required. Reviewing how some statutes have responded in defining the concept of consumer is the task for the following subsection.

2.3.4 Defining ‘Consumer’ from Statutory Perspective

As there is no commonly agreed definition of consumer, the statutory provisions defining the term may be the best way to attempt the task. To understand the way in which some consumer protection laws take a very broad approach, we begin by considering the definitions from Nigeria before other countries.¹⁵⁰ This is done by exploring the concept of ‘consumer’ in the Nigerian legal system and also considers the extent to which the current legislation assists in addressing it. The Nigerian Consumer Protection Decree¹⁵¹ defines a consumer as ‘an individual, who purchases, uses, maintains, or disposes of product or services’.¹⁵² This definition is limited to the individual as a natural person and does not extend to small business. This approach tends to deviate from the common law approach in which the word ‘individual’ is not limited to the natural person but rather includes business entities such as unincorporated businesses.¹⁵³ Generally, the Act did not attempt a definition of ‘an individual’ in any of the provisions. It is recognised that while a company is not an individual, it is likely that an unincorporated body or small business is not regarded as an individual. This study will now proceed with an in-depth analysis of a consumer in Nigerian legislation.

2.3.4.1 Nigeria

Generally speaking, the term ‘consumer’ has only been recently defined in the Consumer Protection Council Decree.¹⁵⁴ In Nigeria like many other African countries, Such as

¹⁵⁰ The following countries legislation was used as a benchmark to consider the definitions, Nigeria, EU, UK, Canada, South Africa and others.

¹⁵¹ No 66 of 1992 (C25, Vol, 4, Law of the Federation of Nigeria (LFN) 2004)

¹⁵² Section 32 of Consumer Protection Council Act No. 66of 1992; Cap C25, Vol, 4, LFN 2004

¹⁵³ See Oughton (note 34 above) 2; Eugene Majahemphini Dlamini, Consumer Protection in Swaziland: A comparative analysis of the law in South Africa and The United Kingdom (2012), PhD thesis, University of Kwazulu Natal. P.36

¹⁵⁴ Hereafter shall be describe as the CPC Act No 66 of 1992

Tanzania, the consumer protection laws are scattered in different legislation.¹⁵⁵ Thus, there is an absence of a uniform definition given to the term ‘consumer’¹⁵⁶ within the statute.

The definition provided above may involve three elements as Oughton suggested.¹⁵⁷ First, that the consumer must be an individual. In this case, the term ‘consumer’ excludes the legal person. Secondly, the consumer buys goods and services. Thirdly, there is uncertainty about whether or not the goods or services in transaction must be intended for personal use only. Despite the significant extent to which the CPC Act definition takes care of the limitations affecting actions in contract,¹⁵⁸ some commentators question its use of the words ‘disposes’ and ‘maintains’.¹⁵⁹ However, Kanyip notes that the use of the word ‘maintain’ may not be easy to justify.¹⁶⁰ On one hand, the provisions on the CPC Act look appealing from the viewpoint of its wide scope, there is an argument that it creates problems for the financial consumers who may find it difficult to rely on it to enforce their rights. For example, the CPC Act has inherent weaknesses which hamper an effective implementation of the provisions of the Act. These weaknesses include but are not limited to the following; (a) a very narrow definition of a ‘consumer’ which excludes financial consumers, (b) with inadequate provisions for enforcement of consumer rights, (c) no clear definition of consumers’ rights and an undefined relationship with financial services regulators. However, the literature in this area did identify some of these weaknesses associated with the Act, these were considered small compared to the challenges the consumers encounter in an attempt to enforce their rights. The absence of clear and concise definition may pose considerable challenges and constraints to the Nigerian courts whilst determining the scope of protection for consumers in the financial sector. Rather than looking at all aspects of transactions or contracts, courts can concentrate on the context-specific definition in making legal judgement.

The definition of the term consumer used in the CPC Act is useful in identifying the person the law intends to protect when entering into a transaction with a seller or supplier of goods

¹⁵⁵ See, Standard Organization of Nigeria Act No. 56 of December 1971(SON), CPC Act 1992, and National Agency for Food and Drug Administration and Control (NAFDAC) no15. Of 19993; National Communications Act 2003 (NCA) S. 157

¹⁵⁶ Both the Consumer Protection Council Act 1992 and the Nigerian Communications Act 1992 have different definition of ‘consumer’ which sometimes leads to misinterpretation of the concept.

¹⁵⁷ David Oughton (note 34 above) 2

¹⁵⁸ Felicia Monye, Law of Consumer Protection (Spectrum Books Ltd 2003) 55

¹⁵⁹ For more discussion about Ajai’s view, see Benedict Kanyip, Consumer Protection in Nigeria: Law, Theory and Policy (Rekon Books Ltd 2005) 18, 19

¹⁶⁰ *ibid*, 19

or services. It is thus clear from the wording of the Act that the following categories of consumers are not included, financial consumer, small business and non-profit organisations. In this Act consumer was defined in a narrow sense to mean ‘the purchase of product or services,’ whether between individuals, buyers and sellers but does not specify if it should be for private consumption or not. However, the definition did not include the purchase of goods and services conducted in the financial services such as insurance. It is essential to mention that where the Act provides protection for consumers because they lack sufficient knowledge when they enter into transactions with the seller or because of lack of equal bargaining power, the small business and non-profit organisations are excluded. However, where the ‘individual’ which the statute purports to protect is not defined in the Act, it is unlikely that the person or entity who uses public or financial services may not qualify as a consumer. These views which are put forward here will be the subject of our discussions in chapter four and five.

The definition provided by the CPC Act is unclear unlike the ones provided in the United Kingdom and other jurisdictions as will be seen in subsequent analysis. For example, the definition of ‘consumer’ in the South African Consumer Protection Act 68 of 2008 and the UK Consumer Protection Act of 1987 encompasses the three elements while Nigerian Consumer Protection Council Act of 1992 does not. As Oughton puts it, that consumer transaction in general involves three elements.¹⁶¹ Accordingly, the three elements emphasised that the consumer has to be an individual, who is not acting in business capacity, and the goods or services must be for private use or not for resale.¹⁶² In some jurisdictions the legal person is not excluded from the scope of protection by consumer protection law while in others they are automatically excluded.

2.4 The Consumer Concept in selected Jurisdictions

In this section, the statutory definition of consumer will be considered from various jurisdictions below. The Nigerian and statutory definitions discussed above demonstrate that the definitions of consumer certainly vary both from country to country and with regard to what a particular legislation aims to achieve.¹⁶³ The point for this selection of common law jurisdictions is to show an in-depth analysis of statutory provisions defining the term ‘consumer’. The fact that most of these jurisdictions have a well-established consumer

¹⁶¹ David Oughton (note 34 above) 2

¹⁶² *ibid*, 2

¹⁶³ Geraint Howells and Thomas Wilhelmsson, *EC Consumer Law* (Dartmouth Publishing Ltd 1997) 2

protection legislation indicates that their experience is worth studying not only for the lesson it provides to other emerging countries, but also for the lessons for countries at the early stage of legal developments in consumer protection regime. These main provisions of the term ‘consumer’ will be analysed below.

2.4.1 The United Kingdom

In the United Kingdom, the most recent definition of consumer is illustrated in Article 2 of The Consumer Protection from Unfair Trading Regulations 2008, which defines consumer as “any individual who in relation to a commercial practice is acting for purposes which are outside his business.”¹⁶⁴ In the UK, different statutes offer different meaning of a ‘consumer’ from a unique perspective. For instance, section 20 (6) of the Consumer Protection Act 1987, defines ‘consumer’ in relation to services or facilities as ‘any person who might wish to be provided with the services of facilities otherwise than for the purposes of any business of his.’¹⁶⁵ On the other hand, it has been noted¹⁶⁶ that in the United Kingdom businesses which engage in a transaction outside their normal business purposes can under section 12(1) of the Unfair Contract Terms Act (UCTA) 1977 claim to be “dealing as a consumer” after the decision in the case of *R & B Customs Brokers Ltd v United Dominions Trust Ltd*.¹⁶⁷

The Consumer Protection Act of 1987 which defines consumer in a much broader meaning to cover three areas namely: (i) consumer as any person who might wish to be provided with goods, (ii) services or facilities and (iii) accommodation otherwise for the purpose of any business of his.¹⁶⁸ In the UK Enterprise Act 2002, consumer means any person who is:

- (a) ‘[...] a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply the; Or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;

¹⁶⁴ Article 2 of the Consumer Protection from Unfair Trading Regulations 2008

¹⁶⁵ See Cartwright Peter, (2004) at 3

¹⁶⁶ See Martin Ebers, Comparative Analysis : The Notion of Consumer’ Comparative Law Compendium

¹⁶⁷ *R & B Customs Brokers Ltd v United Dominions Trust Ltd*. [1988] 1 WLR 321

¹⁶⁸ Section 20 of the Consumer Protection Act of 1987

and who does not receive or seek to receive the goods or services in the course of a business carried on by him'.¹⁶⁹

One of the major characteristics of a consumer as emphasised in these definitions is that 'a consumer is a private person acting in a private capacity while the trader or seller acts in business capacity' with more professional knowledge than the consumer.

In addition, the notion of 'consumer' and the issue of its scope were addressed in the European Court of Justice (ECJ) in the case of *France v Di Pinto*.¹⁷⁰ In this case Di Pinto arranged for the canvassing of professional to sell their business in his magazine. The question before the ECJ was whether traders in the process of selling their business could be considered as consumers. It may be helpful at this point to also consider the way in which European legislations and other jurisdictions defined the concept of a consumer.

It is therefore beyond the scope of this thesis to discuss these concepts in detail. For the present purpose, the study will deal with the general overview of the concept in the selected jurisdictions to enhance our understanding of the diversity and how the people who can be regarded as consumers are protected.

2.4.2 The European Union

Sybe A De Vries said:¹⁷¹

"The basic notion of consumer in EU law is that the consumer is considered an individual who can, if provided with the necessary information, make their own choices and defend their own interests"

This extract illustrates the Commission's consumer protection policy which defines their understanding of a consumer as a natural person acting for purposes not related to business.¹⁷² In the EU, the consumer concepts are used jointly 'as points of reference in policy formation and also as goals of regulation'.¹⁷³ As a primary goal, EU consumer

¹⁶⁹ Section 183; see, also Part 8 of the Enterprise Act 2002

¹⁷⁰ Cortes Pablo, 'Online Dispute Resolution for Consumers in the European Union (Routledge 2010) 10 at 10-12

¹⁷¹ Sybe A De Vries, The Court of Justice's 'Paradigm Consumer' in EU Free Movement Law, in Dorota Leczykiewicz and Stephen Weatherill 'The Images of the Consumer in EU Law (eds) (Oxford 2016) 408

¹⁷² Directive 1999/44/EC; see also Hans-W Micklitz, Jules Stuyck and Evelyn Terryn, Consumer Law: Ius Commune Casebooks for a Common Law of Europe (Bloomsbury Publishing, 2010)

¹⁷³ Doota Leczykiewicz and Stephen Weatherill, The Images of the Consumer in EU Law, in Dorota Leczykiewicz and Stephen Weatherill 'The Images of the Consumer in EU Law (eds) (Oxford 2016) 15

protection policy is aimed at encouraging the consumer to participate in transactions by using goods and services provided on that market.¹⁷⁴

The EU law has no uniform or consistent definition of consumer. In the EU, there are a number of Directives that deal with the notion of consumer.

Article 2 of Unfair Commercial Practices Directive¹⁷⁵ gives a general definition of a ‘consumer’ as follows:

‘Consumer’ means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession.

The EU Directives that relate to consumer protection do not adopt a uniform approach in the definition of consumers¹⁷⁶ that is why in most European Union countries, the definition of ‘consumer’ is varied.¹⁷⁷ Although the Directives often emphasise that the definitions are not of a general nature but it applies to specific Directives. In the Brussels Convention of 27 September 1968, the consumer is defined as “a person acting for a purpose which can be regarded as being outside his trade or profession.”¹⁷⁸ One of the most widely accepted definitions offered is in the Article 2 of the Council Directive on Unfair Terms in Consumer Contracts¹⁷⁹ which defines a ‘consumer’ as ‘[...] any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession.’ At the EU level, a lot of EC directives on consumer protection define the consumer from a narrower perspective unlike the EC competition law which has a broader view of the definition of a consumer.¹⁸⁰

This European Union (EU) legislation has influenced the UK in providing several definitions of a consumer to cover many aspects of commercial activities. For example, the Distance

¹⁷⁴ *ibid*, 15

¹⁷⁵ Article 2 of DIRECTIVE 2005/29/EC

¹⁷⁶ Law Reform Commission of Mauritius [LRC]- Report on Review of Aspects of Consumer Protection Laws and Proposals for Reform (October 2010) at p. 77

¹⁷⁷ Discussion Paper on the Review of Directive 85/577/EEC, at p. 5; Cees Van Dam and Erika Budaite, ‘Unfair Commercial Practices’, British Institute of International and Comparative Law, General Report (London 2005)33

¹⁷⁸ See, Article 13 (1) of Brussels Convention of 27 September 1968 or 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgement in Civil and Commercial Matters (Consolidated version OJ C 27, 26.1.1998, p. 1-27) available at <<http://www.dutchcivillaw.com/legislation/brussels1968.htm>> accessed on 25 November 2016.

¹⁷⁹ See, Directive 93/13/EEC

¹⁸⁰ Katalin Judit Cseres, ‘Competition Law and Consumer Protection’ (Kluwer Law International, 2005), 382

Marketing Directive¹⁸¹ relates to contracts with ‘consumers’ in cross-border trade. This Directive defines the consumer in article 2 as ‘any person who, in distance contracts covered by this Directive is acting for the purpose which is outside his trade, business or profession’¹⁸² However, in order to provide a broader definition of consumer, some Directives¹⁸³ for example, the Directive on Package Travel, Package Holidays, and Package Tours have extended protection to individuals that agree to purchase a package, even those on whose behalf a purchase is made or transferred by the owner and a person on whose behalf a package is purchased as illustrated in the Directive.

Consumer protection in the EU has changed in the last few decades to reflect an increasing public interest in the consumer market unlike the developing countries. The EU directives¹⁸⁴ are entirely different in the sense that it does not require a consumer to pay consideration for a product.

2.4.3 South Africa

South Africa has developed a much wider conception of ‘consumer’ with consumer protection legislation to prevent unethical business practices. The Consumer Protection Act 68 of 2008¹⁸⁵ (updated May 2013) was an innovative piece of legislation¹⁸⁶ that reformed the country’s law of contract. The Act seeks to protect the consumer from unfair trade practices and the scope of the Act is extended to cover unfair trade practices but not African medical products¹⁸⁷ that are unsafe.¹⁸⁸ The CPA 68 of 2008 defines a ‘consumer’ in a much wider way than most consumer protection Act in the African region. The CPA of 2008 defines a ‘consumer’ in respect of any particular goods or a service is defined as follows:

¹⁸¹ See, Article 2 of Directive 85/577/EEC

¹⁸² See Cartwright Peter, Banks, Consumers and Regulations, (Oxford 2004) at 3-4

¹⁸³ Article 3 of Directive 90/314/EEC

¹⁸⁴ For example, in the (*Article 2 of Directive 92/59/EEC*) the Directive on General Product Safety clearly clarifies this when defined ‘product’ and emphasised why consumers should be protected without paying consideration.

¹⁸⁵ Hereafter referred to as the CPA or Act.

¹⁸⁶ Corlia Van Heerden and Barnard J, Redress for consumers in Terms of the Consumer Protection Act 68 of 2008: A Comparative Discussion, *Journal of International Commercial Law and Technology*, Vol. 6, Issue 3 (2011) at P 131

¹⁸⁷ African local medicine goods and traditional medicine practitioners who are selling locally made traditional products that often unsafe to consumers

¹⁸⁸ S. 53 (d) defines the meaning of ‘unsafe’; See Jacobs, Stoop and Van Niekerk, ‘Fundamental Consumer Rights under the Consumer Protection Act 68 of 2008; A Critical Overview and Analysis’ *Potchefstroom Electronic Law Journal*, Vol. 13. No3 (2010) ‘unsafe’ was defined to mean those goods that pose an extreme risk of personal injury or property damage to consumers or other person owing to its characteristic, failure, defect or hazard.

*[...] a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business; a person who has entered into a transaction with a supplier in the ordinary course of supplier's business, unless the transaction is exempt from the application of this Act by section 5(2) or in terms of section 5(3); if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular service, irrespective of whether that user, concerning the supply of those particular goods or services; and a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6) (b) to (e).*¹⁸⁹

This definition clearly provides a broad overview of a consumer which encompasses both natural and legal persons in terms of a franchise agreement¹⁹⁰ and other legal entity with annual turnover that is within a certain threshold value.¹⁹¹ The definition of consumer in CPA of 2008 identifies some categories of legal entity as consumer unlike the Nigeria CPC Act which does not.¹⁹² However, the CPA of 2008 does not specify when a company or other legal persons can be considered as a consumer.¹⁹³ The only rule in the CPA of 2008 pertaining to when businesses or legal persons could be considered a consumer is when its annual turnover is less than R 3 million.¹⁹⁴ A proper understanding of the definition of consumer is necessary in order to avoid the legal uncertainties and to determine the scope of the person who is to be given protection.

In Pakistan,¹⁹⁵ a consumer is defined in the Islamabad Consumer Protection Act of 1995 as any person who buys goods or hires any goods or services for a consideration of any kind and explicitly excludes the purchase of goods for re-sale or commercial purposes.¹⁹⁶ Accordingly, the definition includes any person to whom a service is rendered.¹⁹⁷ In Tanzanian Consumer legislation a consumer is defined in the Fair Competition Act of 2003. The Fair Competition Act 2003 defines a consumer as 'any person who purchases or offers to purchase goods or services other than for the purpose of resale but excludes a person who purchases any goods or services for the purpose of using them in the production or manufacture of goods or

¹⁸⁹ Section 1 of Consumer Protection Act 68 of 2008,

¹⁹⁰ Section 1 & 5 of the CPA of 2008

¹⁹¹ Section 1 & 5 of the CPA of 2008

¹⁹² Section 1 of the CPA of 2008; Section 32 of CPC Act 1992

¹⁹³ Section 1 of the CPA of 2008

¹⁹⁴ Section 5 (2)(b) of the CPA of 2008

¹⁹⁵ In Pakistan there are different Consumer Protection Laws in various provinces for example, Punjab Consumer Protection Act, 2005, Sindh Consumer Protection Ordinance 2007, and Baluchistan Consumer Protection Act 2003.

¹⁹⁶ Section 2 (c) of the Islamabad Consumer Protection Act of 1995; see also Muhammad Mumtaz, et al, Analytical Study of Consumer Protection Laws in Pakistan (2013) 6 Journal of Global Business

¹⁹⁷ Section 2 (c)(ii) of the Islamabad Consumer Protection Act of 1995

articles for sale'.¹⁹⁸ The definition excludes any person who acquires goods for business use or resale.¹⁹⁹ This definition is clearly restrictive as it focuses on the notion of 'buyer' and excludes some categories of consumers who are often regarded as 'business consumers'.²⁰⁰ The Saskatchewan Consumer Protection Act, 1996 defines a consumer as 'a person who buys a consumer product from a retail seller and includes a non-profit organization'.²⁰¹

This definition includes a person who buys the consumer product from a seller but it was not intended for business purposes or resale.²⁰² The primary legislation that defines consumers in Australia is the Competition and Consumer Act of 2010. In the Competition and Consumer Act of 2010 a consumer is defined as a person who acquired goods and in which the amount payable for the goods does not exceed \$40,000 or any greater amount that is prescribed.²⁰³ The important thing to consider in this definition is that the 'person' must acquire the goods for personal, domestic or household use or consumption.²⁰⁴ It is noteworthy that the concept of consumer in Australian law provides for private or household consumption and does not include the legal entities. In Zambia a consumer is defined in the Competition and Consumer Protection Act of 2010 as 'any person who purchases or offer to purchase goods or services supplied by an enterprise in the course of business, and includes a business person who uses the product or services supplied as an input to its own business, a wholesaler, retailer and final consumer and otherwise that the purpose of resale'.²⁰⁵ The definition includes a person who uses the product or service, whether a wholesaler, a retailer or final consumer, provided it is not meant for production and manufacturing of any other goods for sale or another service for remuneration.²⁰⁶ It must be noted that the reason for selecting these jurisdictions is that they are based on common law like Nigeria with the legal practices being heavily reliant on case law and precedents therefore making it apt for comparison.

The definitions of 'consumer' in different national legal systems are very much alike, as established above. The statutory definitions have some form of uniformity shared from the

¹⁹⁸ Section 2 of Act No. 8 of Fair Competition Act 2003

¹⁹⁹ *ibid*,

²⁰⁰ The term 'business consumer' is a relatively new name for a consumer (which encompasses private business, government agencies, institutions and organizations) who purchases a product or services for both private and business purpose. Although differences of opinion still exist, there appears to be some agreement that 'business buyers' should be protected from unfair market practices. See for example, *Law Commission Report*, 292, 2005, at parts 4 and 5

²⁰¹ Section 39 of the Saskatchewan Consumer Protection Act, 1996

²⁰² Section 39 (d) (i) & (ii) of the Saskatchewan Consumer Protection Act, 1996

²⁰³ Schedule 2, Section 3(1) (a) of the Competition and Consumer Act, 2010

²⁰⁴ *ibid*

²⁰⁵ Section 2 (1) (a) of the Competition and Consumer Protection Act, 2010

²⁰⁶ Section 2 (1) (b) of the Competition and Consumer Protection Act, 2010

three denominators of consumer definitions. The ‘consumer’ in this thesis is the users of banking products and services. Defining consumer is particularly important as it has a role to play in determining the individual that needs protection and whether the proposed intervention is aptly targeted. Based on this fact, the researcher defines consumer as an individual that requires protection when transacting with traders due to limited information and knowledge.

As mentioned earlier, the notion of consumer in the national legal system is that of a vulnerable and this will be taken into consideration when referring to Nigerian financial consumers. One thing that is clear with financial services in Nigeria is that without government intervention, consumer welfare is at risk due to perceived lack of information.

2.5 Vulnerable Consumer

Having thus established the notion of consumer from different national consumer legislation, the focus is now directed to the discussion on the distinction between vulnerable and disadvantage consumers. In Nigeria, a good number of the population that conduct business with the financial institutions, especially banks can be regarded as vulnerable consumers with low levels of financial literacy and in most cases these consumers do not have adequate information about their rights and obligations. Clearly, there are two possible ways of exploring vulnerability and disadvantage in the consumer context. First, by examining the limitations within the individual consumer and second, by exploring the external factors such as lack of access to products and services.²⁰⁷ Despite the fact that the Nigeria consumer law does not specifically define what a vulnerable or disadvantage consumer is, it acknowledged that consumer require special protection due to these external factors and their weak position in the marketplace.²⁰⁸

It is essential to differentiate between vulnerable consumer and disadvantaged consumer. These concepts have often been used interchangeably by academics, researchers and policy makers without much clarification of what constitutes vulnerability. The European legislation favours the notion of ‘average’²⁰⁹ consumer rather than vulnerable consumer. These

²⁰⁷ Stacey Menzel Baker, James W. Gentry and Terri L. Rittenburg, ‘Building Understanding of the Domain of Consumer Vulnerability, *Journal of Macro marketing*’ (2005) Vol. 25 No. 2, 2

²⁰⁸ Consumer Protection Council Act of 1992

²⁰⁹ The early EU legislation on consumer law tends to be premised on the notion of ‘average consumer’, rather than vulnerable or disadvantage consumers but where necessary the law provides additional protection for those who might be considered ‘vulnerable’. See, 2005/29/EC on EC Unfair Commercial Practices Directive

complementary concepts have generated huge debate in legal literature.²¹⁰ This has often resulted in further difficulties especially when researchers focus on who is vulnerable without precise definition of vulnerability.²¹¹ The courts in the United States view consumer vulnerability in relation to product sensitivity.²¹² [I]t seems that the idea of what constitute vulnerability is subjective and opinion varies from scholars to the state. Some writers classify vulnerability in terms of ‘consumer-situation’²¹³ In this case vulnerability could only arise through consumers’ personal characteristics.

The need to differentiate between both terms is underscored by the fact that any consumer can be vulnerable in certain circumstances.²¹⁴ A consumer may be disadvantaged but not vulnerable. For example, consumers who live in a rural area where there is no local bank branch or post office may be deemed to be ‘disadvantaged’ not vulnerable in terms of access to financial services. Put another way, the same consumer will be vulnerable if due to his location he has no access to financial advice which leads to his poor financial decision making. He is also vulnerable when compared to another consumer²¹⁵ in a different circumstance.

A more recent perspective of how vulnerable consumers should be viewed is provided by Baker et al.,²¹⁶ where they emphasised that the notion of treating a class of consumer as vulnerable could potentially lead to stigma and anxiety.²¹⁷ If one of the reasons for intervention to protect consumers of banking is to ‘to prevent invidious discrimination against

²¹⁰ Many legal scholars use the terms interchangeable and in this thesis, we have tried to use more of the disadvantage consumer due to some characteristics that are peculiar to developing countries. See, Carol Brennan and Martin Coppack, ‘Consumer empowerments: global context, UK strategies and vulnerable consumers’, *International Journal of Consumer Studies* 32 (2008), Fred W. Morgan, Drue K. Schuler, and Jeffrey J. Stolman, *A Framework for Examining the Legal Status of Vulnerable Consumers*, *Journal of Public Policy & Marketing*, Vol. 14 (2) Fall 1995, Stacey Menzel Baker, James W. Gentry and Terri L. Rittenburg, *Building Understanding of the Domain of Consumer Vulnerability*, (2005) 25 *Journal of Macro marketing*, 2

²¹¹ Stacey Menzel Baker, James W. Gentry and Terri L. Rittenburg, ‘Building Understanding of the Domain of Consumer Vulnerability’, *Journal of Macro marketing* (2005) Vol. 25 No. 2, 2

²¹² *ibid*

²¹³ Stacey Menzel Baker, James W. Gentry and Terri L. Rittenburg, ‘Building Understanding of the Domain of Consumer Vulnerability’, *Journal of Macro marketing* (2005) Vol. 25 No. 2, 2

²¹⁴ Europe Economics, ‘An analysis of this issue of consumer detriment and the most appropriate methodologies to estimate it’ (2007) <www.europe-economics.com> accessed 10 July 2016

²¹⁵ Peter Cartwright, ‘The Vulnerable Consumer of Financial Services, Law, Policy and Regulations, (Executive Summary) at p. 7

²¹⁶ Barker Stacey M, Gentry W. James, and Rittenburg Terri L, ‘Building Understanding of the Domain of Consumer Vulnerability’, (2005) 25 *Journal of Micromarketing*, available at <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.820.6946&rep=rep1&type=pdf>> accessed on 21 November 2016.

²¹⁷ Suraj Commuri and Ahmet Ekici, ‘An Enlargement of the Notion of Consumer Vulnerability’ (2008) 28: 183

individual,²¹⁸ then the classification of consumers as vulnerable will defeat the objective of protection.

Andreasen believe strongly in the potentially important distinction between the two concepts when he described disadvantaged consumers as those ‘who are particularly handicapped in achieving adequate value for their consumer dollar in the marketplace because of their severely restricted incomes, their minority racial status, their old age, and/or their difficulties with the language’²¹⁹ Perhaps for that reason, Baker, Gentry and Rittenburg argued that ‘vulnerability is not the same as disadvantaged because vulnerability occurs when barriers prohibit control and prevent freedom of choice, whereas disadvantage is ascribed to different consumer groups.’²²⁰ They went further to illustrate different aspects of vulnerability by accessing whether it is perceived or actual. Where perceived vulnerability is when others believe that a person is vulnerable even when the person may not agree that he is vulnerable in the real sense.

This study takes the approach that consumers should be viewed as vulnerable only when their experience is due to some personal circumstance rather than being classified as a group. In this work, the concept of vulnerable and disadvantaged consumer is predominantly used due to the focus of the research in Nigerian financial services. The researcher is of the view that the best way to cover the heterogeneity of Nigerian consumers is to take different approaches that will not stigmatise any particular group. Perhaps vulnerable consumer is better defined when considered along-side with the definition of the term ‘consumer protection’ since these concepts reaffirm the need for the other. In this case, we consider ‘vulnerable’ as internal and external factors that can impact on the consumer’s ability to effectively use the financial services. Having defined the concept of consumer, consumer protection, rationale and vulnerable consumer, it is now appropriate to discuss the private law and consumer protection.

²¹⁸ George J. Benston, ‘Consumer Protection as Justification for Regulating Financial Services Firms and Products’ *Journal of Financial Services Research*, (2000, Kluwer Academy Publishers) at 277

²¹⁹ Andreasen, A.R, ‘The disadvantage consumer’ (1975, New York: Free Press) cited in Margaret K. Hogg, Gerait Howells and David Milman, ‘Consumer in the Knowledge-Based Economy (KBE): What creates and/or constitutes consumer vulnerability in the KBE? (2007)

²²⁰ Stacey Menzel Baker, James W. Gentry and Terri L. Rittenburg, Building Understanding of the Domain of Consumer Vulnerability, (2005)25 *Journal of Macro marketing*, 2

2.6 Private Law and its function in Consumer Protection

The law of contract protects contracting parties from undue influence or duress, fraud and misrepresentation. This can only be possible when the law establishes that one of the parties was induced, he can avail himself of the protection. In this case, the question is whether there is any special treatment for consumers in respect of such unfair business practice. The Nigeria contract law, in this respect, will either invalidate the contract or allow the government agencies to prosecute a trader who engages in such unethical practices.²²¹ As Willett and Oughton have pointed out that the rules only aimed at practices affecting consumers.²²² Although, consumers who are cut in this web of unfair practices could protect themselves by suing the rogue trader to recover their losses,²²³ but can they face the rigors of legal action and the cost of litigations. This raises the questions whether the contract law provides adequate mechanisms for protecting consumer rights and interests.

Contract law has a few limitations in protecting consumers' rights and interests. For example, consumers who have no contractual relationship with the manufacturer will not have remedy against the manufacturer in the event of any injury sustained by using the manufacture's product.²²⁴ This limitation of contract law has created more problems for the consumer in the modern times where the products and the channels of distribution are more complex. With the multiple distribution channels which include internet and other telecommunication technology, it would be difficult for a consumer to enter into direct contract with the manufacturer. In this case, the consumer may not have any course of action against the producer for a defective product if he has not purchased the goods directly from him.²²⁵ The consumer's only option might be to sue the retailer and not the manufacturer. The options to sue the retailer are not easy as the retailer may not have a permanent address, resources to pay for damages if a compensation order is made in favour of the consumer. To protect a consumer under this circumstance, intervention is inevitable.

²²¹ See S.28 of CPC Act 1992, and also the powers under S. 24 (f) of National Agency for Food and Drug Administration and Control Act 2004 (NAFDC Act 2004)

²²² Michael Furmston and Jason Chuah, Commercial and Consumer Law, (ed)., (Pearson Education Limited, England, 2010), 384

²²³ Ibid, p.384

²²⁴ Howell Geraint and Stephen Weatheril, Consumer Protection Law (2nd ed, Ashgate Publishing 2006) at 49

²²⁵ Here the aforementioned consumer cannot sue the producer in contract for manufacturing defective products. If the consumer in this case has no direct contract with the producer, the law cannot confer rights or obligations to the consumer who is not party to the consumer in accordance with the law of contract.

It is a commonly asserted dogma in most contemporary legal literature that consumer protection is justified with the notion of a “weaker party.”²²⁶ Haupt,²²⁷ for example, justified the consumer protection on the idea of power imbalance and discrepancy between the economic power²²⁸ of the producer and consumer in the market-place. Hence, it can be argued that consumers are prone to be exploited due to the fact that they are less knowledgeable when compared to producers and traders. Therefore, due to this conception in economic rationale that is clearly illustrated in “exploitation theory.”²²⁹ It is true; however, that what constitutes the exploitation of consumers is not something that everyone will agree upon and it can also be understood in different forms by different schools of thought.

It also shows that, although the consumers may be aware of these unethical practices but the fact that some of these product are not purchased on a repeat basis or that the effect is not noticed until sometime in the future, the legal cost and the difficulties faced by consumers to obtain redress may encourage these trading behaviours. Another possibility is to say that the company’s exposure to consumers’ important information make it possible for them to exploit the consumer to the level that warrants state interference.

An approach that is considered in this study in relation to consumer’s exposure to unfair marketing practices which was not considered under the contract law or exploitation theory. For example, the consumer’s lack of knowledge/information on cancellation rights which includes refund policy and reclaim of mistakenly made purchases especially in the financial services industry which is the focus of this research. When we refer to consumers of financial services, we mean those consumers who use savings facilities, credit cards, and payment services offered by banks, other financial services providers, community banks, Microfinance institutions (MFI) and Insurance companies. This present chapter is not concerned with other financial institution but with retail banks. In recent times, consumer protection has been viewed as a critical function of modern regulation in the financial services sector, the other being maintenance of the financial system stability. It is evident that many countries’ regulatory framework have not recognised or enshrined this important function as part of their financial sector regulation except for the protection of depositor’s

²²⁶ See, Ruhl Giesela, (2011) (note 9 above) at 571-573

²²⁷ See Stefan Haupt, An Economic Analysis of Consumer Protection in Contract Law, 4 German L.J. (GLJ) 1137 at 1137-38

²²⁸ See Stephen Weatherill, *EC Consumer Law And Policy* (Longman 1997), 60

²²⁹ See Iain Ramsay, *Consumer Law and Policy; Text and Material on Regulating Consumer Markets*, (Oxford and Portland, Oregon 2007) at 54-106; George L. Priest, 'A Theory Of The Consumer Product Warranty' (1981) 90 *The Yale Law Journal*, 1298-1301

funds.²³⁰ The question is why do we need consumer protection regimes in a competitive financial market with multiple financial product and services? Again of what importance are public regulators to protect consumers of these financial products?

Therefore, the most important legal task confronting contract and consumer law experts, arguably, is how to intervene or draw a balance in the marketplace when the unfairness is beyond consumer's exploitation. Like when a consumer is faced with risk of computer fraud, misuse of personal information, insecure payment methods and recovering of fraudulent charges if the consumer's bank card information falls into the hands of criminals. These problems provide motivation for this study. Especially in some jurisdictions where there is no legal provision in place or where the development of such is currently underway. This dissertation suggests that the challenge is eminent in the limitations of contract law. The analysis in this study tends to offer a new turn in the theory and practice of consumer protection law as well as justification for the body of this research.

In seeking an appropriate justification for consumer protection, we could even go as far as quoting Bourgoignie, who emphasised that the challenges the consumers face in the marketplace by stating that,

[T]he growth of the trade in consumer goods together with an ever widening range of products put on the market and development of various techniques of product differentiation and non-price competition, accentuates the deficiencies of consumer information and market transparency.²³¹

It is noteworthy that the proliferation of consumer goods and consumer lack of information renders consumers prone to exploitation.

This new position comes as no surprise, given the economic standpoint of consumers, so their need for protection is due to their weak position or danger of exploitation by suppliers or traders.²³² Notably, it is because the proliferation of products, limited knowledge about the products, contract issues and increased risk in which the suppliers have the advantage.²³³ It is

²³⁰ This exception in this circumstance is only seen in developed countries where the regulatory framework is powerfully structured and regulated unlike in most developing countries. And this is commonly seen as the traditional definition of prudential regulation.

²³¹ Bourgoignie Thierry (1992), Characteristics of Consumer Law, Journal of Consumer Policy, Vol.14; at 302

²³² Ibid. at 571

²³³ For more detailed illustration, see Ruhl, supra note 9 at 571

affirmed that consumers lack power relative to producers and suppliers which is why consumer law is provided to redress the imbalance of power.²³⁴ The state in an attempt to ensure that there is balance uses different measures including private law to protect consumers. This focuses mostly on the limitation of contract law.²³⁵ Private law has some inherent limitations that make it inadequate for protecting consumers.

2.7 Concept of Financial Consumer

2.7.1 What is a bank?

Having discussed what constitutes a consumer and consumer protection, it is important to discuss one fundamental question that the law may raise with respect to the jurisdictional powers of regulatory agency over an entity called 'bank'. Certainly, it is such issues that reinforce the importance of defining what a 'bank' and banking business is.

The financial market today is dominated by banks, mainly after a period of financial and economic reforms at the turn of the century. In Nigeria, the economy is overly dependent on banks. Since the price of crude oil dropped, Nigeria's economy now relies on banking services for growth. The banking sector has gradually been transformed from the traditional bank branches to a more technology-driven, globalized marketplace in which different financial products and services are available to consumers through many delivery channels, which pose a whole range of questions. What is a bank? Are there any justifications for regulating them? What is the nature of banking and their role in the economy? There are two key reasons for attempting to know what constitutes a bank and banking business. First, it is important to know whether an entity that has just gone into administration or failed is a bank for the purposes of compensating the depositors. The second reason is based on the nature of the relationship between the customer and the bank. Banks are special based on the uniqueness of the banking activity and information asymmetry between the consumers of the banking services and the banks. Peter Cartwright observes²³⁶:

‘As part of the financial services industry, banks may also be special from an economic perspective because of the extent to which there is information asymmetry between supplier and consumer.’

²³⁴ Goldering John, Consumer Law and Legal Theory: Reflections of a Common Lawyer, *Journal of Consumer Policy*, 13(1990) at 116

²³⁵ Cartwright, *Consumer Protection and Criminal Law: Law, Theory, and Policy in the UK*, pp. 7

²³⁶ Peter Cartwright, *Banks, Consumers And Regulation* (Hart Pub 2004), 1, 2

This bank and consumer relationship was nicely described by Joan Wadsley and Graham Penn²³⁷ as something that ‘has distinctive characteristics’.

In an attempt to define bank, Betz²³⁸ asserts that ‘in a financial system, banks are the central institutions, affecting both the supply of credit and supply of money in an economy’. Perhaps the author may be saying that the bank is the key driver of the economy. Arguably, there is no uniform definition of what constitutes a bank. It is recognised that definition of bank and banking business should be suited to a specific country’s practice. For example in Nigeria, the law requires that a ‘bank’ must be registered and licenced under the BOFIA Act.²³⁹ In other words, for anyone to operate a bank or banking business, the company must be dually incorporated in Nigeria and licenced by the CBN.²⁴⁰ The definition of the term ‘bank’ has been a subject of debate as there is no generally acceptable statutory definition.²⁴¹

Accordingly, the word bank is not specifically defined in any of the Nigerian statute instead it defines banking business.²⁴² This point was articulated in the Supreme Court decision of *Akwule v Queen*.²⁴³ In this case, an action relating to Criminal Breach of Trust was brought against an employee in his capacity as a banker, offence under section 315 of Penal Code. The court, in determining whether the Appellant has committed a breach of trust under the relevant penal Code, turned to the statute for the meaning of a banker. In providing guidance to its decision, the court held that ‘the Banking Act (Cap. 19) does not define Banker as such, but bank is defined as any person who carries out banking businesses’. In defining what constitutes a banking business, the Supreme Court held that it is,

‘[t]he Banking business of receiving money on current account from the general public, of paying or collecting cheques drawn by or paid in by customers and of making advances to customers’.²⁴⁴

However, making reference to judicial interpretation of the term is not often the case in Nigeria as Section 66 of BOFIA Act defined the term ‘banking business’ as:

²³⁷ Joan Wadsley and Penn G A, *The Law Relating To Domestic Banking* (Sweet & Maxwell 2000), 89

²³⁸ Frederick Betz, ‘Why Bank Panics Matter: Cross-Disciplinary Economic Theory’ (Springer Science & Business Media, 2013), 23

²³⁹ See Section 60 of the CBN Act of 2007 for licence requirement.

²⁴⁰ Section 2 of Banks and Other Financial Institutions Act 1991, as amended in 2004

²⁴¹ Peter Cartwright, *Banks, Consumers And Regulation* (Hart Pub 2004), 2

²⁴² For an elaborate discussion on banks, supervision and regulation, see Simon Akaayar and Christine Sijuwade, Regulatory and Supervisory Framework for Banking in Nigeria, In Oladapo Olanipekun (eds), *Banking, Theory, Regulation, Law and Practice*, (Au Courant 2016) 135

²⁴³ *Akwule v Queen* [2012] 1 BFIR 90

²⁴⁴ See the Supreme Court judgement in *Akwule v Queen* [2012] 1 BFIR 90

‘[t]he business of receiving deposits or current account, savings account or other similar account, paying or collecting cheque drawn by or paid in by customers; provision of finance or such other as the governor may, by order published in the Gazette, designate a banking business’²⁴⁵

Apparently, this definition is quite exhaustive of what constitutes a banking business within the practice of banking in Nigeria. As this study focuses, *inter alia*, on the analysis of the legal regime for protecting bank consumers, the next section will discuss ‘what is a [bank] consumer or customer?’

2.7.2 Who is a Bank Consumer?

The term ‘consumer’ has no universal statutory definition. This is because it is not easy to define the term without resorting to judicial attempts to identify ‘who is a consumer?’²⁴⁶ Besides the difficulties in defining the term, whether or not a person is considered as a ‘consumer’ is largely influenced by the contractual relationship. In the case of *Robinson v Midland Bank Ltd*²⁴⁷ it was held that a person may become a customer when the parties intend to enter into a contract. Another way to identify who can be considered as a consumer is in relation to bank is by referring to common law. Thus, in *Barclays Bank Ltd v Okenarhe*,²⁴⁸ the learned judge resolved that a binding contract is sealed on the bases of law of contract if the bank accepts the consumer’s offer to open an account.

It is crucial to note that it is difficult to find any comprehensive statutory definition of the term ‘customer’ in any of the Nigerian financial laws. The term ‘consumer’ and ‘customer’ are often used interchangeably in the financial industry. However, as Peter Cartwright observes²⁴⁹ that, ‘Private bank customers may be viewed as a paradigm of the consumer’. In view of the Cartwright paradigm of consumer, the term ‘consumer’ will be used throughout the study to mean consumer of banking services.

In determining who constitutes a consumer, an argument has been raised whether someone has to have an account with the bank or not. In *New Nigeria Bank Limited v Odiase* (1993)²⁵⁰ it was held that having an account is a prerequisite to becoming a bank customer, however

²⁴⁵ Section 66 of Banks and Other Financial Institutions Act 1991, as amended in 2004

²⁴⁶ For discussion see Anu Arora, ‘Banking Law’ (Pearson, 2014), 204, 207

²⁴⁷ *Robinson v Midland bank Ltd* (1925) 41 TLR 402-COA

²⁴⁸ *Barclays bank, Ltd v Okenarhe* [1966] 2 Lloyd’s Rep. 87

²⁴⁹ Peter Cartwright, *Banks, Consumers And Regulation* (Hart Pub 2004), 2

²⁵⁰ *New Nigeria bank Limited v Odiase* (1993) 8 NWLR Pt. 310,

irrespective of the type of account (whether current, or savings account). Furthermore, one can be considered a consumer from a relationship arising from a contract with the bank or by opening an account irrespective of whether he is holding the money in the account on trust for somebody,²⁵¹ as illustrated in the case of *Ademiluyi and Lamuye v African Continental Bank Ltd* (1964).²⁵² Thus, in Nigeria, the criteria for becoming a bank consumer is when one opens an account as evidenced in the case of *National Bank of Nigeria Ltd v Maja* (1967),²⁵³ and also, in the case *UBN Plc v. ITPP Ltd*²⁵⁴ The definition of ‘consumer’ as earlier examined in this chapter gives the impression that for one to be a consumer or customer a contractual relationship is necessary.

The discussion in this chapter reveals why there is need for adequate regulatory measures in order to successfully address consumer protection issues in the banking sector. It is important to consider whether the regulation and supervision of banks is necessary and the extent of their protection to consumers. The following chapter takes a critical look at the regulation and supervision of banks.

2.8 Conclusion

This chapter has explored the concept of ‘consumer’, ‘consumer protection’ and also highlighted the historical development of consumer protection in Nigeria. The chapter starts by exploring the definitions ascribed to the word ‘consumer’ from both statutory and non-statutory perspectives. The result of the analysis shows that there is no consensus exists on the definition of consumer. In other words, the meaning of consumer if understood in a different context could produce different results. The researcher established that different national legal systems defined the word ‘consumer’ for different purposes and no particular definition is entirely right or wrong. On the one hand, many legal scholars share the same view of a ‘consumer’ as an individual who acquires goods or services for non-business purposes. This chapter concludes that, despite the divergence in the notion of consumer some national consumer legislations agree that the word ‘individual’ should include small business or other juristic persons especially the unincorporated business within a certain threshold.²⁵⁵

²⁵¹ Tugbiyele TA, ‘Banking Laws and Practice’ (Lagoon Suites, 2012), 17, 18

²⁵² *Ademiluyi and Lamuye v African Continental Bank Ltd* (1964) NWLR 137

²⁵³ *National Bank of Nigeria Ltd v Maja* (1967) 2 ALL NLR

²⁵⁴ *Integrated Timber and Plywood Products Ltd v U.B.N Plc* [2006]12NWLR (pt. 995)483at 503

²⁵⁵ Section 5 (6) of the South African Consumer Protection Act of 2008; Section 1 of the Consumer Protection Act of 2008

However, the Nigerian consumer protection legislation does not recognise the legal person or unincorporated business as a ‘consumer’ despite its common law bases.

The concepts of consumer and consumer protection discussed in this chapter form the basis for analysis in the subsequent chapters in this study. As indicated in this chapter, the law has not clearly defined the term ‘bank consumer’ and the criteria for becoming a bank customer or consumer differs from one jurisdiction to another. The purpose of the chapter was to explore the concept of consumer and the consumer protection in the consumer legislation as will be used throughout the study. It also highlights some of the limitations in the definition of the concept. In line with the analysis, the next chapter will examine bank regulation and supervision and also explore the rationale for bank regulation.

Chapter Three

Bank Regulation and Supervision: Theory and Rationale

3.1 Introduction

The previous chapter discussed the conceptual framework for consumer protection. As with the chapter on conceptual framework, this chapter examines the regulatory and supervisory issues in relation to the financial industry and more particularly, banks. When regulation is discussed in relation to banks, it is usually in the terms of ‘prudential’ regulation and when consumer protection is mentioned, it is often considered as something tied solely to prudential instruments. It explores the conceptual understanding of consumer protection within the sphere of regulation and what a ‘conduct of business rule’ stands for. The aim is to provide the background for the main research issues of the study. The key emphasis is on analysing the aims and objectives of bank regulation. In this regard, the chapter attempts to explore the important issues in maintaining systemic stability and consumer protection. The subsequent section discusses the conflict arising from prudential regulation and consumer protection. Theories of regulation are then analysed through the lens of two opposing views of regulation and supervision. The final section concludes the chapter with a brief summary.

The terms regulation and supervision are often used interchangeably in the financial sector, as they are in different academic literature(s) since they point to the same objective. However, it may be a good idea to distinguish them for the purpose of this study. Regulation in the banking sector can be examined from the perspective of ‘prudential regulation’ and the ‘conduct of business regulation’. Thus, one more distinction that needs to be made is between prudential regulations (for systemic purposes) and regulation for purposes of consumer protection. The present study is concerned primarily with one specific aspect of bank regulation, that of consumer protection. The following section will explore the distinction, commencing with the definitions.

3.2 Regulation and Supervision: The Distinction

The last decade has seen increasing concern about the need for adequate regulation and supervision of financial services.²⁵⁶ Bank regulation is primarily concerned with ensuring that banks are financially sound and properly managed.²⁵⁷ Consequently, the crises in the financial systems have triggered discussions surrounding whether regulation could maintain stability of the financial system and protect the consumers. While many countries have responded to this debate in different ways by reforming their regulatory and supervisory regime in some, the development has been remarkably slow.²⁵⁸ The question we address is what is regulation and Supervision? The following section examines the clear distinction between the meanings of these two concepts that are often used interchangeably.

3.2.1 What is Regulation?

A distinction is often made between regulation and supervision. According to *Collins English Dictionary*, regulation means ‘a law, rule or other order prescribed by authority, especially to regulate conduct’.²⁵⁹ In this context regulation becomes a forceful imposition of rules which tends to direct the action of agents in the markets place. In a legal context, there seem to be varying definitions of ‘regulation’, but the term can generally be defined as, ‘the establishment of specific rules of behaviour’.²⁶⁰ A more broad and definitive definition of regulation is given by Julia Black²⁶¹ when she defines regulation as;

‘the sustained and focused attempt to alter the behaviour of others according to defined standards and purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information-gathering and behaviour modification’.

²⁵⁶ James Barth, Gerald Caprio, and Ross Levine ‘Reassessing the rationale and Practice of bank regulation and Supervision around the Globe’(Seminar on Current Developments in Monetary and Financial law Washington, D.C., October 23-27, 2006) available on < <https://www.imf.org/external/np/seminars/eng/2006/mfl/bcl.pdf>> accessed on 27 September 2016

²⁵⁷ Heidi Mandanis Schooner, Michael W. Taylor, *Global Bank Regulation: Principles and Policies* (Academic Press, 2009) xii

²⁵⁸ Goodhart Charles, et al. *Financial Regulation* (Routledge 1998)

²⁵⁹ *Collins English Dictionary - Complete & Unabridged 10th Edition*, available at <<http://www.dictionary.com/browse/regulation>> accessed on 24 May 2016.

²⁶⁰ Charles Goodhart, Philipp Hartmann, David Llewellyn, Liliana Rojas-Suarez and Steven Weisbrod, *Financial Regulation: Why, how and where now?* (Routledge 1998) xvii

²⁶¹ Julia Black, *Critical reflections on regulation* (2002) *Australian Journal of Legal Philosophy*, 26; Koop Christel and Martin Lodge, *What is Regulation? An interdisciplinary concept analysis* (2015) *Regulation & Governance*

The above definition of regulation is more detailed²⁶² as it emphasises the need for continuity and focused effort in order to achieved a desired outcome and alter the behaviour of these market participants. Regulation is defined by Llewellyn as ‘a body of specific rules or agreed behaviour, either imposed by some government or other external agency or self-imposed by explicit or implicit agreement within the industry, that limits the activities and business operations of financial institutions’.²⁶³ As can be seen, the above definition described regulation with reference not only to government interference but as something that can be initiated by the industry in the form of self-regulation.

Another scholar, Olanipekun, defined regulation as ‘the body of legal rules, administrative and prudential requirements put in place by financial authorities or market participants to lime or to absorb the effects of the risks assumed by financial institutions’.²⁶⁴ This definition sought to be more specific in relation to those mechanisms used by either financial regulators or the market itself to curb the excessive operations of the market participants. Goodhart et al described regulation as ‘based on the rule of law’.²⁶⁵ The definition by Goodhart, describes the regulation to a certain extent, through focus on the legal origins. Consequently, regulation is generally thought of in terms of state intervention, but it should not be so.²⁶⁶ The term regulation is sometimes used as a generic description of compliance mechanism and banking policies.²⁶⁷

More specifically in the area of banking, Barth et al stated that; ‘regulation typically refers to the rules that govern the behaviour of banks’.²⁶⁸ The regulation of banks or financial services takes different forms, ranging from restrictions on entry, control of products offered in the market and restraints on prices that can be received or paid.²⁶⁹ Based on the ideas expressed in the definitions of regulation in this section, we made an attempt to define regulation within the framework of this research which is carried out in the field of law. Accordingly, the

²⁶² Christel and Martin Lodge, ‘What is regulation?: An interdisciplinary concept analysis (2015) Regulation & Governance, 11: 95-108

²⁶³ David Llewellyn, Regulation and Supervision of Financial Institutions (London1986), The Institute of bankers, 9

²⁶⁴ Oladapo O. Olanipekun, *Banking Regulation and Deposit Insurance: Legal and Comparative Perspective*, (PhD Dissertation Centre for Commercial Law Studies, Queen Mary University London, 2008) [Unpublished] 33

²⁶⁵ Charles Goodhart, et al (note No.4 above) xx Introduction

²⁶⁶ Chiara Chiumya, *The Regulation of Microfinance Institutions: A Zambian Case Study* (2006) The University of Manchester (unpublished) PhD Thesis, 51

²⁶⁷ James R. Barth, Gerard Caprio, Ross Levine, *Rethinking bank regulation: Till Angels Govern* (Cambridge: 2006) Cambridge University Press,4

²⁶⁸ *ibid*,4

²⁶⁹ George J. Benston, *Regulating Financial markets: A Critique and Some Proposals* (1999) London, The Institute of Economic Affairs, 2

researcher defines regulation as; the process of ensuring that the financial services providers act reasonably, judiciously and prudently within the framework of agreed rules -while providing their goods and services to the general public.

Regulation has been considered as a way to foster efficiency of the institutions but some criticisms have been levelled against it. One of the major criticisms is that regulatory process can be shaped by the private interests of the regulators rather than by the public interest.²⁷⁰ Another criticism is that regulation ‘serves the private interest of politically effective groups’.²⁷¹

The consideration for regulation whether in the form of state intervention or compliance mechanism must be measured against the cost which the financial institutions usually have to bear and also, to avoid the regulated firms passing these costs to consumers. Thus, for the regulation to be effective, it must be capable of correcting the market failures which often lead to bank failures. Regulation is often considered as an attempt to correct a market failure.

The definition of regulation above could be focusing on prudential reasons (safety and soundness of the financial system) for state intervention. However, for the purpose of this study, a further distinction should be made between regulation and supervision. The following section will investigate this distinction and how it applies generally in the banking sector.

3.2.2 What is Banking Supervision?

Supervision can be defined as the process of monitoring and ensuring compliance by banks with rules, or the general standard of soundness in a particular institution. In other words, supervision ‘gives meaning to regulation’.²⁷² By this argument regulation seem to mean administrative measures or legal rules that have to be complied with, while supervision is the process of ensuring that those rules are complied with and also ensuring that the regulated institution act prudently.

²⁷⁰ Hermes, N., Rethinking bank regulation: till angels govern, by James R. Barth, Gerard Caprio Jr., and Ross Levine (Cambridge: Cambridge University Press, 2006, pp. 35). *J. Int. Dev.*, 19: 1166–1168

²⁷¹ Richard A. Posner, ‘Theories of Economic Regulation’ (1974) 2 *Bell Journal of Economics and Management Science*; 335-358

²⁷² Rachel Rock and Maria Otero, (eds), *From Margin to Mainstream’ The Regulation and Supervision of Microfinance* (1997) ACCION International, Somerville, 13

In some jurisdictions the regulatory and supervisory responsibility for regulated banks is divided between two institutions. For instance, in the UK the responsibility is principally shared between the Prudential Regulatory Authority (PRA) (which is a part of Bank of England) and the Financial Conduct Authority (FCA). It is noteworthy that bank supervision involves oversight or monitoring of bank behaviour in order to encourage sound operational practices and to promote public confidence in the financial sector. The objective of bank regulation is to protect depositors and maintain the stability of the financial system. In most countries, the supervisory function is vested in one institution (mainly the Central Bank). In Nigeria which is the focus of this study, the Central Bank of Nigeria (CBN) is in charge of regulating and supervising banks' activities in Nigeria.²⁷³ The banking crises and failures, especially the recent crisis of 2008 lead Nigeria to move towards banking supervision reform. Consequently, Nigeria has introduced a new wave of prudential supervision of banks in the aftermath of the global financial crisis. This supervisory model is geared towards preventing institutions from indulging in unsound banking practice and to ensure the safety of the financial institutions.

Generally, the definition of regulation and supervision in the banking sector require a further distinction, which will give a clearer picture of where consumer protection falls within the regulatory efforts of the financial authorities. According to Llewellyn, regulation 'focuses on the solvency and safety and soundness of financial institutions,'²⁷⁴ while the supervision focuses on the general oversight of financial institutions' behaviours.²⁷⁵

A further distinction can be made, in the area of financial regulation between prudential and systemic regulation. The purpose of systemic regulation is to ensure the safety and soundness of financial institutions for mainly systemic reasons. This is because the social costs of failure of financial institutions (primarily banks) exceed private costs.²⁷⁶ In other words, prudential regulation is based on the assumption that consumers are not practically in a position to judge the safety and soundness of a financial institution.²⁷⁷ However, to understand where 'consumer protection' falls within the regulatory parameters, a further distinction is made between 'prudential' and 'conduct of business regulation'. The latter 'focuses upon how

²⁷³ Under the Central Bank Act of 2007, the CBN is in charge of drafting prudential guidelines, licensing and supervision bank.

²⁷⁴ David Llewellyn, *The Economic Rationale for Financial Regulation*, The Financial Services Authority, (1999) Occasional Paper Series, 11

²⁷⁵ Charles Goodhart et al, (note 4 above) xvii

²⁷⁶ David Llewellyn, (note 287 above) 13

²⁷⁷ *Ibid*,10

financial firms conduct business their customers'.²⁷⁸ However, as noted by Llewellyn, this conduct of business regulation,

[...] focuses upon mandatory information disclosure, the honesty and integrity of firms and their employees, the level of competence of firms supplying financial services and products, fair business practices, the way financial products are marketed'.²⁷⁹

In short this distinction, as illustrated above, shows that the latter focuses upon the functions of financial institutions without specifying the type of firm that is conducting the business, while the former focuses on the individual firm.

Generally, there has been much debate about the uncertainties regarding the demarcation between the purpose of regulation and supervision. It can be argued that the concept of regulation and supervision are often used interchangeably, although in practice, they mean different things even when the functions are performed by the same institution. It can also be argued that for regulation to work effectively, it must be monitored, enforced and also be made to work for the interest of the whole system rather than individual institutions.²⁸⁰ For David Llewellyn, the best way to consider the distinction is by looking at the role of regulatory agencies.²⁸¹ The above section has dealt with the definitions of the 'regulation' and 'supervision'; it is now opportune to examine the reasons for regulation and supervision of banks.

3.3 The Regulation and Supervision of Banks

3.3.1 The rationale for regulating and supervising banks

Having analysed the distinction between the regulation and supervision, it is now appropriate to examine the rationale for intervention. Both regulation and supervision are designed to achieve certain objectives and this section attempts to provide this analysis. In considering the importance of the banking system and the dangers it may pose to the economy if it fails, this section will examine the two key objectives of prudential regulation in the banking

²⁷⁸ Ibid, 11

²⁷⁹ Ibid, 11

²⁸⁰ See The future of EU financial regulation and supervision – European Union Committee, available at <<http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcom/106/10605.htm>> accessed 2 December 2016

²⁸¹ David T. Llewellyn, 'Financial Regulation: A Perspective from the United Kingdom,' (2000) *Journal of Financial Services Research*, 17:1 219, 312. In this article David made a distinction between *regulation* (the establishment of specific rules of behaviour), *monitoring* (observing whether the rules are obeyed), and *supervision* (the more general observation of the behaviour of financial firms)

sector, financial stability and consumer protection. Although bank regulation can be justified based on some arguments, such as information imbalances (asymmetries) and externalities, these justifications receive only our passing attention. In this chapter, this research looks into the regulation and supervision of banks, in particular, the protection of consumers.

It should be noted that the key objectives of regulating and supervising financial institutions are;

- I. *maintaining financial system stability or systemic risk*
- II. *and investor/consumer protection*²⁸²

Initial regulatory objectives usually focus on these two key purposes, there are though some other objectives not often mentioned, for instance regulation can provide potential investors with information about the soundness of the financial institution²⁸³ which will attract them to invest and in turn provide more funding for the sector. Another issue that can trigger regulation is concern about inadequate competition and monopoly in the banking sector.²⁸⁴ Furthermore, the issue of moral hazard which often arises from the government guarantees.²⁸⁵ The role of the regulator in this case is to ensure that the market powers are not abused and the consumers are protected adequately.

History has shown that financial crisis often propels changes, and the recent financial crisis provided a unique opportunity to re-examine why financial services need to be adequately regulated. If there was a need for regulation, the type of regulation that would prove beneficial to consumers or service providers must be made clear from the outset. In many sectors of the economy, most markets are subject to some form of regulation, for several reasons. Governments have regulated the financial services for centuries through the use of many regulatory tools. The two generic reasons for regulating financial institutions in particular the banking sector, will be discussed below.

²⁸² It has been suggested that the maintenances of systemic stability and protection of investors/consumers are often deemed as two important pillars of regulation. See Emilios Avgouleas, *Governance of Global Financial Markets: The Law, the Economics, the Politics* (Cambridge University Press 2012)

²⁸³ David Llewellyn, (note 19 above) 9, 10

²⁸⁴ Ernst Baltensperger and Jean Dermine, 'The Role of Public Policy in Insuring Financial Stability: A Cross – Country, Comparative Perspective' (1986), INSEAD Working Paper No 86/33, 1. 3

²⁸⁵ Stephen G. Cecchetti, 'Financial Intermediation and Regulation: An Overview' Federal Reserve Bank of New Current Issues In Economics and Finance, Vol. 5 No 8 (May1999) 3

3.3.1.1 Systemic Considerations

The financial institutions, (FIs) particularly the banks, are closely connected to one another if left unchecked the failure of one FI is likely to affect another (contagion), which may result in instability. This has been considered as contagion effect which makes the banking industry special in terms of regulation. Systemic instability or systemic collapse of the financial institution has often emerged as the most powerful argument for financial regulation. Systemic instability occurs when issues at one financial institution induce consumers into a panic withdrawal of business. Institutions considered to be connected to that which is failing, may also suffer loss of existing business and a reduction of new business due to consumer insecurity. For example, the collapse of Barings Banks in the United Kingdom led to depositor's panic withdrawals from other investment banks which were not failing. The banks have grown dramatically interconnected with each other in recent years, and thus, an issue at one can result in direct or indirect consequences for the others.

The banking sector being at the centre of the payments system is often considered to be more susceptible to systemic risk; hence the failure of one bank can bring about a devastating effect on others and the resulting externalities that may not be easily predicted. Generally, banks (deposit-taking institutions) were considered typically susceptible to this type of contagion.²⁸⁶ These systemic risks can lead to a contagious loss of confidence and may undermine the integrity of the payment system. These financial institutions can only function resourcefully when there is public confidence in their ability to carry out their duties and honour their obligations.

The systemic argument for regulation stems from the basis that FIs, particularly the banks take greater risks and should be regulated; unlike in other industries, the failure of one financial institution can have a potential cost to the economy and affect the public confidence in the entire financial system. The justification for imposing these regulations therefore is not only to reduce the possibility of banks failing but also to contain the potential effects on the economy of such failure. What is less clear however is whether the market requires an interventionist approach on the part of authorities or alternatively, whether this type of market failure can best be contained by a reliance on control of market participants by the market itself?

²⁸⁶ Heidi Mandanis Schooner, Michael W. Taylor, *Global Bank Regulation: Principles and Policies* (Academic Press, 2009) xvi

3.3.1.2 Consumer Protection Considerations

Having considered why systemic instability is a potent argument for bank regulation, it becomes necessary to consider the second argument (investor/consumer protection). The consumers who deposit funds in an institution would like to be secured in the best way against the failure of the institution. According to Llewellyn²⁸⁷ the consumer protection issues arise in the banking sector for two main reasons, ‘because an institution where clients hold funds might fail, or because of unsatisfactory conduct of business of a firm with its customers.’ It has been argued that the failure of financial firms may not only have adverse effects on the financial system stability as a whole but also cause some form of loss to individual depositors who are often seen as unable to handle their own interest.²⁸⁸

The rationale for consumer protection regulation is based on information failures.²⁸⁹ Inadequate information is one of the reasons why markets may not achieve the desired outcome or work perfectly for consumers. This may warrant the government to impose some form of regulation in the market place. Many a time the effect of failure of financial firms on the interests of consumers and systemic stability, will force the regulators to have concerns about how effective the information provided for consumers is and the individual risk in different institutions.

In other words, the government owes the consumer(s) the duty to ensure that the sector is operating in a fair, competitive and safe manner by providing the investor and depositor protection in the form of regulation. Perhaps regulation that is directed to consumer protection is better understood when a distinction is made between prudential regulation and conduct of business regulation. The next section will examine the two types of regulation.

3.3.2 Types of Regulation and Supervision

In this section the analysis of the distinction between prudential regulation and conduct of business regulation will be considered as it is fundamental to understanding the origin of consumer protection regulation. Generally, there are two main types of regulation and

²⁸⁷ David Llewellyn, *The Economic Rationale for Financial Regulation*, The Financial Services Authority, (1999) Occasional Paper Series, 10; Erika Botha, Daniel Makina, *Financial Regulation and Supervision: Theory and Practice in South Africa* (2011) 10 *International Business & Economics Research Journal*, 29

²⁸⁸ *Ibid*, 10

²⁸⁹ Sharon Tennyson, *Analysing the Role for a Consumer Financial Protection Agency* (2009) Policy Brief – Network Financial Institute at Indiana State University; available at <<http://www.human.cornell.edu/pam/outreach/upload/Tennyson-09-pub-01.pdf>> accessed on 26 December 2016.

supervision in the banking section, the prudential regulation and the conduct of business regulation. According to Llewellyn, prudential regulation ‘focusses on the solvency and safety and soundness of financial institutions, while conduct of business regulation refers to ‘how financial firms conduct business with their customers’.²⁹⁰ Prudential regulation can be further distinguished from systemic regulation even though both are similar to a certain extent, as systemic regulation addresses safety and soundness for the purpose of preventing systemic risk.²⁹¹

I. Prudential Regulation

Prudential regulation when broadly construed, involves regulatory rules and enforcement of those rules by either the government or the market agents to ensure the safety and soundness of the financial system. The banks occupy a critical position in any economy and because of this essential position their business must be conducted in a transparent and prudent manner. If the prudential supervisor does not perform this role well, then the financial system will be exposed to risk that could lead to failure or insolvency. The failure of deposit-taking institutions can disrupt the payment system and affect the supply of credit for small and medium-size firms.²⁹² Prudential regulation is important because the consumers are not in a position to judge the safety and soundness of financial institutions due to agency problems associated with the nature of financial intermediation and imperfect consumer information.²⁹³

Generally, prudential regulations are primarily concerned with the protection of these consumers who are not knowledgeable and may not be able to assess the financial soundness of these institutions. However, prudential regulatory approach differs between countries. For example, in some countries where twin-pick model is practiced, the prudential regulation falls under the central banks. The Central Bank of Nigeria (CBN) undertakes prudential regulation in Nigeria and aims to ensure that the institutions under its regulatory purview are financially sound. On the other hand, the prudential regulations in Nigeria are in the form of guidelines. Guidelines are by their nature ‘advice’ which could simply be ignored by regulated firms.

²⁹⁰ David Llewellyn, (note 287 above) 10

²⁹¹ Peter Cartwright, *Banks, Consumers and Regulation* (Bloomsbury Publishing, 2004) 5; Charles Goodhart et al, *Financial Regulation: Why, How and Where Now?* (London, Routledge, 1998) 5

²⁹² BOE: The Prudential regulation Authority’s approach to banking Supervision, Bank of England Prudential Regulation Authority (April, 2013) 13

²⁹³ Llewellyn (note 287 above) 12

It is argued that prudential regulation from an economic point of view is mainly based on the idea of information asymmetry.²⁹⁴ It should be noted that issues concerning consumer protection, as the integral part of conduct of business regulation will be incorporated in this discussion.

II. Conduct of Business Regulation

The term ‘conduct of business regulation’ is often used to refer to rules regulating the relationship between the provider of financial services and the customer.²⁹⁵ By contrast, prudential regulation refers to the safety and soundness of financial institutions. Reifner and Clerc-Renaud,²⁹⁶ note that;

“Financial regulation is also designed to protect customers and investors through business conduct rules. Particularly in cases where transparency requirements alone are insufficient, investors are protected by rules that mandate fair treatment and high standards of business conduct by intermediaries. Conduct-of-business rules ultimately lead to greater confidence in the financial system and therefore potentially greater market participation. Business conduct regulation has a quite different focus from safety and soundness oversight. Its emphasis is on transparency, disclosure, suitability, and investor protection. It is designed to ensure fair dealing”.

What this means is that conduct of business regulation focuses on protecting consumers in their transactions with financial institutions and their products. As previously mentioned the consumers are protected, when the conduct of business regulation addresses the unequal position that exists between the financial institutions and the consumers. Given the complexity of financial products, lack of adequate disclosure, dishonesty and lack of information, the consumers will rely on the regulators to protect them from issues such as bias advice, fraud and market abuse. Accordingly, this market power imbalance and lack of adequate information which may result in market abuse must be addressed through government intervention and regulation.

Conduct of business regulators may address these aforementioned market imperfections in various ways, by providing appropriate rules and guidelines on advice, training of financial institutions employees and by imposing strict requirements on product information

²⁹⁴ Peter Cartwright (note 304 above) 5

²⁹⁵ Julian Burling, Julian M Burling, Kevin Lazarus, Research Handbook on International Insurance law and Regulation (Edward Elgar Publishing, 2012) 356

²⁹⁶ ²⁹⁶ Udo Reifner and Sebastien Clerc-Renaud, Financial Supervision in the EU: A Consumer Perspective (2011) BEUC, the European Consumer’s Organisation,8,9

disclosures. The distinction between the prudential regulation and conduct of business regulation has been evident in the United Kingdom where these functions are handled, in many cases by separate institutions. The point for this distinction is to differentiate between ‘conduct of business rules - where consumer protection comes from,’ as opposed to why deposit insurance schemes are not regarded as being part of consumer protection or conduct of business rules.²⁹⁷

Conduct of business regulation applies not only to banks but also across other ranges of financial products. It focuses mainly on the functions of financial institutions and covers issues of entry restrictions, disclosure of information, fair business practices, advertisement of financial products and corporate governance. Generally, conduct of business regulation is designed to establish rules that will ensure the financial institutions act fairly in their business practices and when dealing with consumers who often lack information to make informed decisions. In addition to the rules or guidelines, conduct of business regulation in most cases includes obligations for financial institutions to provide dispute resolutions mechanism, enabling consumers to enforce their rights. The conduct of business regulation is justified mainly on the basis that there are information asymmetries in the market which can be tamed by regulatory systems.²⁹⁸

Asymmetries of information in the market can prevent the private investor or shareholders from having adequate information about the institution in which they want to invest, thereby giving rise to moral hazard behaviour by the financial institution and adverse selection.²⁹⁹ These moral hazards and adverse selections could be addressed by the government through regulation which will mandate the financial institutions to disclose information to these market participants.

Various reasons have been put forward for the regulation of the banking sector. In order to understand why some of these reasons may conflict with the regulators’ traditional objective of ensuring the soundness of institutions, it is essential to analyse the potential conflict of interest faced by these regulators, especially when it is handled by on institution.

²⁹⁷ For the purpose of this study, ‘conduct of business’ and ‘consumer protection’ regulation will be used interchangeably.

²⁹⁸ Erika Botha, Daniel Makina, *Financial Regulation and Supervision: Theory and Practice in South Africa* (2011) 10 *International Business & Economics Research Journal*, 29

²⁹⁹ Frederic S. Mishkin, *The Economics of Money, Banking and Financial Markets* (2004) 7th edition, Pearson, 174

3.4 Conflicting Priority: Arising from Prudential Regulation and Conduct of Business

This section clarifies the need to separate prudential supervision from the conduct of business supervision in the banking sector. Based on the above analysis, it can be said that prudential regulation and conduct of business (consumer protection) would seem to be in conflict in various ways. The conflict between supervising financial institutions and protecting the interest of consumers may occur for the following key reasons:

Firstly, the regulatory objective or strategy of the prudential regulation can result in a multiple conflict with the intention of protecting the interest of consumers. For example, in a country where there is one institution (Central Bank) which is responsible for both ensuring prudential stability and consumer protection, there is a possibility of potential conflict in achieving these objectives. The current supervision of banking consumer protection laws in Nigeria, especially the establishment of the first Consumer Protection Department within the Central Bank of Nigeria, promises to be a good case study with which to test the proper separation of these two functions in order to encourage pro-active supervision. The Central Bank of Nigeria supervises consumer protection laws through on-site and off-site supervision and through its Consumer Protection Department (CPD). Thus, this supervision is currently undertaken by the same team that carries out prudential supervision. In fact, the CPD appears to provide alternative dispute resolution services but it does not currently have the power to conduct on-site supervision or to pro-actively supervise market conduct. There is however, apparent conflict between the central bank as the prudential supervisor and a consumer protection department which is also acting as an alternative dispute resolution in protecting and resolving consumers' dispute. This apparently means that prudential regulators need different approaches and training from conduct of business (consumer protection) regulators.³⁰⁰ Furthermore, the prudential regulator (Central Bank) in carrying out its objectives tends to rely upon the co-operative relationship with the financial institutions which it regulates, while the regulators for consumer protection will be required to be more proactive since it protects the consumers from the financial institutions.³⁰¹ In any case, the experience of Nigeria, an example of a country with the Central Bank as the traditionally prudential regulator and supervisor, suggests that such conflict between the regulatory objectives and protecting the welfare of consumers are likely.

³⁰⁰ Robin Hui Huang and Dirk Schoemaker, *Institutional Structure of Financial Regulation: Theories and International Experiences* (Routledge, 2014) 257

³⁰¹ Alison Lui, *Financial Stability and Prudential Regulation: A Comparative Approach to the UK, US, Canada, Australia and Germany* (Routledge, 2016)

The second is the regulatory approach, however, this is important for reducing unnecessary risk taking by banks, it can create a conflict when problems arise. The conflict can be seen in the central bank approach when policy issues or problems arise. This may for example, be the case with conduct of business regulators, which would like to see low exclusion or a decrease in the section of the adult population that are formally excluded from the formal financial system. To achieve these objectives (increase financial inclusion) may require reducing lending standards and outsourcing various functions to reach small borrowers. This may be seen by prudential regulators as increasing bank reputational risk or financial system risks. In this case, the financial inclusion objectives may be hindered by prudential regulators, who would not like to allow the expansion of financial products or entry of financial institutions which are not proper or unfit. A major issue therefore, is whether the regulator should focus on a policy issue of how to carefully enhance financial access or focus on broader regulatory issues of how to protect the stability of the financial system.³⁰² As a result, every institution may be determined to pursue its own institutional aims at the possible expense of others.

In relation to the connection between prudential regulation and conduct of business, it is argued that in most cases there is no conflict between the two. Both seek to protect consumers and to ease the problems arising from the information asymmetry between financial services providers and consumers.³⁰³ However, Briault mentioned some circumstances where a conflict may arise, such as in some cases where treating consumers fairly and providing them with useful information may threaten the financial soundness of the bank. Such situations will be evident for example where compensating some consumers will endanger the overall soundness of the financial system or where disclosing adverse information could make the consumers move their business to another firm.³⁰⁴ This type of conflict may therefore be difficult to resolve, even in the best regulatory structure.

The third is the mandate of the Central Bank. The laws and regulations in most countries contain limited consumer protection provisions and the Central Bank is responsible for both prudential and consumer protection oversight of the financial institutions.³⁰⁵

³⁰² Actually, the prudential and conduct of business regulators need to strike a balance between the need to provide inclusive finance for consumers who are excluded from the former financial institutions, while guaranteeing the protection of consumers and the stability of the entire financial system.

³⁰³ Clive Briault, Revisiting the rationale for a single national financial services regulator (FSA Occasional Paper 16, February 2002) 18

³⁰⁴ Ibid, 18-19; Cartwright, (note 304 above) 7-8

³⁰⁵ For examples, the Bank of Zambia (BOZ) and the Bank Negara Malaysia (central bank) carry out the consumer protection and prudential oversight of financial institutions. For all see Peru Diagnostic Review of

Given their human resources and capacity constraints, the potential for conflict is more likely because the central bank may have to give up one of its objectives for another. For example, the central bank may, due to scarce resources tend to give more priority to maintaining the stability of the financial market rather than consumer protection. The central bank cannot therefore, realistically be expected to effectively monitor consumer protection compliance, while also regulating and supervising a large number of financial institutions (which may be scattered geographically) under their purview. Consequently, this might lead to more financial institutions being less closely monitored than is required, which could result in more risky undertakings which may undermine public confidence in the financial system.

Moreover, if a situation which demands a difficult choice of objective arises, the possibility that the Bank will choose a more adversarial approach to protect consumers, instead of ensuring financial stability is uncertain. Consequently, the assumption we introduced in this study is that the tension between the objectives of protecting consumers and ensuring the stability of individual financial institutions is apparent when these functions are fused together without statutorily defined roles.³⁰⁶ However, to ensure effective consumer protection in the financial sector there is a need to strike a balance between prudential and market conduct. Without this balance, the prudential objectives will be hindered by the conflict of priorities. As Rutledge points out “when consumer protection is assigned to the financial regulators, looking out for consumers’ interests always stands second behind issues of financial stability.”³⁰⁷

This view has been further portrayed by the Chairman of the US House Financial Services Committees, Barney Frank when he notes that,

‘No one familiar with the track record of the bank regulatory agencies with respect to protecting consumers can deny the need for an independent agency if we are going to have effective consumer protection. Bank regulators have traditionally treated their responsibilities for consumer protection as a second priority’.³⁰⁸

consumer Protection and Financial Literacy, pp.15, available at <
<http://documents.worldbank.org/curated/en/209771468297302897/Peru-Diagnostic-review-of-consumer-protection-and-financial-literacy> >; Republic of Zambia - Diagnostic review of Consumer Protection and Financial Literacy, pp.6, available at < <https://openknowledge.worldbank.org/handle/10986/25889> >

³⁰⁶ See Section 4.4.1.2 of Chapter 4 for more discussion on the Consumer Protection Department in the Central Bank of Nigeria.

³⁰⁷ Rutledge Susan, 'Consumer Protection and Financial Literacy' (The World Bank 2010) 19

³⁰⁸ Chairman Barney Frank, Speech on Consumer Protection, February 9, 2010, available at <<http://democrats.financialservices.house.gov/news/documentsingle.aspx?DocumentID=382801> > accessed on

Based on the aforementioned potential conflict of priorities, regarding protecting consumers and ensuring financial health of the institutions, the effectiveness of current consumer protection supervision in the Central Bank of Nigeria (CBN) is open to question due to the legal and regulatory uncertainties, in terms of the appropriate regulatory approach to assessing issues affecting consumers and obtaining information about the health of financial institution.

It could however be argued, that the Central Bank of Nigeria does not hold the responsibility for consumer protection as this might conflict with the responsibility for financial stability. It could also be argued that the CBN Consumer Protection Department (CPD) primary objective is not recognised by the CBN Act, thereby, making consumer protection a secondary objective while the CBN primary objective is to maintain a sound financial system in Nigeria.³⁰⁹ Where there is a conflict between primary and secondary objectives, the CBN primary objective will override any such consideration. Again it is argued, that the CPD objective should not only be to protect the consumers and restore confidence in the financial system but also to ensure market integrity.³¹⁰ To protect consumers and to ensure market integrity entails a different approach.

The recent global financial crisis has forced many countries to adopt different models depending on the structure and the characteristics of their financial system. In short, the recent financial crises and market developments have reinforced the importance of having separate institutions dealing with financial consumer protection issues in an independent way, in spite of the chosen model. One potential risk is ‘duplication of functions’ from involvement in all aspect of monetary system. In order words, it may be sensible to have memorandum of understanding to avoid confusion, especially when the Central bank takes up different roles in the supervision of the monetary system.

The next section considers the rationale for regulation of banks within the context of the financial services. It focuses on the three common reasons why the government intervene in the marketplace.

10 December 2016; Ann Graham, The Consumer Financial Protection Agency: Love It or Hate It, U.S. Financial Regulation Needs It, 55 Vill. L. Rev. 603 (2010); Available at: <http://digitalcommons.law.villanova.edu/vlr/vol55/iss3/3>

³⁰⁹ Section 2 (d) of the CBN Act 2007

³¹⁰ See UK Consumer Protection and Market Authority, p31.

3.5 Theories of Regulations

This section will examine the broad theoretical framework for financial sector regulation. The regulatory policies in the financial sector can be justified from two broad approaches.

We begin the discussion in this section from two opposing views of supervision and regulation, namely the public interest view³¹¹ and the private interest view³¹².

3.5.1 The Public interest view

The public interest approach has been used to justify the thinking on regulation throughout much of the twentieth century, yet it is taken for granted in many international discussions of regulations.³¹³ The public interest approach, which is sometimes referred to as ‘helping hand’³¹⁴ theory of regulation is premised on two primary assumptions. First, that the market is inherently imperfect and an unregulated market is likely to fail due to monopoly or externalities. Second, to enhance the market and make it function effectively, the government has the incentive and capability to use regulation to correct the market failure.³¹⁵ According to this view, the government will need to intervene if there is potential market failure in order to correct it. This particular view of the public interest approach is one in which the supervision is fairly straightforward, as it is a matter of ‘getting the rules and procedures correct’.³¹⁶

Regulation in banking has been justified on the notion of ‘public good’.³¹⁷ The public interest approach to regulation relates to consumer interest, also emphasising that those who introduce regulation have the tendency to advance public interest objectives rather than individual or group private interest. A further reason put forward in support of the public interest view of regulation in the financial sector, is that market imperfections cannot be easily overcome and the market cannot produce efficient outcomes if it is not regulated or it is left on its own. Giving the important role of banks in the economy well-structured a

³¹¹ This theory is associated with Pigou and dates back to 1938; see Arthur Pigou, *The Economics of Welfare*, 4th ed. (London: Macmillan, 1938).

³¹² The Private interest school was championed by Stigler. See George Stigler, *The Citizen and the State: Essays on Regulation*, (1975) University of Chicago Press, for more elaborate discussions

³¹³ Barth et al., (note 280 above) 21

³¹⁴ Andrei Shleifer, *Understanding Regulation* (2005) 11 *European Financial Management*, 439-451

³¹⁵ Barth et al., (note no.280) 34

³¹⁶ James. R. R Barth, Gerard Caprio, and Ross Levine, *Reassessing the Rationale and Practice of bank Regulation and Supervision around the Globe*, (2007) Seminar on Current Developments in Monetary and Financial Law, Washington DC, 17

³¹⁷ Sheila C. Dow, *Why the banking system should be regulated* (1996) 106 *The Economic Journal*, 698.

regulation and supervision can prevent the financial institutions from engaging in an unnecessarily excessive risk, thus enhancing the financial institutions' stability.

The public interest view that regulation can prevent market failure has been subjected to a number of criticisms. The first criticism levelled against public interest view is that regulations do not often achieve the stated objective (which is to correct market failure), due to the competing relationship between the regulators and the regulated. The fact that the industry being regulated means it has an obvious interest in the outcome, it could be concluded that the industry will influence the regulatory process to get what they want (private interest of powerful group). Capture theorists argue that public interest theory exaggerates the extent of market failure and undermines the extent of political and economic influence on regulation. The thrust of these arguments is that the industry, politicians or the regulators have much influence on the process of regulation in such a way that the regulation benefits their interests rather than those of the general public.³¹⁸

However, it may be doubtful that the regulators have 'no private or personal interest' in regulation. This view asserts that the regulators are often motivated by a desire to enrich themselves, in which case regulation may be compromised by pursuit of either industry or personal interest. It has been argued that the outcome of regulation is often determined by regulator's personal interests and incentives. In relation to banking regulation, which is the focus of this study, it is arguable whether regulation in all possible situations, would serve the public interest more than it would serve private interests.

To summarise, it is noteworthy that despite the criticisms discussed above, regulation of the banking industry irrespective of what is considered as its main purpose, will always serve the public interest. Regulation is considered to be important in the banking industry due to the role of the bank in the economy.

3.5.2 The Private Interest View

Although, the private interest view of regulation recognises that there are market failures, the private view, often referred to as 'Stigler's capture theory', considers regulation as a product,

³¹⁸ Richard A. Posner, 'Theories of Economic Regulation' (1974) 2 *Bell Journal of Economics and Management Science*; 335-358; Chiara Chiumya, *The Regulation of Microfinance Institutions: A Zambian Case Study* (2006) The University of Manchester (unpublished) PhD Thesis,

focusing on the interaction between the demand and the supply.³¹⁹ Posner³²⁰ in an attempt to provide theoretical foundation on regulation stated that,

‘Viewing regulation as a product allocated in accordance with basic principles of supply and demand directs attention to factors bearing on the value of regulation to particular individuals or groups, since, others things being equal, we can expect a product to be supplied to those who value it the most’.

The supply of these regulations usually falls to the government, consumers may demand regulation but the industry has great influence on who gets what.

The private interest view or ‘capture theory’ consists of two basic assumptions. First, the process of regulation is captured by the industry and operated mainly for its benefit. It has been further argued that state intervention in regulation has defeated the essence of regulation. Second, the incompetence of regulators has made it difficult for them to succeed in promoting social welfare, even under the influence of organised consumer groups.³²¹ However, at the empirical level the capture theory has failed to recognise that some consumer groups benefit from regulation. Thus, according to capture (sometimes the ‘grabbing hand’) theory, regulation is designed to promote the interests of politicians and the regulatory process may be altered to advance their economic interest.

The ‘political capture’ is another concept that is related to the note of ‘regulatory capture’.³²² According to this view, ‘political capture’ is akin to regulatory capture, under which regulation is formulated and manipulated depending on whether the gain is going to advance the political or economic welfare of politicians.

In regards to the banking sector, the private interest view would imagine regulations that will clearly reflect the interests of various represented groups, while enhancing the safety of the financial institutions and the welfare of the political elites. Furthermore, in most developing countries banks exist for the benefit of the government or political elites, being ready to fund and finance government projects.

It has been argued that the public interest view of financial sector regulation by government is primarily to facilitate the government expenditure and grant credit facilities to powerful politicians, even when they have the public interest objective as their underlying interest. The

³¹⁹ Barth et al., (note 280) 34

³²⁰ Posner, (note 330) 344

³²¹ Shleifer (note 326) 441

³²² Barth (note 2258) 34

findings suggest that the regulation of the financial sector may well have the public interest objective but the process and the involvement of powerful-agents can make it inefficient.

A regulatory and supervisory system perfectly suitable for the banking sector should have reliance on market discipline and a fair regulatory p

3.6 Conclusion

This chapter has examined bank regulation and supervision and highlighted the difference in the meaning of the two terms, which are often used interchangeably. The chapter also discussed the need to analyse the distinction between the concepts of regulation and supervision, hence each of them leads to different policy issues. Accordingly, regulation in most cases refers to ‘body of legal rules’ (legal framework), while supervision compliments these rules through the process of monitoring and compliance. Given the importance of financial intermediaries to the economy, regulation without supervision would be inadequate.

We have shown that the importance of the banking sector in the economy demands that the rationale for regulation and supervision can be justified mainly on two grounds of public interest. In this regard, banking regulation exists to first ensure that the financial system does not suffer any form of instability and second, to protect the consumer. As part of the analysis, the need to establish the rationale for bank regulation and the theories of regulation has been clearly considered. The chapter has also emphasized the need to draw a line between consumer protection and investors or deposit protection.

In this chapter, we have shown that prudential regulation is different from conduct of business regulation; consumer protection is borne out of conduct of business rules.

The next chapter will examine the current bank regulation and consumer protection regime in Nigeria

Chapter Four

Banks and Consumer Protection Regime in Nigeria

*“Consumer protection is not about protecting consumers from bad decisions but about enabling consumers to make informed decisions in the marketplace free of deception and abuse”*³²³

4.1 Introduction

Having discussed the conceptual framework in chapter two and the banking regulation in chapter three, this chapter examines how the consumer protection initiatives in Nigeria protect the bank consumers. The chapter provides a brief overview of the legal and regulatory regime in the financial sector, its enabling law, the role of the regulatory institutions and its current development in the protection of consumers. It then considers the way in which the Central Bank of Nigeria (CBN) exercises its role as the regulator. This is done through analysis of the consumer protection regime in Nigeria, remedies available to consumers and consumer access to justice and empowerment. The challenges faced by consumers in enforcing their statutory rights and the common law remedies are also considered.

This chapter will answer a number of questions. First, who are the financial regulators and what are their roles in consumer protection? Secondly, to what extent do the existing financial laws and regulations protect the bank consumers? Thirdly, what are the lacunas/gaps in the existing supervision and regulations in the protection of bank consumers? Finally, to examine whether the CBN powers are exercised on the level that provides sufficient protection for bank consumers.

This opens the question of supervision of banks for stability and consumer protection. The aim is to understand the level of consumer protection problems in Nigeria and what has or has not been done to ameliorate these problems. This analysis is crucial as it will provide the necessary background for the comparative studies in the next chapters. The rest of the chapter has been divided into two. A review of the institutional structure of regulatory agencies and legal powers are undertaken in part one before a discussion of the consumer protection issues. Along these lines, the chapter made a legal assessment of four legislations that created some

³²³ Financial Stability Board, Consumer Finance Protection with particular focus on credit, 2011 <<http://www.financialstabilityboard.org/>> accessed 10 May 2016

regulatory agencies; including their roles and weakness in some particular areas. This chapter does not intend to engage in complex analysis of all the consumer protection issues across a range of sectors, which would go beyond the scope of the present study; rather, its aims are far more focused on banks that are regulated by the CBN.³²⁴

4.2 Legal and Regulatory Framework

The CBN has the responsibility of regulating and supervising the banks and other financial institutions within its purview.³²⁵ While the CBN has the duty to enforce the whole range of banking and financial institutions legislation, only a few related regulatory and legal provisions mandate the CBN to deal with aspects of bank consumer protection. The regulation and supervision of financial institutions particularly the banks have generally been exercised at the federal level by few authorities that are guided by various Acts of parliament of the Federal Republic of Nigeria. A number of subsidiary legislations have been enacted to provide for effective financial market operations. In Nigeria, the regulatory framework for banking contributes immensely to the enhancement of consumer protection in addition to its role in strengthening the stability of the financial systems.

It is of note that this study is particularly focussed on the supervision and regulation of the banking sector for consumer protection, and not the entire financial services.

In Nigeria, the main legislation covering the banking sector is as follows:

- the Central Bank of Nigeria Act,³²⁶ (CBN Act 2007)
- the Banks and Other Financial Institution Act,³²⁷ (BOFIA 2004)
- the Nigerian Deposit Insurance Corporation Act.³²⁸ (NDIC Decree 22 of 1988).

The Central Bank of Nigeria is responsible for regulating and supervising the banking sector, but its legal mandate like many other Central Banks does not explicitly include consumer protection.

³²⁴ For a list of Banks and Micro-Finance banks regulated by the CBN, Available at <<http://www.cenbank.org/Supervision/Inst-MF.asp>> accessed on 11 May 2016>

³²⁵ The current supervisory system has nine financial institutions under the CBN regulatory purview. These institutions include Commercial Banks, Finance Companies, Micro-finance banks amongst others.

³²⁶ Promulgated as Decree No. 24 of 1991, but amended by No. 4, 1997 and recently, Cap. C4, *Vol.2 Laws of the Federation of Nigeria 2004*

³²⁷ Promulgated also as Decree No. 25 of 1991 and amended by No.3 of 1997

³²⁸ Cap. N102, *Laws of the Federation of Nigeria 2004*

In Nigeria, there are some basic legislative and regulatory framework(s) in place for financial consumer protection; however, the provisions dealing with the protection of consumers of financial products and services are not included in the common man (consumer) in untold hardship in the past.³²⁹

As far as Nigerian financial law is applicable, the BOFIA provides for a licensing requirement to be fulfilled before commencing financial business in Nigeria.³³⁰ The licensing requirement applies to all financial business other than stock broking and insurance.³³¹ Sometimes when it appears in guidelines issued by the regulatory and supervisory authorities, it lacks clarity and detail. In this case, it might be difficult for a consumer in Nigeria to rely on these provisions unlike in Australia where the consumers can rely upon the Federal Trade Practices Act 1974 (TPA) for their transactions with the bankers.³³²

It should, however, be noted that there are other institutions such as the Financial Services co-ordinating committee (FSCC), and Federal Ministry of Finance (FMF), which have been involved in various way in the financial institution regulation and will be discussed under this chapter. The Bank and Other Financial Institutions Act of 1991 (BOFIA), Nigeria Deposit Insurance Corporation Act 1998 (NDIC), and Central Bank of Nigeria Act of 2007 (CBN) have been chosen for brief analysis as a case study.

4.2.1 Bank and Other Financial Institution Act 1991(as amended in 2004)

This legislation started as the Bank and Other Financial Institutions Act, No. 25 of 1991. The BOFIA, among other things, vested the power to regulate and supervise the banks,³³³ and also prohibits the carrying out of financial services business without being dually licenced and incorporated in Nigeria.³³⁴ The Act also empowers the Governor of the CBN to remove any manager or officer of any failing bank.³³⁵ The BOFIA No.25 of 1991 superseded the Banking Act of 1969 and strengthened the CBN legislative powers. The amendments in this Act gave the CBN some degree of flexibility in regulating and supervising the Nigerian banking sector. Section 5 of BOFIA gives the Governor of the Central Bank the powers to revoke an operating licence of a bank or impose fresh additional conditions. The 2004 Act, is geared,

³²⁹ Ganiyu A. Ogunleye, 'Perspective on the Nigerian Financial Safety- Net' (NDIC, 2010), 44

³³⁰ BOFIA, 2004, s.58

³³¹ BOFIA, 2004, s. 59

³³² Carrigan, Amanda Claire and Gray, Pamela Noel, Financial Services and Consumer Protection (August 27, 2010). Available at SSRN: <<http://ssrn.com/abstract=1666693>> accessed on 5 June 2016

³³³ BOFIA, 2004, s. 61

³³⁴ BOFIA, 2004, s. 58

³³⁵ BOFIA 1991 (as amended)

amongst others, to penalise any bank that fails to comply with any of the provisions of the Act.³³⁶ The series of amendments in the BOFIA over the years helped the regulators to manage the upsurge of licenced banks and the incessant bank failures that put business or transacting a banking business, whether as an individual or corporate body in Nigeria without the necessary licence is guilty of a criminal offence.³³⁷

It is important to note that despite the enhanced innovations which the BOFIA brought in the regulatory paradigm of the Nigerian financial institutions, the Act still remains unreformed to incorporate the realities of Nigeria financial market.

4.2.2 Nigeria Deposit Insurance Corporation Act 1998

The NDIC was established by Decree No. 22 of 1988³³⁸ and it commenced operation in 1989. The NDIC is one of the government agencies that has its own autonomy and also acts as a supervisory agency over Deposit Money Banks and Other Financial Institutions. One remarkable achievement of the NDIC Act, 1998³³⁹ is that it established a clear deposit insurance scheme in Nigeria. This scheme protects Nigerian depositors against loss of their insured deposit.³⁴⁰ The 1990s witnessed an upsurge in the liberalisation of banking licensing. Prior to the government realising and placing an embargo on the issuance of new banking licences, about 79 new banks obtained their licence, making the total number of banks in operation 120.³⁴¹ As some of these banks were operating before obtaining their licences, it is uncertain whether the consumers were dealing with regulated or unregulated financial institution. This can create uncertainty for bank consumers in identifying and determining whether their deposit is secured. These challenges prompted the government to step in to establish the Bank Deposit Insurance Scheme (DIS). In the past the banking public (consumers of banking services) have been made to face untold hardship due to many bank failures. The NDIC which offers the Deposit Insurance Scheme was established in accordance with the government's objective of making banking sectors powerful and to protect bank depositors.³⁴²

³³⁶ BOFIA 2004, s. 51

³³⁷ BOFIA, 2006, s.59(6)

³³⁸ This was also known as 'NDIC Decree'

³³⁹ The Act has been repealed by the Nigeria Deposit Insurance Corporation (NDIC) Act, 2006

³⁴⁰ See generally NDIC, Available at < <http://ndic.gov.ng/deposit-insurance/> > accessed on 10 May 2016

³⁴¹ For comments and discussion on this, see Ganiyu Ogunleye, 'Perspective on the Nigerian Financial Safety-Net' (NDIC, 2010), 44

³⁴² NDIC Act, 2006 s. 2(1)

4.2.2.1 Deposit Insurance Scheme (DIS)

Based on the discussion above, this section examines the Deposit Insurance scheme established by the NDIC Act to help us understand how insufficient the scheme has been in the present economic situation in Nigeria. The Nigerian Deposit Insurance Scheme developed out of government intention to shift emphasis from bail-out of management and shareholders of banks, to protect the bank depositors who are always the victim of unhealthy competitions that arose in that period. A diagnostic study carried out by CGAP uncovered that ‘deposit protection is one of the most basic forms of consumer protection in the banking industry’.³⁴³

The Nigerian Deposit Insurance Corporation has been in operation in Nigeria for well-over 28 years. The question arises, what is the maximum coverage limit and how are the insured depositors paid? For the DIS to be effective in achieving its objective, the various provisions of the Act should include appropriate measures for ‘coverage’ and ‘payment of the insured deposits’.

4.2.2.2 Deposit Insurance Scheme - Coverage

Nigerian law provides for a statutory deposit protection scheme which is enshrined in the NDIC Act. According to section 16 of the current NDIC Act in Nigeria, all deposits of licensed banks are insured with the Corporation. Conversely, the Act clarified also the type of deposits that are not covered by the DIS:

- a. Insider deposits (both the deposits of staff and directors of insured banks);
- b. Counterclaim from a person who maintains both deposit and loan accounts, the former serving as a collateral for the loan; or
- c. Such other deposits as may be specified from time to time by the Board.³⁴⁴

Within the provisions of Section 20 of NDIC Act (as amended) all depositors in the insured banks in Nigeria are covered with the exception of those listed above. The importance of coverage in DIS cannot be overemphasised as it determines not only the depositors’ level of confidence in the overall banking system but also the potential liabilities of the scheme in general. There is lack of consumer awareness of the existence of the deposit insurance

³⁴³ CGAP, Consumer Protection Diagnostic Study, (Kenya 2011), 18

³⁴⁴ NDIC Act, s.16

arrangements. This is a big challenge not only for the consumers but also for the entire financial system.

From the beginning of the Corporation in 1988, the maximum deposit insurance coverage was set at N50, 000 (approximately £104) per depositor for each insured bank. It is also noted that, this maximum insurance deposit was not increased until the NDIC Act 2006 brought some changes due to some perceived reasons such as inflation. The NDIC Act 2006 made some changes which include the increase of the coverage limit to N200, 000 (approximately £414) for licensed banks and N100, 000 (£207) for deposit taking financial institutions.³⁴⁵ The question that this study seeks to address is, whether this deposit insurance is ‘sufficient’ in view of the depreciation of the national currency (Naira) and inflation.

This raises concerns because the amount the consumer will receive if the bank closes down will be so little compare to other jurisdictions. Moreover, the inflection rate in Africa and particularly in Nigeria may require some form of legal reform to increase the maximum deposit limit. There is a major difference in terms of the value of Naira when the NDIC commenced operation in 1989 and the current exchange rate in Nigeria today. This type of change has influenced many countries around the world to either make provisions to expand the protection of the consumer’s deposit or increase the existing deposit insurance limit. For example, the European Union in reaction to the global financial crisis in 2009 amended the consumer’s deposit scheme (**Directive 2009/14.EC**).³⁴⁶ For example, in Germany the consumer’s deposit compensation has been statutorily increased to Euro. 100.000. The UK depositors are provided with claims up to £85, 000 of their deposits.³⁴⁷

Having identified the scope/coverage and the broad objectives of the DIS in relation to consumer compensation, the next logical step will be to highlight inherent challenges associated with the payment of the insured deposits. Some of these challenges include:

- A. Consumer lack of awareness of the DIS and the coverage limits;
- B. Consumers opinion of insurance as ‘complete scam’;
- C. There is need to strengthen the public awareness campaign, for example in the UK the Financial Conduct Authority mandated every bank to place a notice in all bank

³⁴⁵ NDIC Act, 2006, s. 20

³⁴⁶ See 11 March 2009 – **Directive 2009/14/EC** of the European Parliament and of the Council

³⁴⁷ The £85, 000 maximum coverage takes effect from 1 January 2017

branches showing the general public the limits of coverage which has been increased from a maximum of £35,000.00 to £50,000.00 (now £85,000) after the Global Financial Crisis. These types of measures need to be adopted in Nigeria;

- D. Finally, the challenges of the three months window period for depositors to bring forward their claims is sometimes unrealistic given the country's peculiar circumstances. Consequently, this NDIC Press release mainly during bank failures³⁴⁸ (calling for insured depositors to come forward within three months) conflicts with the Paragraph 6 of the NDIC Services Charter which provides for the insured depositors to be paid, 'ninety days' within which the closure of deposit taking institutions and subsequently, the appointment of the NDIC as liquidators by a court.³⁴⁹

The regulators should, in order to promote the awareness of the DIS, involve different stakeholders to encourage the consumers to come forward (whenever a bank fails) and make their claims on time. The role of the regulator in this regard will not only be to make a press release but also to monitor the process to ensure good compliance.

4.2.2.3 Payment of the Insured Deposits

Section 21(1) of NDIC Act, 2006 provides that where the licences for deposit-taking have been revoked, the Corporation shall make payment of the insured deposit within 90 days either by cash, negotiable instrument, or moving the deposit to another insured institution, in an amount equal to the insured deposit held in the failing institution.³⁵⁰ The payment of insured deposit up to the statutorily insurable limit has arguably been the source of consumers' loss of confidence in the financial system as the limit was pegged at N50, 000 at the establishment of the Corporation in 1988. The truth is that the coverage was increased ten years ago (2006 to 2016). The conclusion is clear. The value of Naira³⁵¹ (Consumers' deposit in 2006) ten years ago cannot be the same in 2016.

³⁴⁸ NDIC Act, 2006 s.41 (1)

³⁴⁹ NDIC Act, 2006 s.40(1)

³⁵⁰ NDIC Act, 2006, s. 21(1)

³⁵¹ The Nigerian currency is called 'Naira'.

However, it is noted that the limit has been currently marked for review in order to reflect the current economic realities in Nigeria. Such review is necessary and lessons could be learned from the UK model, which recently increased the maximum limit from £75,000 to £85,000. It could be argued that fast disbursement of bank consumers insured deposit is crucial to sustain depositor confidence and avoid the imminent risk of bank run. Thus, in the past the Corporation has attempted to make prompt payment in the case of the 33 banks which went into liquidation some years ago. Until this statute was amended in 1998, it did not offer much help to depositors with regard to the time limit of three months for the insured depositors to come forward to make claim. In recent years however, the Northern Rock experience in the UK has shown that usually three months may not be sufficient to ensure the confidence necessary to avoid a run on a bank in any country.

Consequently, the low coverage limit offered by the DIS; the payment process of insured deposit is unlikely to assuage anxious depositors until the Corporation has completed the liquidation and started paying substantial amounts from the liquidation dividends to depositors. In spite of the regulatory measures discussed above, the insurance coverage per depositor which was pegged at N50, 000 since the commencement of the corporation in 1988 constitutes a major challenge to the effective protection of consumers.

4.2.3 The Central Bank of Nigeria Act 2007

Based on the discussion of the NDIC and Deposit Insurance Scheme preceding sections, this part spotlights the issues the Central Bank should consider in combining the role of prudential supervision with consumer protection. Section 1(1) of the Central Bank Act³⁵² provides for the establishment of a body known as the Central Bank of Nigeria. This legislation has a long history.³⁵³ It established the Central Bank of Nigeria in 1958 and it came into full operations on 1 July 1959. The CBN is the top regulatory authority of the financial system. In its early days, the legal framework within which the CBN Operates and regulates banks were then established by the Central Bank Act 1958 (as amended) and the banking Decree 1969 (as amended).³⁵⁴ The law was later amended through the Federal government of Nigeria enacted CBN (Amendment Decree No. 3). It has since been repealed following the CBN Decree No. 24 of 1991 which was enacted to strengthen the Central Bank to cover new institutions. In

³⁵² Central Bank of Nigeria Act 2007

³⁵³ History of the CBN, Available at < <http://www.cenbank.org/AboutCBN/history.asp>> accessed on 10 may 2016

³⁵⁴ *Ibid*,

1997 the 1998 (Amendment) Decree No. 37 was repealed by the CBN Act 2007. This last Act is applicable to date. Generally, the CBN Act of 2007 which repealed the Act of 1991 and all its amendments provides that the CBN shall be a wholly autonomous body in the discharge of all its functions under the BOFIA and the enabling Act. The key provisions centred on the establishment of the bank,³⁵⁵ and its regulatory and supervisory functions under the Act.³⁵⁶ This legislation, apart from establishing the CBN, contained some provisions on how the financial institutions under the purview of the CBN should be licensed and managed. The Decrees played a vital role by updating the key innovations in the financial systems, the CBN has added responsibilities for covering both banks and non-bank financial Institutions.

Consequently, under section 51 of the CBN Act, the bank has been vested with the power to make and alter rules and regulations for the order and management of the bank. The CBN also has the powers under its functions to promote a sound financial system in Nigeria; this perhaps, includes making rules and regulations that will protect the interest of consumers.³⁵⁷

4.3 Regulatory and Supervisory Framework: Over view of Banking Regulators

4.3.1 The Central Bank of Nigeria

Nigerian banks and other deposit taking institutions are supervised by the Central Bank of Nigeria and by the Nigeria Deposit Insurance Corporation. The key provisions of the Nigerian banking supervisory law are laid down in the Central Bank Act which established the CBN. The CBN is responsible for taking much of the supervision measures, such as granting or revoking licenses with other administrative decisions within its powers. Nigeria Deposit Insurance Corporation is responsible for deposit protection in Nigeria. Both the NDIC and the CBN co-operate closely and share information pertaining to the safety of the financial system, which are crucial for the performance of their individual responsibilities. The main challenge here is that the Corporation does not have adequate enforcement powers. The Act, (BOFIA and CBN Act as amended) empowers only the CBN to impose sanctions on institutions that fail to comply with the provisions of the Act. Apart from supervising the deposit taking banks, CBN is also responsible for the supervision of the Microfinance banks. The CBN has its Head Office in Abuja and also branch offices in each of the 36 States of the Federation.

³⁵⁵ Section 1 of the CBN act, 2007

³⁵⁶ Section 2 of the CBN Act, 2007

³⁵⁷ CBN Act, 2007, s. 2

Over the last few years, the Nigerian regulatory system has witnessed fundamental changes or reforms which were mainly driven by the financial crisis and bank failures. The majority of changes are propelled by the government initiative to make Nigeria one of the global 20 economies by the year 2020.³⁵⁸ In line with this initiative, the CBN in 2010 created a new department within the Central Bank of Nigeria to be in charge of Consumer Protection.³⁵⁹ According to the CBN, the department was created to regulate conduct of financial services providers, to create trust and confidence in the Nigerian financial system.³⁶⁰ The rationale behind the creation of the department was (i) the lessons learnt from the recent financial crisis, (ii) the indifferent attitude of Nigerian financial institutions in addressing consumer complaints and lack of effective recourse mechanisms for financial consumers.³⁶¹

It is still unclear how the CBN will divide the supervisory responsibility between the new department and the NDIC. More importantly, the new department does not have statutory backing.³⁶² According to the mandate, the new department would enhance consumer financial capability through consumer education.³⁶³ It is currently intended that the new department will be working as an independent department within the CBN regulatory structure.

³⁵⁸ See Nigeria Vision 2020, available at <http://www.nationalplanningcycles.org/sites/default/files/planning_cycle_repository/nigeria/nigeria-vision-20-20-20.pdf> accessed 22 September 2017

³⁵⁹ See Subsection 4.4.1 of the Chapter

³⁶⁰ See Central Bank of Nigeria, Consumer Protection Enlightenment Series (2013)

³⁶¹ *ibid*, 2

³⁶² See Chapter Five of this Thesis for detailed discussion

³⁶³ See Central Bank of Nigeria, Consumer Protection Enlightenment Series (2013)

Table 1:1;

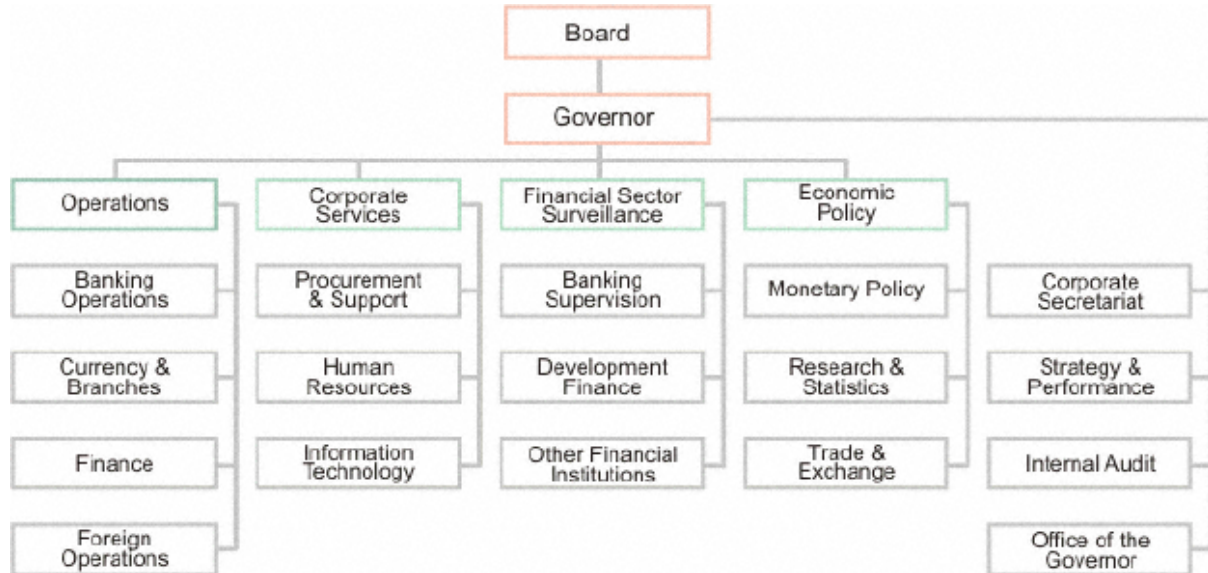
Regulatory/Supervisory Framework for Nigerian Banks

TYPE OF INSTITUTIONS	LEGAL FRAMEWORK	IN CHARGE OF LICENSE	SUPERVISION	INCHARGE OF INSURANCE
BANKS	CBN Act 2007 BOFIA Act 2004 NDIC Act 2006	CBN	CBN/NDIC	NDIC

The above table shows the three main legislations that constitute the key regulatory and supervisory structure in the Nigerian banking Sector.

CBN Organogram Before 2008

Table 2:1; Central Bank of Nigeria (CBN) - Organigram



Source: The CBN website

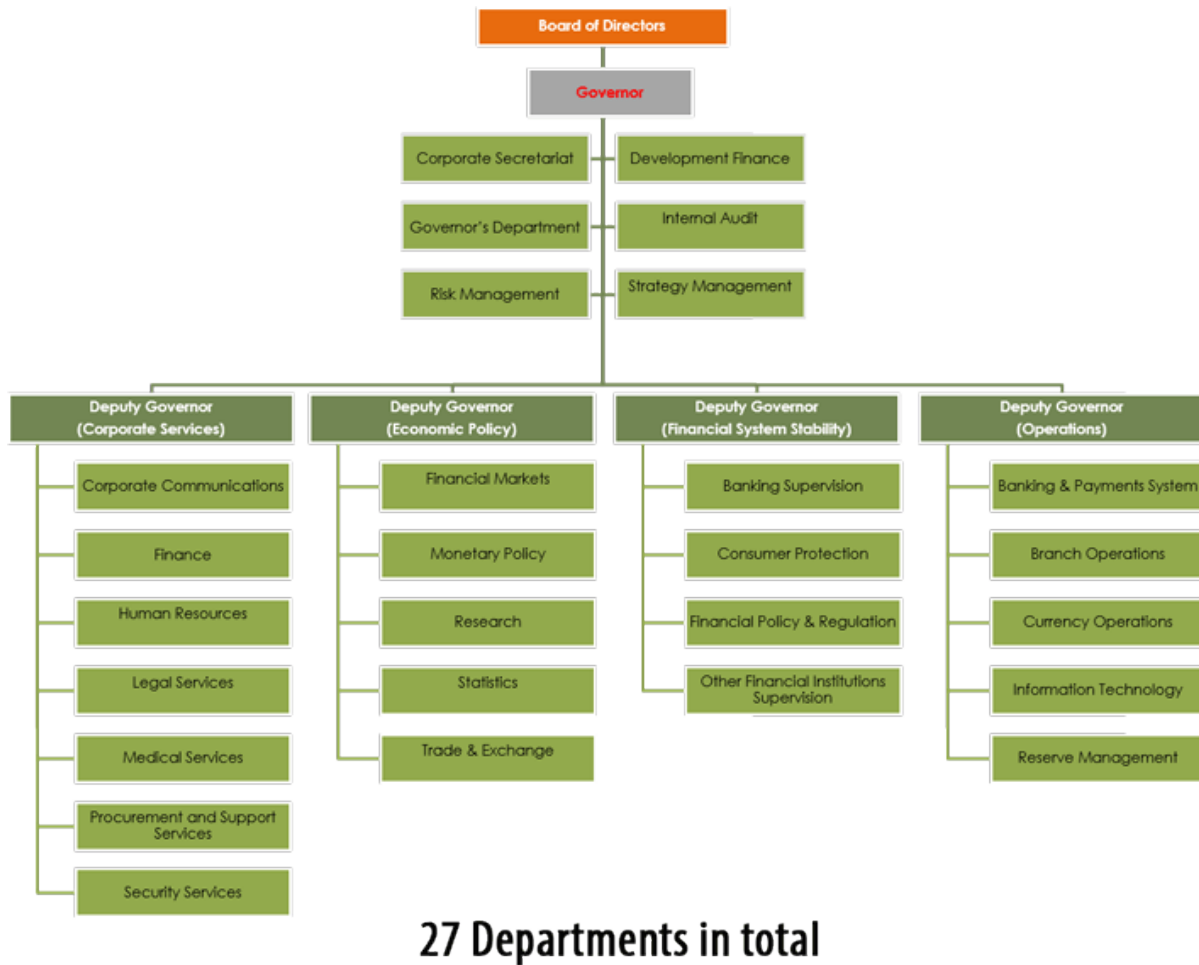
The institutional structure shows that prior to 2008, the Consumer Protection Department in the CBN was not a full-fledged Department.

4.3.2.1 Recent Changes – CBN Creates Two New Departments

In response to the financial crisis which forced the CBN to embark on extensive internal reforms, in March 2012, the Board of the bank approved the creation of two new departments. The newly created departments are Corporate Communications and Consumer and Financial Protection Departments.³⁶⁴ The two new departments make the total number to 27 departments spread under 5 directorates headed by one governor and four deputy governors. See below:

³⁶⁴ See Central Bank of Nigeria, Abuja, Press Release, Available at < www.cenbank.org > access 13 May 2016

Table 2:2; Central Bank of Nigeria (CBN) - Organigram after December 2010



Source: The CBN website.³⁶⁵ Effective from January 2011.

The Central Bank of Nigeria is structured into four divisions and headed by four Deputy Governors. The above structure shows that the Consumer Protection Office in the Financial Policy and Regulation Department (FPRD) was upgraded to a full Department in April 2012. This was one of the initiatives of the CBN to give consumer protection the anticipated attention in the banking sector.³⁶⁶

³⁶⁵ See CBN web site: <<http://www.cenbank.org/aboutcbn/organogram.asp>>

³⁶⁶ The Central Bank of Nigeria, 2015 Consumer Protection Department Annual Activity Report, 5

4.3.2.2 The Role of the Central Bank of Nigeria

When we talk about the role of the CBN, the first question would be, what is their mandate, the second, how do the CBN carry out these roles, and the third, what is their role in consumer protection. To understand this role, it would be important to determine the overriding objective of the CBN. Historically, however, it would seem that the roles of the CBN are wide-ranging. In practice, the CBN roles are as follows:

- (i) to be the banker and financial adviser to the Federal Government of Nigeria,
- (ii) (ii) to issue the legal tender currency coins and notes,
- (iii) (iii) to maintain the Nigerian's external Reserves,
- (iv) (iv) to maintain and promote the monetary stability and sound financial system in Nigeria³⁶⁷.

Subsequently, the Bank and Other Financial Institutions (BOFIA) Act 1991 (as amended), charged the CBN with the sole responsibility of ensuring the high standards of banking practice and financial stability for market surveillance.³⁶⁸

The overriding objective of the Central Bank of Nigeria, just like those in developed countries is to ensure the stability of the currency through the execution of its monetary policy.³⁶⁹ The CBN assumed this important function since July 1959 when it began operations. Since the CBN commenced operations in 1959, the Nigerian financial sector has witnessed remarkable reforms. For example, 1991 recorded major currency reform that allowed the CBN to phase out 5 kobo and 2 kobo coins.³⁷⁰

The last few years, however, has seen a drastic increase in the role played by the CBN as the monetary authority, due to the complexity of the financial system and the improvement of global economies. These core changes are especially in relation to the CBN's capacity as the financial system regulator and supervisor. In carrying out its various tasks, the CBN has to ensure that that all the FIs under its regulatory purview, operate in accordance with the universally accepted practices within the industry. Accordingly, the formation and execution

³⁶⁷ Section 2 of the CBN Act of 2007

³⁶⁸ See the statement of CBN Core Mandate, Available at <<http://www.cenbank.org/AboutCBN/>> accessed on 1 June 2016

³⁶⁹ Adriana Teixeira de Toledo, 'The Central Bank's Role in Consumer Protection: A Viable Model for Brazil' (2015) *RJLB*, Ano 1, pp. 3

³⁷⁰ For more discussions on the currency reform, see the CBN functions Available at <<http://www.cenbank.org/MonetaryPolicy/Function.asp>> accessed 1 June 2016.

of monetary policy in Nigeria is the CBN sole responsibility with the promulgation of the BOFIA Decree No. 25 and CBN Decree No. 24 of 1991 (as amended).

In Nigeria, the CBN regulates the activities of different financial institutions, namely commercial banks, micro-finance, primary mortgage banks and merchant banks but delegates to its agency (National Board for Community Banks) the supervision of Community Banks. However, one thing that has not emerged in Nigeria is the recent trend of outsourcing supervision to an agency that is separate from the central bank. Thus, with the Nigerian integrated (single-regulator) model, there is a likelihood of some potential conflict of priorities between activities, as will be discussed in subsequent sections in this chapter. One important point which arises from this discussion is ‘the challenge of CBN monitoring of the conduct of businesses focused on consumer protection in the banking sector’. The recent financial crisis has moved many countries towards a twin-peak model; this may not be the ideal organisational structure for Nigeria due to its political, historical and legal framework.

This study identified some challenges in the role of the financial regulator (CBN) and also, in the remedies available to bank consumers in Nigeria.

4.3.2.3 The Mandate of the Central Bank

The mandate of the CBN is to regulate and supervise the Nigerian financial institutions. The CBN can be classified as an ‘apex regulatory authority’ with a clear mandate and distinct powers. For the CBN to achieve its mandate, the enabling law gives it both regulatory and supervisory functions.³⁷¹ The BOFIA confers extensive powers on the CBN.³⁷² For example, it gave the CBN the sole responsibilities for licensing banks and also many powers to enforce the banking laws.³⁷³ The CBN has the powers to take over distressed banks and remove the managers. Since 1991 when the enabling laws gave the CBN the additional flexibility, the Bank and NDIC have taken reasonable steps to deal with failing banks.

The CBN also has the power to withdraw the licence of any bank which fails to comply with the Act. Some other powers vested on the CBN by the CBN enabling Act include;

- power to Act as banker to the State Government;³⁷⁴

³⁷¹ Section 51 of BOFIA 1991 (as amended)

³⁷² Section 5 of BOFIA 1991 (as amended) powers to revoke licences

³⁷³ Section 12 of BOFIA, 1991 (as amended)

³⁷⁴ CBN Act, 2007, s.39

- power to make regulation;³⁷⁵
- power to licence and regulate credit bureaux;³⁷⁶
- Power to Act as an agent for the Federal Government.³⁷⁷

The CBN in line with the mandate listed above, is also charged with the responsibility of administering the BOFIA Act 1991 (as amended) to ensure reliable standards of banking practice and financial stability within the country. In other words, the bank often achieves these mandates through its supervisory activities. Furthermore, the CBN in addition to its monetary policy functions, play other important roles especially in the development of the Nigerian economy.

4.3.2.4 Regulation and Supervision of Banks

Under the current arrangement in Nigeria, the CBN is to be responsible for prudential regulation and oversight of the financial stability (systemic risk) of the financial system. The recent financial crisis has shown that weaknesses in banking systems can expose the entire financial system to risk of failure and instability. Bank supervision is a key aspect of the CBN's process of monitoring whether the financial institutions are complying with the regulatory requirements. Now, the question is what is 'regulation'? As noted earlier in chapter three, regulation, supervision, and monitoring are often used interchangeably in the financial services sector. Mwenda uses the term regulation to cover 'those rules that are applied by all regulators in the fulfilment of their functions; in the financial services area, they include such prudential rules as those influencing the conditions of access to the market.'³⁷⁸ Although differences of opinion still exist, there appears to be some agreement that 'regulation' refers to 'intervention in the marketplace to control the activities of banks in the public interest.'³⁷⁹ Cartwright observes that 'where regulation which is directed at protecting the consumer is concerned, a distinction can be made between prudential regulation and conduct of business regulation'.³⁸⁰

³⁷⁵ CBN Act, 2007, s.51

³⁷⁶ CBN Act, 2007, s.57

³⁷⁷ CBN Act, 2007, s.40

³⁷⁸ Kenneth Mwenda, 'Legal aspects of Financial Services Regulation and The Concept of Unified Regulator' (2006) The World Bank, 5

³⁷⁹ Peter Cartwright, 'Bank, Consumers and Regulation' (Hart Publishing, 2004), 5

³⁸⁰ Peter Cartwright, *Banks, Consumers and Regulation* (Hart Pub 2004), 5

The CBN's involvement in the supervision of banks is crucial to maintain the appropriate level of depositor and investor confidence in the market place.³⁸¹ At an international level, the Basel Committee has developed a set of 25 core principles of effective banking supervision which will help to strengthen banks.³⁸² The aim is to improve financial stability at both national and international level. The CBN supervision approach involves frequent onsite examination of financial institutions under their purview to ensure that the bank is operating in a sound manner.³⁸³ The bank examination is usually conducted in collaboration with the NDIC on a random basis.

4.3.2.5 CBN Banking Supervision and Enforcement Powers

The way in which the CBN (financial regulators and supervisors) enforce rules is very important in order to ensure depositor and investor confidence in the market place. The banks in Nigeria are subject to regular supervision by CBN and NDIC. Bank supervision is of course important with respect to consumer protection and also with respect to risk minimizing instruction. One of the main activities of the NDIC in bank supervision is protecting depositors as well as promoting the safety and stability of the banking system in Nigeria.³⁸⁴ IMF propagates that "the primary objective of banking supervision is to promote the safety and soundness of banks and the banking system. If the banking supervisor is assigned broader responsibility, these are subordinate to the primary objective and do not conflict with it".³⁸⁵ The BOFIA mandates the CBN to supervise the financial institutions in Nigeria, and also stipulates the manner in which the returns should be provided to the CBN. The role of the NDIC in bank supervision is more one of complementing the CBN but with focus on protecting depositors and contributing to the stability of the financial system.³⁸⁶

The CBN in exercising its Lender of Last Resort (LLR) function is also involved in bank supervision. The supervision of banks entails conducting of on-site examinations as well as off-site monitoring. The CBN supervisory function is structured into three departments:

³⁸¹ For elaborate discussion on Bank Supervision and Enforcement Powers, see Dalvinder Singh, *Banking Regulation of UK and US Financial Markets* (Ashgate 2007).

³⁸² See BIS Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision*, (2006)

³⁸³ Godwin Okpara, A Synthesis of the Critical Factors Affecting Performance of the Nigerian Banking System (2009) 17, *European Journal of Economic, Finance and Administration*,

³⁸⁴ See Nigeria Deposit Insurance Corporation Annual Report 2009, Available at <http://www.ndic.gov.ng/files/NDIC_2009_ANNUAL_REPORT.pdf> accessed on 19 June 2016

³⁸⁵ International Monetary Fund- Monetary and Capital Markets Department, Republic of Korea: Financial Sector Assessment Program-Detailed Assessment of Compliance on the Basel Core Principles for Effective Banking Supervision (International Monetary Fund, 2014)

³⁸⁶ See about NDIC, Available at <<http://ndic.gov.ng/about-ndic-3/>> accessed on 27 June 2016.

- a. Bank examination, which is responsible for off-site supervision
- b. Banking supervision, which is in charge of on-site supervision
- c. Other financial institution department, which supervises the non-bank financial institutions under the purview of CBN supervision.³⁸⁷

The Banking Supervision Department of the CBN is responsible for onsite examination and it is carried out by the bank examiners, who visit the financial institutions periodically, to review risk management of the regulated institution and the asset quality.³⁸⁸ Nevertheless, the capacity of the CBN on-site supervision, for example, in evaluating the information published by the banks is limited. It is noted that the on-site supervision of market conduct (consumer protection) is done by the same CBN team of prudential supervisors and one cannot ascertain whether the resources for this mandate are sufficient. Furthermore, there are issues caused by a lack of standardised procedures for carry out these enormous tasks, which in an ideal situation should be done in a collaborative manner.

Off-site supervision basically involves monitoring of the activities of the regulated financial institutions, as statutorily required to ensure that they are complying with the regulations. This measure enables the regulators to ensure that the risk of insured financial institutions is adequately assessed, that they are complying with prudential guidelines and the interest of depositors are adequately protected.³⁸⁹

The purpose of the off-site supervision is to enable the CBN and other supervisors to monitor trends and development in the regulated institutions. However, there are generally some limitations to the attainment of these supervisory or enforcement goals. The limitations are based on supervisory techniques, willingness of the insured financial institution to be transparent and also lack of experienced professionals. The CBN in particular has suffered from institutional lapses and lack of coordination among examiners as is evidenced over the years by uneven supervision and enforcement.³⁹⁰ This undermines the importance of the CBN

³⁸⁷ Ikpefan Ailemem, *Issues in banking and Finance* (2012) 88

³⁸⁸ Section 32 and 33 of BOFIA Act

³⁸⁹ Anonymous, 'The impact of Banking Regulation and Supervision in Nigeria Commercial Banks' Nigeria Articles, Available at: < <http://articlesng.com/impact-banking-regulation-supervision-nigeria-commercial-banks/>> accessed 20 June 2016

³⁹⁰ As Sanusi puts it, 'the geographical separation of on-site and off-site examiners hindered the building of integrated and effective supervisory teams'. See Sanusi Sanusi, "The Nigerian Banking Industry: What Went Wrong and The Way Forward" (Square, Bayero University, Kano, 2010), 9

supervisory objective, not only in the maintenance of stability and confidence but also the analysis of information about supervised banks.

The CBN's scope for action prior to the recent financial crisis was also controlled by a lack of explicit reference to consumer protection in the statute provisions, which automatically limited their supervisory approach to one direction, focusing mainly on the financial stability. The post crisis development of Nigeria consumer protection in the banking sector, has involved a developing interaction and overlap between the two different approaches of prudential supervision on the one hand and consumer protection supervision on the other. There are also fundamental philosophical differences between these two supervisory approaches. Prudential supervisory policy is predicated on the notion that banks are best safeguarded against instability when they are monitored or controlled to comply with prudential guidelines. Consumer protection policy on the other hand is based on the assumptions that there is no perfect market; consumers lack knowledge and expertise and therefore require legal support in order to make an informed choice.³⁹¹ Prior to the recent financial crisis, Nigeria bank supervisory policy depended largely on the use of prudential guidelines to shape the bank conducts for consumers to benefit in the market place.

In practice, it could be argued, that guidelines by themselves were insufficient to provide adequate protection for consumers. The CBN has introduced some new measures in banking reform, which led to the development of consumer protection departments, as will be seen in subsequent sections.

The way in which these issues are addressed is important, because measures that fail to provide effective regulatory and supervisory frameworks in the banking sector may not only undermine consumer protection but also bank performance which can lead to financial instability. Without these characteristics consumer protection in the banking sector cannot be adequately addressed.

4.4 Consumer Protection in the Nigerian Banking Sector

The Nigerian financial sector is dominated by the banking system. The Central Bank of Nigeria was established in 1958. The draft legislation that established the Central bank of Nigeria in 1958 was an important step in creating the legal framework governing the Nigerian

³⁹¹ Peter cartwright, Banks, Consumers and regulation, (Hart Publishing, 2004), 6

banking system.³⁹² There are two major pieces of legislation which constituted the legal framework within which the banking operation and regulation developed in Nigeria, namely the CBN Act 1958 (as amended) and the banking Decree 1969 (as amended).³⁹³ Despite all the amendments³⁹⁴ to enhance the effectiveness of the CBN as the regulatory and supervisory authority of banks and non-banking financial institutions, the banking system did not have a legal framework for consumer protection.

However, the global financial crisis which was arguably triggered by the United States subprime loans crisis 2007 has spread in Nigeria and has had some overwhelming negative effects. In the pre-crisis, as the former Central Bank Governor observes, ‘neither the industry nor the regulators were sufficiently prepared to sustain and monitor the sector’s explosive growth’.³⁹⁵ Between 2004 and 2008, as the oil prices increased it also led to an increase in Nigerian deposits, thereby influencing the bank to give loans and encourage the depositors to invest in bank stocks. This huge flow in capital availability occurred at a time when the regulators failed to impose market discipline, which allowed banks to take advantage of bank consumers.³⁹⁶ The investment policy promoted by Nigerian banks to maximise profits, made many depositors who were new to investing and unaware of the risk to make wrong decisions.

In order to ensure that consumers in the financial services are fairly treated, the management of the CBN embarked on extensive banking reform, which led to the creation of the Consumer Protection Department in the CBN. The department was initially created as a unit but later upgraded in 2012 to a full department.

According to the Director, Consumer Protection Department of the CBN, ‘since the upgrading of the Consumer Protection Unit in the bank to a department in 2012, over 5,500

³⁹² For discussion about the CBN History see History of the CBN, Available at <<http://www.cenbank.org/AboutCBN/history.asp>> accessed on 7 May 2016

³⁹³ *ibid*,

³⁹⁴ The Banks and Other Financial Institutions (BOFIA) Decree 24 and 25 of 1991 which repealed the banking Decree 1969; the CBN (Amendment Decree No. 3 and BOFIA (Amended) Decree No. 4 in 1997; CBN (Amendment) decree No. 3 of 1998 which repealed the CBN (Amended) decree No. 3 of 1997; and the current legal framework, CBN Act of 2007 which repealed the CBN Act of 1991. See also Kanayo Ogujiuba and Michael Emeka Obiechina, 'Financial Sector Reforms In Nigeria: Issues And Challenges' (2011) 6 IJBM, 224.

³⁹⁵ Sanusi L. Sanusi, Convocation Lecture by the CBN Governor, delivered at the Bayero University, Kano, (February 26, 2010), 5

³⁹⁶ *ibid*, 8

complaints have been lodged by customers³⁹⁷ in Nigeria, the majority of complaints against financial institutions were as follows; illegal, excessive charges, fraud and administrative fees to mention but a few.

This situation has forced the CBN to embark on the idea of protecting consumer, in the aftermath of the financial crisis, but the question arises, to what extent do consumers know about this new department. In 2011 the Central Bank of Nigeria issued a Circular directing all banks to expand their existing ATM Help Desk to handle all types of consumer complaints.³⁹⁸ This CBN Circular also states that if a consumer has complaints against his financial institution, he must first make the complaint direct to the financial institution and if the financial institution fails to resolve the matter within two weeks, as provided by the ATM Help Desk Circular, then the consumer has the right to escalate his complaint to the Consumer Protection Department (CPD) of the CBN.³⁹⁹ The complaint handling process of the Central Bank of Nigeria detailed on the CBN web site has two methods of contacting the CPD namely by writing or by email. However, the post-crisis period was the first time the bank regulators issued a Circular or Directives that clearly provide a uniform standard for consumer complaint handling in the banking sector.

As mentioned earlier, in the pre-crisis period the financial institutions in Nigeria have an indifferent attitude to handling consumer complaints; no framework for consumer protection and there was no clear recourse mechanism process in the financial services sector before the 2008 financial crisis. A genuine question is what the reasons behind these gaps were and inconsistencies in the CBN market conduct regulation. It can be said that these gaps contributed to inadequate protection of consumers in this sector.

It is argued in this study that though the CBN post-crisis measures have provided a guide on how and where a consumer can lodge a complaint against the financial institutions, under the purview of the CBN; these measures are insufficient for four reasons. First, there is a lack of consumer awareness of the complaint management process in the financial institutions. This is because the CBN has no clearly mandated obligation on the financial institutions to inform the consumer about this process before they open an account or have any transaction with

³⁹⁷ Emma Una, 'Illegal Charges: CBN Compels Banks to Refund N17bn to Customers' *Vanguard* (2014) <<http://www.vanguardngr.com/2014/09/illegal-charges-cbn-compels-banks-refund-n17bn-customers/>> accessed 17 May 2016.

³⁹⁸ See Central Bank of Nigeria Complaints Management, Available at <<http://www.cenbank.org/Supervision/cpdcomgt.asp>> accessed on 15 May 2016

³⁹⁹ *Ibid*,

them. For example, in the UK all banks are mandated by Financial Conduct Authority (FCA) to give consumers key information about ‘who’ regulates them, what their rights are if they are not satisfied with the services, where to take their complaints to and they have to ascertain that the consumer understands the information.⁴⁰⁰

Second, the process requires the consumer to make the complaint in writing or via email to the CBN Head Office or any of the CBN branches at the state level. Thus, this will constitute an unnecessary constraint to consumers who cannot read or write and have no access to internet facilities. Accessibility is one of the most important aspects of consumer redress mechanisms. Even if the CBN regulation or Guidelines make it clear that the consumers can send their complaints to them, there is a gap in the support system. There is no voluntary agency that provides advice on financial consumer issues at the local level. This is particularly a concern where consumers have literacy and numeracy challenges and their ability to write or use internet is in question. A Citizen Advice bureau could be set up like the United Kingdom model merely by the local council to provide free support and advice to consumers. It is important that the CBN be allowed to develop their consumer protection strategy, free of any unnecessary constraints and based on international best practices such as the World Bank Good Practices for Financial Consumer Protection. To address this issue, it is suggested in this study that the regulatory authority should; (i) provide funding opportunities for consumer organisations that assist consumers; (ii) provide call centres services and drop-in sections in different zones around the country; (iii) work in collaboration with other stakeholders.

Thirdly, the CBN measure does not have a provision for alternative dispute resolution methods. Cartwright observes that, ‘consumer redress in financial services has been transformed by the use of alternative dispute resolution methods, in particular the Financial Ombudsman’.⁴⁰¹ These dispute resolution measures are important because they are independent and impartial and also, can be used by consumers to resolve complaint directly with their financial services provider. For example, in the United Kingdom the Financial Conduct Authority use of the Ombudsman service to resolve consumer disputes and also to examine issues that usually give rise to disputes.

⁴⁰⁰ See Financial Conduct Authority, ‘Bank Account Checklist – on opening an account’ available at <<https://www.fca.org.uk/consumers/financial-services-products/banking/your-rights/opening-an-account>> accessed on 17 may 2016

⁴⁰¹ Peter cartwright, ‘bank, Consumer and Regulation’(Oxford and Portland Oregon, 2004), 152

Fourth, there are no funding or stable sources of revenue for Consumer Association Groups or Non-Governmental Organisations to directly provide financial guidance and also give information to consumers. However, it could be suggested that the absence of these funding facilities merely mirrors the fact that the consumers, especially the low-income consumers can hardly have relevant information necessary to either make informed decisions or enforce their rights. This could be achieved partly by raising consumer awareness and confidence, which might have been affected when dealing with the financial institution. Such regulatory goals are likely to be met if all the financial service providers are mandated to have a dedicated complaints unit, contact information and active consumer associations that are active in assisting consumers with disputes.

4.4.1 Born after Crisis: A brief History of the CBN Consumer Protection Department

4.4.1.1 The Financial Crisis in Nigeria

Before the 2008 financial crisis which made the stock market crash with an estimated loss of about \$60billion in market capitalisation, and the subsequent liquidity crisis in banks,⁴⁰² there was no department specifically created to oversee consumer protection matters in the Central Bank. The consumer protection laws were inadequate.⁴⁰³ Almost all the CBN departments are involved in the supervision of activities relating to consumers; however, no particular department produced continually updated guidelines for banks or activity reports on consumer matters. This lack of action was not the result of bank consumers living in a society devoid of various consumer problems. Some of the consumer problems include the following: overcharges, high interest rate, unauthorised deductions and fraud. While the new Consumer Protection Department will be best placed to deal with consumer redress, there are a number of questions to be asked.

⁴⁰² For extensive discussion on the Nigerian financial crisis experience see Olumide Famuyiwa , ‘The Nigerian Financial Crisis: A Reductionist Diagnosis’ (2013) Afe Babalola University: Journal of Sustainable Law and Policy,pp.36-64

⁴⁰³ This study revealed the gaps in the Consumer Protection laws which involves; lack of jurisdiction over financial services, inconsistent enforcement and supervision.

Creation of the New Department

4.4.1.2 The Consumer Protection Department (CPD) in the Central Bank of Nigeria

In March 2012, the Board of the CBN approved the creation of the Consumer Protection Department (CPD)⁴⁰⁴ as part of their internal reform.⁴⁰⁵ The CBN re-assess its measures after two years, on seeing the enormous responsibilities that confront the new department created then Consumer and Financial Protection Department as an independent department under the Financial System Stability.⁴⁰⁶ The creation of the two new departments; Corporate Communications and Consumer and Financial Protection Departments brings the total number of the CBN departments to 27. This new consumer protection department assumed responsibilities on 2nd April 2012.

The CBN Act did not expressly give the oversight body the mandate to protect consumers but emphasised that it should 'promote a sound financial system in Nigeria.'⁴⁰⁷ For this reason the CBN needs a special department to regulate the conduct of the financial services providers to engender trust and confidence in the Nigerian financial system.⁴⁰⁸ Prior to 2009, there was no independent department charged with the responsibility to protect consumers from unfair and deceptive business practices in the banking sector. Although, the CBN Banking Supervision Department (BSD)⁴⁰⁹ handles issues relating to harmful market conduct, it has no explicit consumer protection mandate.

The CBN Act empowers the oversight body to make rules and regulations for effective functioning of the banking sector.⁴¹⁰ The CBN in the application of this power has given the CPD few basic tools and its mandate. Ordinarily, the mandate of the new department is to promote and implement policies that would ensure, among others, the following objectives,

⁴⁰⁴ 'The Consumer Protection Department (CPD) was created in April 2012 in furtherance of one of CBN's core mandates of promoting a sound financial system. The CPD was established to develop and implement an effective consumer protection framework that would promote consumer confidence in the financial system.'<http://www.cbn.gov.ng/> accessed 3 August 2015.

⁴⁰⁵ See, CBN Press Release: CBN Creates Two New Departments to Enhance Operations. Available at www.cbnbank.org/ accessed 15 July 2016.

⁴⁰⁶ See the CBN Organigram After 2010 in Table: 1:1, showing the 27 departments.

⁴⁰⁷ CBN Act 2007, S. 2(d)

⁴⁰⁸ See Consumer Protection Enlightenment Series, Consumer Protection Department – Central Bank of Nigeria, (April 2013), available at <http://www.cenbank.org/Supervision/cpd.asp> accessed on 15 July 2015.

⁴⁰⁹ 'Banking Supervision Department has the following mandates; Conduct of off-site surveillance and on-site examination of Deposit Money Banks, Specialized Institutions Credit Registry Bureaux, and related institutions. -Development of standards for examinations and consolidated supervision'<http://www.cenbank.org/> accessed 3 August 2015.

⁴¹⁰ S. 50 of CBN Act 2007

- Ensure fair and responsible market and business conduct amongst financial services providers;
- Enhance consumer financial capacity through consumer education;
- Develop a grievance redress mechanism that is fair, transparent, accessible, timely and inexpensive,
- Develop consultation and feedback mechanism to ensure the market is working well for consumers.⁴¹¹

In giving the CPD this extensive mandate, the CBN transferred some functions relating to consumer protection from the Banking Supervision Department to the new department.⁴¹² For example, the CBN gave the CPD authority to develop consumer protection framework, consumer complaints management system (CCMS) and implement the financial literacy in the financial consumer marketplace in Nigeria. The proposed authority is hoped to help CPD take action against unfair and abusive business practices experienced by a large number of the Nigerian population who lack the basic knowledge and understanding of financial products and services. However, the CBN did not assign to the CPD any extra responsibility for supervising Micro-finance banks or nonbank firms even though they offer financial products and services to Nigerian financial consumers.

In particular, the CBN gave the CPD the authority to receive and treat complaints from consumers against Deposit Money Banks (DMB) and to require monthly reports from all the banks. This conflict resolution authority will enable the CPD to work with the DMB sector to correct abuses and provide redress where necessary. While it is not possible for CPD to take legal action to enforce ‘financial law that relate to consumers’,⁴¹³ including against DMB firms, its creation represents an important step towards the protection of Nigerian financial consumers. By putting the CPD under the Financial System Stability, headed by a CBN-

⁴¹¹ For more information, see, <<http://www.cenbank.org/Supervision/cpd.asp>>

⁴¹² For an overview of the inability of the Banking Supervision Department to handle these multitask duties and its effects on the financial system prior to the creation of the Consumer Protection Department, see generally Olumide Famuyiwa, ‘The Nigerian Financial Crisis: A Reductionist Diagnosis’ (2013) 2(1) Afe Babalola University: Journal of Sustainable Development Law and Policy, 36

⁴¹³ Although there is no specific ‘National Consumer Financial Law’ but there are some laws in the BOFIA, CBN, NIDC acts that guide the relation between the financial consumers and their customers. Consumer Protection Council Act 1992 does not expressly contain any provision that shows its jurisdiction over financial services sector. See Jennifer Isern and others, ‘Access to Finance in Nigeria: Microfinance, Branchless Banking, and SME Finance’ (2009) CGAP, 43

Deputy Governor, the CBN recognized that a consumer-focused perspective can help preserve the safety and soundness of the Nigerian financial institutions. Accordingly, the financial system as a whole and the safety and soundness of procedures can have consequences for consumers at different times.

It should be noted that one of the main challenges of the CPD is the CBN's inability to transfer the responsibility for protecting consumers in the Nigerian financial marketplace from other regulators (like the Nigerian Deposit Insurance Corporation) to the new department. Notably, the Nigeria Deposit Insurance Corporation (NDIC) is empowered by the NDIC Act to supervise banks for compliance with regulatory law.⁴¹⁴ Coordinating this supervision with NDIC, which has supervisory authority over DMBs for safety and soundness, arguably could create regulatory arbitrage or gaps in supervisory compliance.

The CBN did not also transfer to the CPD the authority to promulgate rules regarding consumer financial protection laws⁴¹⁵ and to enforce those specific laws that guide the relationship between these banks and their customers. In particular, the CPD is not solely in charge of the implementation and enforcement of the following rules or regulations:

- The Know Your Customers (KYC) regulations,⁴¹⁶ which require the banks and other financial institutions go close to the reach of the poor people and socially disadvantaged part of the population in which majority are rural dwellers. For example, KYC requires the Banks and Other Financial Institutions to make access to essential banking services easier; hence, the statistics show that about 64.1% of adult Nigerians (56.3million) do not have access to financial services.⁴¹⁷

⁴¹⁴ NDIC Act, s. 2

⁴¹⁵ It is noteworthy that because of the absence of a detailed 'Consumer Financial Protection Laws in Nigeria', the new Consumer Protection Department in the CBN is drafting a legal framework for consumer protection for institutions regulated by Central Bank of Nigeria. For more information, see The Central bank of Nigeria request for an input for the Development of a Consumer Protection Framework for Financial Institutions Regulated by the Central Bank of Nigeria (CBN). Available at <<http://www.cenbank.org/Supervision/cpd.asp>> accessed 16 July 2015.

⁴¹⁶ *CBN AML/CFT Regulation, 2009* tends to introduce new deposit limit for account holders, which separated bank customers into three levels: Level 1- low value accounts, level 2 – medium value accounts, level 3- High value accounts. For more information, see *FPR/DIR/CIR/GEN/02/001*- CBN Circular to All Banks and Other Financial Institutions (18 January 2013).

⁴¹⁷ *ibid*, p.2

- CBN Disclosure Requirements⁴¹⁸ which set out the operational and management information which banks and other financial institutions are required to disclose in their periodic returns to the public and regulatory authorities. (Disclosure requirement also entitles to obtain a free monthly account statement with the fees and charges explanation).

In addition, in clarifying the CPD position in the protection of financial consumers in Nigeria, the CBN and the new department seem fairly unsuccessful at providing clear and consistent conditions on a number of important questions such as: What is the actual role of the CPD in consumer protection, compliance or supervision in the banking sector? What happens if the supervision mandates of other regulators coincide with their responsibilities? How can the CBN ensure that the Consumer Protection Department operates efficiently and in the interest of consumers, rather than in the interest of the oversight body who seeks to ensure safe and sound financial systems in Nigeria? When will the CPD have its legal framework and what would be its scope? What is the assurance that the new Department will not be prejudiced against some banks or financial institutions? The problem is that in Nigeria there is no specific legislation that deals with financial consumer agency. Giving the importance of consumer protection in the banking sector, this lack of legislation is completely intolerable for the reasons emphasised above.

Some countries enact legislation to specifically deal with Financial Consumer Agency. For example, in Canada there is an Act that established the Financial Consumer Agency of Canada.⁴¹⁹ Such Acts will establish a financial consumer protection agency with the power to enforce rules for financial institutions, monitor or supervise reports on markets as well as facilitate consumer complaints. In contrast, an enormous task has been given to the CBN Consumer Protection Department, which it cannot suitably perform due to lack of basic legislation.

Despite certain shortcomings in the new CPD in the Central Bank of Nigeria and the mode of its creation through the powers vested on the CBN by the CBN Act, the adoption of this model truly provided hope for financial consumers through the banking reform agenda. The CBN has recovered more than N8.6billion in favour of various consumers through the new

⁴¹⁸ Actually, this was one of the CBN Governor Mallam Sanusi Lamido Sanusi's four-point agenda, which aims to strengthen the supervision and regulation of financial services through enhanced disclosure.

⁴¹⁹ See Financial Consumer Agency of Canada Act 2001; In the United State, Dodd-Frank Wall Street Reform and Consumer Protection Act was passed in 2010 to establish 'The Consumer Financial Protection Bureau' (CFPB)

CPD.⁴²⁰ With these achievements; CPD expanded its scope of operations to include three sub-departments namely:

- Complaints Management
- Market Conduct and Development
- Consumer Education/Financial Literacy

4.4.1.3 The Unique Challenges in Consumer Protection and Its Complexities

The creation of the Consumer Protection Department (CPD) in the Central bank of Nigeria was intended to consolidate as part of the banking reform, placing consumer protection powers within the regulatory authority but there was no intention to extend regulation beyond the deposit-taking institutions like the Micro-finance banks. The micro-finance banks are also regulated by the CBN but the mandate of the new department (responsible for financial consumer protection) does not cover them. Thus, it is obvious that the existing prudential regulators do have significant roles in consumer protection which is not expressly enshrined in their mandates.⁴²¹ These roles are also shared with other agencies within the financial services industry.

This study argues that the creation of the new department brings some areas of overlap and gaps for the supervisors and the new CPD. This can be noted from the difficulties in drawing clear lines between where safety and soundness end and where consumer protection begins. The institutional arrangements for consumer protection regulation and supervision have not been clearly defined. The CBN has the responsibility as the supervisory agency in charge of prudential and market conducts supervision to design a comprehensive framework for consumer protection in the banking sector but has not. Placing consumer protection in the CBN (prudential supervision) normally ensures good exchange of information and supervisory coordination, at the same time it creates conflicts with its prudential duties. In this case it is doubtful whether the new department has any operational independence,

⁴²⁰ According to the reports of the CBN as at 31 March 2013, the new CPD has received and treated over 2,800 complaints from consumers against Deposit Money Banks and these figures only represents complaints and refunds which did not include other electronic related issues or ATM complaints.

⁴²¹ CBN Act of 2007 created the Central Bank of Nigeria. The CBN has the following mandates which does not expressly include consumer protection: (a) ensure monetary and price stability; (b) issue legal tender currency in Nigeria; (c) maintain external reserves to safeguard the international value of the legal tender currency; (d) promote a sound financial system in Nigeria; and (e) Act as the banker and provide economic and financial advice to the Federal Government; CBN Act 2007, S. 2

adequate powers and resources to carry out its duties as it is not indicated in any of their mandates.⁴²²

Nevertheless, this institutional integrated approach for financial consumer protection in Nigeria can be effective only if there are clear explicit mandates for the new department. An absence of explicit mandate will continue to cause overlap and gaps in the regulatory and supervisory practices within the CBN. Furthermore, it has been noted that the new consumer protection department has been in operation for the past three years without any legal framework for financial consumer protection.⁴²³

Finally, dealing with the more general concern about the new department's constitutional legality and its preparedness for the protection of bank consumers in Nigeria, it is undeniable that independence, practicability and speed in taking-action are most important features which a well-functioning consumer protection regime should have.

4.5 How effective is Consumer Protection in the Banking Sector in Nigeria

In order to assess the effectiveness of consumer protection in the banking sector in Nigeria, the study examines the role of CBN in consumer protection under the following sub-headings: CBN key measures, corporate governance, code of banking practice, access to finance and financial education. In recent times, the CBN has devoted a lot of attention to improving the guidelines and regulatory measures which are directed at protecting consumers. Nevertheless, it could be argued that, the current challenges in the banking sector require the CBN to adopt measures that will strengthen the protection of consumers and provide a minimum standard for systems of redress.

⁴²² According to CBN the rationale behind the establishment of the Consumer Protection Department (CPD) is to 'regulate conduct of financial services providers to engender trust and confidence in the financial system and to complement traditional prudential regulations in promoting a safe, sound and stable financial system in Nigeria.' This can only be effective if there are explicit roles and mandates. For instance, the G20/OECD High-Level Principle emphasised that 'an effective system for financial consumer protection regulation and supervision ensures that there are clear roles, responsibilities and objectives set for each authority involved.' See also, Effective Approaches To Support The Implementation of the Remaining G20/OECD High-Level Principles on Financial Consumer Protection, (9 September 2014) p. 7 Available at <<http://www.oecd.org/finance/financial-education/g20-oecd-task-force-financial-consumer-protection.htm>> accessed 14 July 2015

⁴²³ The CBN in September 2015 issued Draft Consumer Protection Framework for discussion purposes. The 'Exposure of the Draft Consumer Protection Framework was the CBN recent initiative. See **CPD/DIR/GEN/CPF/02/012**, Published on 17September2015, <<http://www.cenbank.org/documents/policycirculars.asp> > accessed 19 June 2016

4.5.1 The Role of CBN in Consumer Protection

Currently, the main player in consumer protection in the Nigerian banking sector is the CBN. The CBN being the main regulator has responsibility to enforce the entire range of banking and financial institutions legislation, however, only a few related regulatory and legal provisions mandate them to indirectly deal with some aspects of consumer protection in the banking sector. Section 2 of the CBN Act, 2007 mandates the CBN to regulate banks and financial institutions to ensure monetary and price stability and promote a sound financial system in Nigeria.⁴²⁴ By way of illustration, the Central Bank Act does not have any clear provisions that determine the mandate and role of the CBN in the protection of consumers of banking services. A point to note, however, is that the CBN has always relied on section 2 on the CBN Act 2007 to make regulations, guidelines and directives that relate, in its view, to consumer protection.⁴²⁵

The CBN Act, 2007 states clearly that the primary objectives of the CBN in supervising and regulating financial institutions shall be as follows:

- 1) To ensure monetary and price stability;
- 2) To issue legal tender currency in Nigeria;
- 3) To maintain external reserves to safeguard the international value of the legal tender currency;
- 4) To promote a sound financial system in Nigeria; and
- 5) To act as banker and provide economic and financial advice to the Federal Government.⁴²⁶

Although, the Act does not have any provisions to say that the CBN shall protect the interest of consumers, the Banking Supervision Department of the CBN has been inspecting banks to assess the level to which they comply with provisions of several laws and regulation that relate, in their opinion, to consumer protection issues.

Section 51 of the CBN Act, gives the CBN ‘power to make and alter rules and regulations for the good order and management of the bank. In exercising this power, the CBN has issued several regulations and guidelines that provide consumer protection provisions’.⁴²⁷

⁴²⁴Cap C4 LFN 2004, s. 2

⁴²⁵ Section 2 of CBN Act, 2007

⁴²⁶ Section 2 of CBN Act, 2007

⁴²⁷ Section 51 of CBN Act, 2007

In 2013, the CBN issued a ‘Guide to Charges’ for Banks and Other Financial Institutions (OFIs), which prescribed a standard for the application of charges on different types of financial products and services offered by Deposit Money Banks and Other Financial Institutions under their purview.⁴²⁸ The CBN Circular of 16 August 2011 requires Deposit Money Banks to expand the existing Automated Teller Machine (ATM) help desk to handle various categories of customer complaints.⁴²⁹

However, these CBN Guidelines and Circulars contain a number of gaps. First, as the name suggests, a guideline is to prescribe or to guide the Deposit Money Banks on how to carry out a particular function while offering services to consumers (customers). In any case, this means that the banks can use these guidelines to design their own policies or rules but may not operate with it. Therefore, there is need to address the concerns arising from the design of guidelines in the light of absence of consumer engagement in the development of the guideline or circulars. The bank consumers may not directly rely on the breach of these Guidelines to bring actions to court against the banks without going through the regulatory agencies. The unclear procedures and the inconsistency in monitoring and enforcement of these rules are not helping matters either. Overall, the current measures do not ensure that best practice is achieved in the protection of consumers, or monitoring and enforcement of the guidelines.

It is crucial to note that, the criticisms in this dissertation are not directed to the CBN use of policy guidelines in protecting consumers of the banking sector *per se* but rather on the lack of clear and comprehensive legal framework. Hence, a well-designed and properly enforced policy guideline can be actively effective. In an ideal situation, policy guidelines should offer a better and perhaps a timely protection for consumers than reliance on real legislation.

4.5.1.1 The Key Measure for Achieving Consumer Protection in this Sector

Before reviewing the existing legal framework for consumer protection on Nigeria, this section briefly overviews the key tools for achieving consumer protection particularly in the financial services sector. Despite the financial Central Bank of Nigeria’s efforts over the years, scholars have criticised their role in the conduct of business especially in relation to consumer protection.

⁴²⁸ See CBN Draft Guide to Charges for Banks and Other Financial Institutions, Available at <<http://www.cenbank.org/documents/circulars.asp>> accessed on 9 May 2016

⁴²⁹ CBN Circular; **FPR/DIR/CIR/GEN/01/020** of August 16, 2011. Available on <<http://www.cenbank.org/documents/circulars.asp>> accessed on 9 May 2016.

This study demonstrates the need to adopt the right tools. Unlike the United States where the financial regulatory authority over financial institutions is spread among different federal agencies and also, the newly created Consumer Financial Protection Bureau, Nigeria has a semi-integrated financial supervisory system, which means that a selected number of financial institutions are under the supervision of the Central Bank.⁴³⁰ The study argues that the Nigerian financial system does not need to reorganise the structure of the supervisory or regulatory system due to the country's peculiar characteristic, rather it needs the right tools in order to fulfil its role in protecting the consumers and ensuring the safety of the financial system.

The financial regulator (CBN) needs to be equipped with the right tools to perform its role whether protecting the consumers or ensuring the safety of the financial system. These tools may not necessarily require the regulatory system to have a complete overhaul such as structural reforms, as the approach may often differ from country to country. These tools will help the regulators to ensure that the rules are adequately complied with for the effective working of the financial market. Presently, there are a number of measures used by the CBN to protect consumers namely: enforcement, corporate governance, banking codes, financial education and access to finance.

4.5.1.2 Corporate Governance

The 2008 financial crisis no doubt brought to the about, the need for good corporate governance. The regulatory authorities are required to monitor the transparency and accountability of the management of banking institutions under their purview in order to curtail their risk appetite. Nigeria operates responsive corporate governance which involves the installing of mechanisms for ensuring the management of banking institutions are accountable, transparent, comply with regulatory and legal requirements, and dispose appropriate information to all stakeholders including consumers.⁴³¹ The recent financial

⁴³⁰ In Nigeria, the Central Bank of Nigeria is the main supervisory agency and the NDIC also supplements the supervisory role of the CBN. The CBN has about nine financial institutions namely, Commercial Banks, Bureaux-de-change, Development Financial Institutions, Discount Houses, Finance Companies, Merchant Banks, Micro-finance Banks, Non-interest Banks and Primary Mortgage Banks under its supervisory purview. For more details of Institutions supervised by CBN see <<http://www.cenbank.org/Supervision/finstitutions.asp>> accessed 25 May 2016.

⁴³¹ Ganiyu Ogunleye, 'Perspective on the Nigerian Financial Safety- Net' (2010) Nigeria Deposit Insurance Corporation, 45

crisis exposed the weaknesses of governance standards in the banking institutions and the insider abuse that requires urgent supervisory intervention. As Lamido Sanusi observes⁴³²;

“Governance malpractice within banks, unchecked at consolidation, became a way of life in large parts of the sector, enriching a few at the expense of many depositors and investors. Corporate governance in many banks failed because boards ignored these practices for reasons including being misled by executive management, participating themselves in obtaining un-secured loans at the expense of depositors and not having the qualifications to enforce good governance on bank management.”

The above extract illustrates the challenges which the depositors often face due to a lack of transparency and accountability of the management of the Nigerian banking institutions and the high level of risk taking. The recent financial crisis exposed the extremely weak governance standards in the banking institutions. For example, the CBN published that some bank management engage in unethical practices, including insider abuse, Chief Executive Officers (CEOs) setting up avenues to lend money to themselves for purchases of estates and borrowing depositors’ money to buy private jets.⁴³³ Moreover, the board of directors’ lack of independence and weak ethical standards creates a favourable ground for the management to abuse consumers’ deposits.

The recent reform in the financial sector has a commendable initiative with the objective of introducing a new effective risk management culture that will reduce abuse of consumers by the financial institutions.

4.5.1.3 Code of Banking Practice

As part of the current measures to reform the regulatory process in Nigeria, the CBN and the Chartered Institute of Bankers of Nigeria (CIBN) jointly drafted a ‘*Code of Conduct in the Nigerian Banking Industry*’⁴³⁴ which was approved and signed by the Bankers’ Committee on 9th April 2013. This is the most comprehensive code of banking practice ever drafted within the financial services sector in Nigeria. Most of the CBN-regulated financial institutions (not all FIs) do have what they call a code of professional conduct. However, it is questionable

⁴³² Sanusi L. Sanusi, Convocation Lecture by the CBN Governor, delivered at the Bayero University, Kano, (February 26, 2010), 7

⁴³³ For extensive discussion on Corporate Governance abuse in Nigerian banking sector see Sanusi L. Sanusi, Convocation Lecture by the CBN Governor, delivered at the Bayero University, Kano, (February 26, 2010), 7

⁴³⁴ See Code of Conduct in the Nigerian Banking Industry, 2014, Available at < <http://www.cibng.org/>> Accessed on 9 June 2016

whether these FIs take these codes of conduct seriously and if the codes are publicly available either on paper or web for consumers. This is also the reason why the CBN encouraged the CIBN to draft a comprehensive *Code of Conduct* in the Nigerian Banking Industry shortly after the financial crisis.

These industry codes serve as a means of self-regulation, usually aimed to protect the interest of banking consumers.⁴³⁵ The recent financial crisis and the growing increase in the array of products and services offered by Nigerian banks in the last two decades have forced the financial regulators to consider the self-regulatory process as a means to control the FIs. The 2013 *Code of Conduct* in the Nigerian banking industry was created as a result of the recommendations made by the CBN immediately after the financial crisis. The CBN recommended that CIBN should develop the code of banking practice based on the best practice standard set out in the G20 High-level Principles on financial consumer protection. The Nigeria Code of banking Practice is a non-statutory code that is recognised by banks that are members of the Chartered Institute of Bankers of Nigeria and it tends to set minimum standards for regulated institutions. This Code also indicates that it is a ‘Professional Code of Ethics & Business Conduct’ which means that it addresses the conduct of Members of CIBN, conduct of employees of FIs regulated by CBN and the conduct of banks in relation to their consumers. The objective of the Code has several themes such as employees conducting their duty with honesty and fairness and complying with the legislation.⁴³⁶

The Code is designed in five sections as follows:

- 1) Section 1: Professional Code of Conduct for Individual Members
- 2) Section 2: Unethical Practices/Unprofessional Conduct for Members
- 3) Section 3: Banks and their Customers
- 4) Section 4: Infringements and Sanctions
- 5) Section 5: Establishment of the Investigating Panel and Disciplinary Tribunal (Extract from the CIBN Act)

Accordingly, section 3 of the Code focuses precisely on consumer protection. Thus, section 1 and section 2 also have some dimensions of consumer protection that is spread all-over the

⁴³⁵ Peter Cartwright, *Banks, Consumers and Regulation*, (Hart Publishing 2004), 122

⁴³⁶ Code of Conduct in The Nigerian Banking Industry (2014), Paragraph 3(b), (e), (f) and (j)

sections. For example, section 1 of the Code contains provisions that will help to prevent employees from misleading or treating consumers unfairly.

However, the Code failed to curb unethical practices and Nigerian bank consumers experienced uncontrolled bank charges in the form of administrative fees, handling fees and excess charges.⁴³⁷ It could be argued that although consumers can be protected by imposing upon bank employees the duty to act fairly and honestly while dealing with consumers, the Code basically focussed on the manner in which the bank employees should conduct their job rather than on specific consumer protection issues. Even the section that deals with bank-customer relationships failed to address the imminent challenges.

4.5.1.4 Access to Financial Services

According to the recent survey by Enhancing Financial Innovation & Access (EFInA), ‘Nigeria lags behind Kenya, South Africa and Botswana in terms of the percentage of the population who are financially served’.⁴³⁸ While Nigeria has a population of over 170 million, the recent report from the industry claims that only about 35% is formally included and so, have access to financial services.⁴³⁹ The Nigerian financial sector is still growing and the private sector (bank) lending has expanded in recent years, though, still below average when compared to other Sub-Saharan African countries.⁴⁴⁰

CGAP has pointed out that Nigeria has a long history of making financial services available to the unbanked through microfinance, community finance, Small and Medium Enterprises (SME).⁴⁴¹ Even with this laudable initiative, the report has shown that 74 percent of the adult population have never banked and the number of women that have bank accounts is 15 percent.⁴⁴² In the EFInA study on Access to financial services in Nigeria 2008, the report in relation to the population that has access to a bank concentrates on gender rather than geographical factors.⁴⁴³ It added that 67 percent of males have never banked and also 82

⁴³⁷ Ayozie D .C, ‘The Current Ethical Challenges in Nigerian Commercial banking Sector, (2013) Global Journal of Management and Business finance, pp. 2249-4588

⁴³⁸ Enhancing Financial Innovation & Access (EFInA) 2012

⁴³⁹ CGAP, ‘Access to Finance in Nigeria: Microfinance, Branchless Banking, and SME Finance’ (2009), Available at <<http://www.cgap.org/sites/default/files/CGAP-Access-to-Finance-in-Nigeria-Microfinance-Branchless-Banking-and-SME-Finance-Jan-2009.pdf>> accessed on 10 June 2016

⁴⁴⁰ According to EFInA report, South Africa has the highest banked population of 60%, and Nigeria has 21% of banked population in the across country comparisons.

⁴⁴¹ *ibid*, iv

⁴⁴² EFInA, “EFInA Access to Finance Survey in Nigeria 2008: Key Findings”, (October 2008) 14

⁴⁴³ *Ibid*, 15

percent of females have never banked. Additionally in this report, the 24 percent of the unbanked gave the reason that the ‘bank is far away’. Rural communities and women appear to have suffered disproportionately in this situation. It could be argued that access to financial services (especially banks) in Nigeria is limited, for example because the unbanked lack financial education, have no identity document, and do not know how to open an account.

These challenges show that financial exclusion is a reality and there is need for the financial regulator (CBN) to balance their objective to protect consumers, and policy issues of how to expand the financial access to poor rural dwellers, considering their low level of financial literacy.⁴⁴⁴

It is important to note that whatever measures that the regulator may use to improve access to financial services should not only introduce a standard low account for consumers regardless of income but also provide initiatives that promote financial education. From the preceding discussion, it is obvious that the consumers have various challenges in relation to access to banks and there is no comprehensive regulatory measure in Nigeria that provides for this gap.

Nevertheless, the area of access to finance has received great attention under the reform program of the CBN and the present government administration. It is apparent that the CBN and the banks under their purview are currently undertaking various strategies designed to promote financial inclusion; however, there are apparent challenges that are limiting the progress. The government has established the Financial System Strategy 2020 (FSS) in its attempt to promote a stable financial system. However, the question is whether the regulator (CBN) has given considerable attention to designing regulations and guidelines to remove ‘access challenges’.⁴⁴⁵ The CBN has to understand and take into consideration, the consumers’ perception of banks which are indicated in the report as follows; ‘they have to pay service charges, need to have identification documents, must have a permanent address and must have a minimum balance to open an account’.⁴⁴⁶

Having examined the idea of access to finance in Nigeria, it is also important to consider the financial education and empowerment initiative.

⁴⁴⁴ Central Bank of Nigeria, Financial Inclusion in Nigeria Issues and Challenges, CBN Occasional Paper, No 45, 2013

⁴⁴⁵ Access challenges are used to refer to the noted challenges and the reasons which the unbanked populations in Nigeria give for not having bank account or not using financial services. These noted challenges may vary from country to country depending on many factors such as education, environment and gender.

⁴⁴⁶ EFINA, “EFInA Access to Finance Survey in Nigeria 2008: Key Findings”, (October 2008)

4.5.1.5 Financial Education and Empowerment

The term financial education and financial inclusion are commonly used in the literature and popular media in Nigeria. Increasing consumer financial inclusion is a government policy objective to increase access to formal financial services. Financial education has gained prominence in recent years due to developments in the financial markets, economic and policy changes.⁴⁴⁷ Financial markets are becoming more complex as new products are continuously offered to consumers who are financially less-educated. A recent report from the OECD states that ‘financial understanding among consumers is very low’.⁴⁴⁸ In addition, the report also highlights that the financial literacy levels are particularly low for certain groups, such as people with lower income, less-educated and the minorities.⁴⁴⁹ This raises the question of whether the government or regulatory institutions have adequate initiatives that will empower consumers and enhance their financial education.

Apparently, there are a lot of misunderstandings about what constitutes financial education and who should be responsible for financial education. In considering what constitutes financial education, the OECD provided broad definitions as follows:

Financial education is the process by which financial consumers/investors improve their understanding of financial products and concepts and, through information, instruction and/or objective advice, develop the skills and confidence to become more aware of financial risks and opportunities, to make informed choices, to know where to go for help, and to take other effective actions to improve their financial well-being.⁴⁵⁰

In Nigeria, for example, the term financial education and financial inclusion often are used interchangeably. A point to note, however, is that a few scholars have attempted to differentiate these terms. By developing strategies to increase consumer access to formal financial services, the regulatory agencies can help to reduce adult population currently excluded. However, the focus of the Nigerian government and regulators’ have often been on the number of individuals that use the services and those who are not (excluded). Accordingly, promoting and providing initiatives that bring the financially excluded towards inclusion is important, however, in order to ensure that the consumers understand the benefits of such measures, a number of initiatives are required. Financial education is one of those

⁴⁴⁷ OECD, *Improving Financial Literacy: Analysis of Issues and Policy* (2005), Washington D.C. OECD. 10,27

⁴⁴⁸ *ibid*, 12

⁴⁴⁹ *ibid*, 12, 13

⁴⁵⁰ OECD, *Improving Financial Literacy: Analysis of Issues and Policy* (2005), Washington D.C. OECD. 13

initiatives as observed by the Financial Inclusion Working Group of Ireland, and that could ‘bring members of the public towards financial inclusion’.⁴⁵¹ The Working Group further states that ‘successful financial education empowers people and gives them the knowledge and skills to make informed decisions about how they manage their money’.⁴⁵²

The financial regulators and the Nigerian government have also recognised the importance of improving consumers’ financial literacy.⁴⁵³ The term ‘financial literacy’ means ‘the possession of knowledge and skills by individuals to manage financial resources effectively to enhance their economic well-being’.⁴⁵⁴ Financial literacy initiatives are complementary to and not a substitute for financial inclusion or consumer protection measures. The Nigerian government has recently used the financial education initiatives as one of the major financial inclusion policies to promote access to financial services and financial literacy.⁴⁵⁵ In 2011 the CBN made a commitment to develop and implement a broad based program to reduce the number of financially excluded Nigerians from 46.3% in 2010 to 20% by the year 2020.⁴⁵⁶ Consequently, in searching for the most effective way of achieving this aim, the CBN developed and launched the National Financial Inclusion Strategy (FIS) in October 2012. This strategy identified issues such as consumer protection, dispute resolution and consumer education as crucial to the attainment of its goals.⁴⁵⁷ In January 2013, in order to assist the CBN to achieve the key implementation priority of the FIS, the CBN developed a Financial Literacy Framework (FLF). The CBN Consumer Protection Department has adopted one major approach, knowing that, the most effective way of improving the financial literacy levels of consumers of financial services are by using a range of approaches involving consumer education activities. One of these key approaches used by the Consumer Protection Department is the ‘Financial Literacy Mass Awareness and Sensitization campaigns’ which helped them to cover twelve States across six geo-political zones.⁴⁵⁸

⁴⁵¹ See Report of the Financial Inclusion Working Group on the Standard Bank Account Pilot Project June 2013 (updated in November 2013), 26

⁴⁵² Ibid, 26

⁴⁵³ See Central Bank of Nigeria, Financial Literacy, Consumer Protection and Financial Inclusion, Available at <<http://www.cenbank.org/Devfin/finliteracy.asp>> accessed 13 June 2016

⁴⁵⁴ This is the definition of ‘financial literacy’ as used in the website of the Central Bank of Nigeria.

⁴⁵⁵ For detailed discussion on financial inclusion in Nigeria, see Central Bank of Nigeria, Financial Inclusion in Nigeria: Issues and Challenges, Occasional paper No. 45 (August 2013); also the CBN website <<http://www.cenbank.org/Devfin/finliteracy.asp>>

⁴⁵⁶ See CBN, National Financial Inclusion Strategy, Available at <<http://www.cenbank.org/Devfin/finliteracy.asp>> accessed on 11 June 2016

⁴⁵⁷ *ibid*,

⁴⁵⁸ *ibid*,

Therefore, financial education should not be designed to complement various measures of promoting access to financial services. According to Good Practices for Consumer protection diagnostic tool, financial education, information and guidance can help consumers in various ways.⁴⁵⁹ For example, it can help consumers establish a reasonable budget and manage their income, avoid becoming victims of scam or fraud, enable them to save and invest and protect them from taking unnecessary risks.

The CBN, as part of its commitment to promoting a sound financial system in Nigeria, has embarked on school curriculum development to provide Financial Literacy Curriculum for primary and secondary schools in the country. This seems to be a step in the right direction; however, it may be too early to ascertain whether these measures will focus on the consumers' attitudes, information, skills and financial education. Accordingly, it could be argued that the CBN Financial Literacy Framework initiative (now National Financial Literacy Framework) aims to promote a national financial inclusion policy without covering basic issues. As it is not sufficient for consumers and potential consumers to only learn how to use the financial services, they also need to understand that they have to save, and the benefit of putting money aside on a regular basis for retirement. The question is whether these measures provide sufficient protection for the consumers?

Practically speaking, this initiative has no funding,⁴⁶⁰ the coordination of activities among the different agencies is lacking, which technically leads to gaps. Furthermore, in the researcher's view, the Financial Inclusion strategy has another problem with regards to how this financial literacy programme will reach the local government areas or rural communities without funding opportunities for consumer groups to access. This issue is not clarified with the National Financial Inclusion Strategy and needs urgent attention by the regulators. Obviously, putting financial literacy in the school curriculum may help the schools to touch lightly on consumer education but not enough to show widespread impact.

The next section (part two) will discuss consumer protection in Nigeria from the perspective of the government agencies responsible for coordination and enforcement in different areas in the market place.

⁴⁵⁹ The World Bank, Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool, ECSPP Working Paper 001(2010), 31

⁴⁶⁰ The Financial Inclusion Strategy has no 'Funding' either from the financial regulators or from the government. Questions may be raised regarding the way in which this laudable initiative will be finance.

PART TWO

4.6 Consumer Protection Legislation in Nigeria

4.6.1 Introduction to the Existing Legal Framework for Consumer Protection in Nigeria

The general purpose of consumer protection regulation is not only to ensure that consumers are treated fairly,⁴⁶¹ but also to ensure that there are appropriate mechanisms for resolving consumer complaints whenever they arise. While several regulations provide specific provisions for consumer protection in Nigeria, part two of this chapter focuses on the legislative assistance which the government offered through the establishment of some regulatory agencies.

In addition to these regulatory mechanisms are the public complaint commission and the consumer association regulatory mechanism. The aim is to determine the role of the institutions, and organisations involved in consumer protection and also, to understand whether the provisions of the law establishing them are adequate to protect consumers.

4.6.2 Legal and Institutional Framework

Nigeria like many countries around the world has legislation which generally protects consumers. The protection of consumers in Nigeria is under various legislations but the 'consumer rights' were not explicitly listed under any section in the major consumer protection legislation (Consumer Protection Council Act, 1992 as amended). The Consumer Protection Council Act is not a consumer rights based legislation like the Consumer Protection Act in South Africa.⁴⁶² Consumer protection in Nigeria, as in many African countries, has not been entirely responsive to development, in part due to lack of government interest and funding to encourage consumer organisations.

However, over the last 20 years, the Nigerian government has shown some interest in consumer protection through the promulgation of different Decrees to safeguard consumers from unethical business practices. There is a need for one to examine the three layers of government in order to understand the legal and institutional environment in which consumer protection operates. The federal constitution is the main authoritative law, followed by the State Laws and the Local Government By-laws.

⁴⁶¹ George J. Benston, *Regulating Financial Markets: A Critique and Some Proposals*, American Enterprise Institute for Public Policy and Research, (1999)

⁴⁶² Consumer Protection Act, No68 of 2008

The understanding of the current legal framework in Nigeria will require a brief discussion of the important changes that have taken place in the last few years. It is important to note that a huge stride was made in the development of consumer protection in Nigeria in the 1990s during the military regime. Prior to the 1990, there was no primary law in Nigeria which centres on a practical approach to enforce consumer rights. The Consumer Protection Council Decree of 1992 now referred to as Consumer Protection Act (CPA)⁴⁶³ was enacted. This Act which formed the basis of the legal framework for consumer protection in Nigeria created the Consumer Protection Council (CPC) to create consumer awareness and to handle consumer complaints. There are other legislations apart from the CPC Decree which also created regulatory agencies. They are as follows; the National Agency for Food and Drug Administration and Control Decree in 1993, The Standards Organisation of Nigeria (SON) established by Decree No. 56 of 1971, The Nigerian Communications Commission (NCC) under Decree 75 of 1992.

The Nigerian government in order to attain this aim has introduced measures which involve holistic mechanisms to ensure that consumers are protected by establishing different administrative agencies charged with the enforcement of consumer law in various areas. With the few administrative agencies of Nigeria, the consumer protection strategies tend to fulfil dual objectives, namely,

- either to prevent consumers from being ripped off, or,
- Provide a platform for consumer redress or compensation.⁴⁶⁴

The National Agency for Food and Drugs Administration and Control (NAFDAC)⁴⁶⁵ activities tend to be more focused on preventing adulterated medicines or drugs that could have harmful effects on consumers. The administrative procedures should be made available for consumers within the three tiers of government (the Federal, State and Local Authorities) in order to achieve these aims.

Having examined the main idea of administrative procedures from the consumer protection perspective, this part will attempt to examine the extent to which the administrative agencies have reduced unfair trade practices and enforced compliance in Nigeria. In other words, does the administrative procedure sustain the idea of reducing infringements on the rights of

⁴⁶³ Cap C. 25 LFN 2004

⁴⁶⁴ Etefia E. Ekanem, 'Institutional Framework for Consumers Protection in Nigeria' (2011) 2(1) International Journal of Advanced Legal Studies and Governance, 33, 37

⁴⁶⁵ The role of NAFDAC has been discussed in details in Section (4.6.4.3) of this chapter.

consumers? This part also aims to examine a few administrative authorities in Nigeria which are empowered to enforce different consumer protection law, in order to make some assessment as to the success of these measures. In doing so, this part will also evaluate the problems which these agencies face and whether much has been achieved through them. Considering the importance of consumer protection, this next section aims to examine the administrative regime and consumer protection in Nigeria.

4.6.3 Consumer Protection and the Administrative Regime in Nigeria

Nigeria has a federal system of government which consists of a three-tiered structure - the Federal,⁴⁶⁶ State⁴⁶⁷ and the Local Authority.⁴⁶⁸ Consumer protection regime in Nigeria was not designed to accommodate legal frameworks at both the federal and the state level.⁴⁶⁹ To start with, the main regulation that governs consumer protection concerns in product and services is the federal law.⁴⁷⁰ The Constitution of the Federal Republic of Nigeria applies to the whole country from the federal to the local authorities. This Constitution governs the relationship between the government agencies and citizens in one hand, and the citizens and government in another.⁴⁷¹

Generally speaking, the Constitution of the Federal Republic of Nigeria confers some obligations and rights which are similar to consumer protection. The principles of consumer protection and other citizens' rights tend to be implicitly drawn from chapter two and four of the constitution or administrative regulations.

The state acts as the protector of the people and uses the administrative measures to keep the societal order. The current constitution actually has extensive provisions containing the fundamental rights of all citizens. Some of these rights include; right to fair hearing, family

⁴⁶⁶ Nigeria operates a federal system of government which has three distinct branches: Legislative, Executive and the Judiciary. There are two legislative bodies, the Senate (with 106 Senators representing all the Senatorial zones) and the House of Representative (with 360 members elected from every state of the federation). These legislators make laws through the due process of the law. See Ufot B. Inamete, *Federalism in Nigeria: The Crucial Dynamics*, (Routledge 2008) 191, 195

⁴⁶⁷ There are 36 states in Nigeria with 774 Local Government Authorities or Council. Each state has (a legislative Assembly elected from all the council areas) the power to make some certain laws that can only be binding within that State.

⁴⁶⁸ The local authorities or council all enforce the laws made by the state. They have councillors elected from the entire council wards to represent the interest of the citizens.

⁴⁶⁹ There are no local legislation on consumer protection matters in Nigeria, See Etefia E. Ekanem, 'Institutional Framework For Consumers Protection in Nigeria' (2011) 2 (1) International Journal of Advanced Legal Studies and Governance 33,38

⁴⁷⁰ The Federal Law in simple terms means, the Constitution of the Federal Republic of Nigeria 1999. This seems to emphasise that every law derives its legitimacy from that particular countries' constitution.

⁴⁷¹ Constitution of the Federal Republic of Nigeria 1999, Chapter two

life, freedom of thought and freedom from discrimination.⁴⁷² An argument could be made that one of these rights⁴⁷³ have links with consumer protection.⁴⁷⁴ It is not surprising that, the right to a fair hearing within a reasonable time, which is enshrined in section 36(1) of the Constitution, epitomize the general CPC rights discussed under the Consumer Protection Council below.⁴⁷⁵ However, sometimes the right of consumers⁴⁷⁶ are partly mixed up with constitutional fundamental rights which perpetuate confusion and overlap. In Nigeria, the administrative agencies have an ‘undefined relationship’⁴⁷⁷ with other regulators which often leads to some confusion as to the actual role of the agencies.

In order to provide a clearer picture of jurisdictional overlap in administrative regime of consumer protection, this section focuses on four regulatory agencies, the Consumer Protection Council (CPC),⁴⁷⁸ the Standard Organisation of Nigeria (SON),⁴⁷⁹ the National Agency for Food and Drug Administration and Control (NAFDAC)⁴⁸⁰ and National Communication Commission (NCC).⁴⁸¹ These four prominent regulatory agencies were selected for the analysis in this study, because they are the most renowned and most easily recognised of the few regulatory agencies charged with consumer protection matters.

⁴⁷² Constitution of the Federal Republic of Nigeria 1999, Chapter four – Fundamental Rights

⁴⁷³ Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999

⁴⁷⁴ See Felicia Monye, Boniface Umoh, and Chinyere Chukwunta, ‘Research Report on the State of Consumer Protection in Nigeria: A Review of Consumer Protection in the Telecommunications sector in Nigeria’ (2014), <<http://www.consumersinternational.org/news-and-media/resource-zone/consumer-protection-in-nigeria/>> accessed 8 January 2017

⁴⁷⁵ Section 36 (1) states as follows; ‘In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.’

⁴⁷⁶ Right of Consumers’ are not explicitly stated in CPC Act 1992. One of the inherent weaknesses of the CPC act is lack of definition of consumers’ right and unclear relationship with other regulators such as the financial services regulators or supervisors.

⁴⁷⁷ Undefined relation in simple terms means that none of the Acts establishing these consumer protection agencies clearly made provision for co-operation or coordination among the agencies. It is in the sense that the term is used in the study.

⁴⁷⁸ ‘Consumer Protection Council (CPC) is a Parastatal of the Federal Government of Nigeria, supervised by the Federal Ministry of Trade and Investment. Though it was established by Act No. 66 of 1992, it commenced operations only in 1999, when its institutional framework was put in place’ <http://cpc.gov.ng/?page_id=865> accessed 3 August 2015.

⁴⁷⁹ ‘The Standards Organisation of Nigeria (SON) was established by an Enabling Act Number 56 of December 1971 - the Standards Organisation of Nigeria cap 412 of the laws of Federal Republic of Nigeria, with a commencement date of 1 January 1970, when the Organisation started to function. The Act has three amendments: Act Number 20 of 1976, Act Number 32 of 1984 and Act Number 18 of 1990’ <<https://trade.gov.ng/son/>> accessed 3 August 2015.

⁴⁸⁰ ‘NAFDAC was established by Decree 15 of 1993 as amended by Decree 19 of 1999 and now the National Agency for Food and Drug Administration and Control Act Cap N1 Laws of the Federation of Nigeria, 2004.’ <<http://www.nafdac.gov.ng/about-nafdac/nafdac-act>> accessed 3 August 2015.

⁴⁸¹ ‘The Nigerian Communications Commission is the independent National Regulatory Authority for the telecommunications industry in Nigeria. The Commission is responsible for creating an enabling environment for competition among operators in the industry as well as ensuring the provision of qualitative and efficient telecommunications services throughout the country.’ <<http://www.ncc.gov.ng/>> accessed 3 August 2015.

Accordingly, the Decrees⁴⁸² established the consumer protection agencies with elaborate functions and mandate with overlapping jurisdiction, functions, and no clear enforcement strategy. This fact partially explains why consumers tend to be reluctant to use the agencies. In order to address consumers' concerns where a consumer is not only dissatisfied, but reasonably believes that legal wrong has been committed, the measures for addressing them need to be cost effective, simple and expeditious.⁴⁸³

Clearly, the provisions of the laws establishing these administrative bodies, give the consumers the right to seek assistance and advice through the agencies. The question then is whether these administrative authorities are easily accessible and efficient in settling complaints and providing sufficient redress to consumers.⁴⁸⁴ These issues are discussed further in this section starting with the Consumer Protection Council (CPC) in the next section.

4.6.4.1 Administrative Law: The Role of the Regulatory Agencies

There are three kinds of administrative agencies – the Standard Organisation of Nigeria (SON), National Agency for Food and Drug Administration (NAFDAC) and Consumer Protection Council of Nigeria (CPC), established by the government to carry out matters of consumer protection in Nigeria. This section will assess the provisions of the statutes individually. It will also explore the challenges the consumers often face while enforcing their rights.

⁴⁸² The Federal Military Government of Nigeria enacted the decree which was initially intended to provide legal infrastructure necessary to engender consumer protection in different sectors that needed urgent attention in 1990s. These decrees are as follows: Consumer Protection Council Act, Degree No 66 Of 1992 was enacted by the military administration of General Ibrahim. B. Babangida in 1992. The Nigerian Communications Commission was created in November 1992 by the same military administration under decree No. 75; National Agency for Food and Drug Administration and Control (NAFDAC) was established by NAFDAC Decree 1992 and The Standard Organisation of Nigeria (SON) was promulgated by Decree No. 56 of 1971. See Benedict Bakwaph Kanyip, *Consumer Protect in Nigeria: Law, Theory and Policy*, (Rekon Books Limited 2005) 302,307

⁴⁸³ See Adedeji Adekunle and Shankyula Tersoo Samuel, *Law and Principles of Consumer Protection*, (Nigeria Institute of Advanced Legal Studies 2013)490

⁴⁸⁴ In Nigeria, the power to redress wrong or injuries to consumers can be either through the Court or administratively by one of the agencies depending on the type of offence. The court system can issue penalties to the offending institution or organisation but the penalties goes straight to the court funds not the consumer. The administrative agencies for example the NAFDAC Act does not contain any provision to make compensation order in favour of consumers in addition to penalties which does not go to the consumers. See Adedeji Adekunle and Shankyula Tersoo Samuel, *Law and Principles of Consumer Protection*, (Nigeria Institute of Advanced Legal Studies 2013) 370

4.6.4.2 The Standard Organisation of Nigeria (SON)

The organisation was established by Decree No. 56 of 1971 as amended by Decree No. 32 of 1984 and at present, the SON is regulated by Cap 412 Laws of the Federation.⁴⁸⁵ The primary aim of promulgating this Decree was to establish an organisation within the Federal Ministry of Industry with key responsibility for preparing standards, specifications and to ensure that the quality of the locally manufactured and imported products and services generally comply with the Government policy on standards. In 1984, Decree No. 32 changed the name of the Organisation to Standards Organisation of Nigeria (SON) from Nigeria Standards Organisation (NSO) to avoid the conflicting identity with the then Nigerian Security Organisation. Subsequently, the Decree No. 18 of 1990 granted the SON a partial autonomy from the Ministry of Industry with status of a corporate body and a common seal capable of suing and being sued.⁴⁸⁶

Generally, section 3 and 4 spells out the functions of the organisation. In the following, the functions include to advise the federal Government generally on the national policy on standards, standards specifications, quality control and metrology; to designate, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry; to provide the necessary measures for quality control of raw materials and products in conformity with the standard specification; to organise tests and ensure compliance with standards designated and approved by council; to undertake investigations as necessary into the quality of facilities, material and products in Nigeria, and establish a quality assurance system including certification of factories, products and laboratories; to ensure reference standards for calibration and verification of measures and measuring instruments.⁴⁸⁷

Note that in considering the aforementioned functions of the organisation the issues of mandate and the scope of coverage is not clearly defined. Kanyip goes even further by arguing that ‘the SON enabling statute reveals that the mandate of the SON relates to only products’.⁴⁸⁸ It is possible to envisage that the products in question are consumer durables which do not include bank or financial products. The fact that the mandate of the SON did not expressly provide whether or not it covers the regulation of financial services, the

⁴⁸⁵ SON Act Cap. LFN 2004

⁴⁸⁶ For more elaborate discussions see, About SON, available at <<http://son.gov.ng/about-us/>> accessed on 3 July 2016; Section 2 of SON Act Cap. LFN 2004

⁴⁸⁷ Section 5 of SON Act Cap LFN 2004

⁴⁸⁸ Benedict Kanyip, Consumer Protection in Nigeria, Law, Theory and Policy, (Rekon Books 2004), 306

organisation often perceives its mandate to be elastic. The following may, *inter alia*, cause duplication of responsibilities and confusion for consumers.

4.6.4.3 The National Agency for Food and Drug Administration (NAFDAC)

The NAFDAC is a government corporate agency which can sue and be sued in its corporate name.⁴⁸⁹ The NAFDAC was established by Decree No. 15 of 1993⁴⁹⁰ to deal with most of the functions of the former Food and Drugs Administration and Control Department (FDAC) of the Ministry of Health. The Agency has some functions similar to the one conferred on the former FDAC by Drugs Act. However, it is worth noting that, the functions conferred on the NAFDAC by the enabling Act is a little more extensive than the FDAC.

Some of the mandate of the NAFDAC includes regulating and controlling the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals.⁴⁹¹ The Decree provides for standard specifications and guidelines for the production, importation, exportation, sale and distribution of food; undertaking inspection and registration of products and undertaking measures to ensure that the use of narcotic drugs and psychotropic substances are limited to medical and scientific purposes.⁴⁹²

Generally, the enabling Decree provides for penalties and administrative fines for any person who contravenes the provisions of the regulation. It provides for a fine of N5,000 or imprisonment for a maximum of two years or both.⁴⁹³ Section 25 (4) provides for the fining of corporate organisations or any person purporting to act in their capacity contravening the provisions of the regulation.⁴⁹⁴

The fact that the penalties are not severe indicates that the enabling Act does not give the Agency much power to deter the sale and distribution of fake drugs in Nigeria. More so, the Act which was promulgated as a Decree does not contain basic offences.

⁴⁸⁹ Section 1 of NAFDAC Decree of 1993

⁴⁹⁰ The National Agency for Food and Drugs Administration and Control Decree No. 15 of 1993

⁴⁹¹ Section 5 (a) of NAFDAC Decree of 1993

⁴⁹² Section 5(J) of NAFDAC Decree of 1993

⁴⁹³ Section 25(1) of NAFDAC Decree of 1993

⁴⁹⁴ Section 25(4) of NAFDAC Decree of 1993

4.6.5 The Consumer Protection Council of Nigeria (CPC)

The Consumer Protection Council (CPC) was created by the Consumer Protection Council Decree of 1992⁴⁹⁵ given the prevalence of consumer abuse and the widespread lack of control against hazardous products in Nigeria. The CPC Decree established the Consumer Protection Council (CPC) and mandates it with responsibility to protect consumers against hazardous products.⁴⁹⁶ The Act also spelt out the functions and the powers of the Council which includes providing speedy redress to consumers' complaints through negotiations, mediation and reconciliations.⁴⁹⁷

The CPC's other important responsibilities include publishing from time to time a list of products whose consumption and sale have been banned, withdrawn, severely restricted or not approved by the Federal Government or foreign governments.⁴⁹⁸ To cause an offending trader to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies, that are inherently harmful, injurious, violent or highly hazardous.⁴⁹⁹ Removing or eliminating from the market, hazardous products and causing offenders to replace such products with safer and more appropriate alternatives.⁵⁰⁰ Organise and undertake campaigns and other forms of activities as will lead to increased public consumer awareness.⁵⁰¹

Encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers;⁵⁰² issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligation under this Decree;⁵⁰³ encourage the formation of voluntary consumer groups or associations for consumer well-being.⁵⁰⁴ The Council has been mandated to perform such other functions as may be imposed pursuant to the Decree.⁵⁰⁵ The CPC Act created a State Committee to

⁴⁹⁵ CPC Decree No. 66 of 1992, now Consumer Protection Act (CPA) Cap C. 25 LFN 2004.A 'Decree' is any law made at the Federal level during the Military Era but any law made at the State level is called 'Edict.' When there is a change of government or democracy the 'Decree' immediately change to 'Act' and the State 'Edict' change to 'LAW.' The local authority becomes 'By-Law.' This study uses the word interchangeably because most of the Consumer Protection Decree was enacted during the Military regime or era.

⁴⁹⁶ Sections 2-8

⁴⁹⁷ *ibid*, Sec. 2(a)

⁴⁹⁸ *ibid*, Sec. 2(C)

⁴⁹⁹ *ibid*, Sec. 2(d)

⁵⁰⁰ *Ibid*, Sec. 2 (b)

⁵⁰¹ *ibid*, Sec. 2(e)

⁵⁰² *ibid*, Sec. 2(f)

⁵⁰³ *ibid*, Sec. 2(g)

⁵⁰⁴ *ibid*, Sec 2(h)

⁵⁰⁵ *Ibid*, Sec. 2(k)

assist the Council in performing these tasks at the State level. It provides for the State Committee to receive complaints from consumers and investigate the complaints and act on them.⁵⁰⁶

The creation of the Council was considered as a milestone in the history of consumer protection in Nigeria. It could be argued that the CPC Act does not have provision specifically pegged as consumer rights.⁵⁰⁷ Like many other agencies promulgated by Decree in the 1990s, the rights of consumers tend to be subsumed in the CPC functions and also into the duties it assigned to the State Committees. The CPC powers and functions recognized the conventional rights as it is illustrated in the United Nations Guidelines for Consumer Protection.⁵⁰⁸

In general, these rights though not explicitly defended or stated in the Act include the right to be informed, right to safety⁵⁰⁹ and right to be heard. It has been argued that the CPC is mainly product focused and its definition of ‘consumer’ covers only individuals and not corporations.⁵¹⁰ It could be argued that the use of the term ‘individual’ in the definition above does not prevent action by a group of consumers or community⁵¹¹ having suffered a loss or injury as a result of their use of products or services.

The meaning of the community has caused some difficulty for consumer lawyers, and researchers. Some scholars argue that the provision for redress available to individual consumers extends also to ‘community’ therefore creating opportunity or possibilities for class action.⁵¹² It might be argued that the term ‘community’ as used in the Act has no

⁵⁰⁶ CPC Act, Sec. 4(1)

⁵⁰⁷ See Kamarudeen B. Bello, Jamila B. Suleiman, Ibrahim Danjuma, ‘Perspectives on Consumerism and Consumer Protection Act in Nigeria,’ (2012) 4(10) *European Journal of Business and Management* 72,74; Adedeji Adekunle and Shankyula T. Samuel, *Law and Principles of Consumer Protection*, (Nigeria Institute of Advanced Legal Studies 2013) 487

⁵⁰⁸ The United Nations declaration of 1985 expressly illustrated the basic rights of consumers which is completely absent from the assumed rights in Nigerian law. The Guidelines on Consumer Protections is illustrated on the Consumers International web site which CPC is a member. See <<http://www.consumersinternational.org/who-we-are/un-guidelines-on-consumer-protection/>> accessed 4 August 2015

⁵⁰⁹ The right to safety could be seen through the CPC duty to protect consumers from hazardous products. See S. 2 and 3

⁵¹⁰ CPC Act, S. 32, defines “consumer” as an individual who purchases, uses, maintains or dispose of product or services.

⁵¹¹ S. 6(1), here the Act states that ‘A consumer or community that has suffered a loss, injury or damage as a result of the use or impact of any good, product or services may make a complaint in writing to seek redress through a State Committee.’ See Felicia Monye, *Law of Consumer Protection*, (Spectrum Books Limited 2003) 55, 62

⁵¹² See Felicia Monye, Boniface Umoh, and Chinyere Chukwunta, ‘Research Report on the State of Consumer Protection In Nigeria: A Review of Consumer Protection in the Telecommunications sector in Nigeria’

connection with class action since the Act did not define the meaning of community. Even if consumers or the community seek redress through the State Committees, this does not mean the Committee will pursue the case on their behalf in practice. A further argument that is often put forward is that there is no provision in the Act that clearly mark consumers' right to just and reasonable terms and conditions.⁵¹³ This should be an important element in the battle against unsuitable or defective products which is a common factor affecting Nigerian consumers. The suppliers of goods and services often hide behind different clauses⁵¹⁴ when refusing to refund consumers or intentionally producing defective products, knowing that consumers have no right to return defective products or to seek a refund.

This researcher opines that limited enforcement capacity and the lack of elaborate redress systems precisely dedicated to consumer concerns, presents significant difficulties to Nigerian consumers. It is appropriate at this point to say a few things about the need for effective enforcement machinery, which is more beneficial to the interest of the consumers than the proliferation of regulatory agencies. The CPC states that one of its functions is to provide speedy redress to consumer complaints through mediation, negotiation and conciliation.⁵¹⁵ As well as to provide redress to obnoxious practices or the unscrupulous exploitation of consumers by companies,⁵¹⁶ Monye⁵¹⁷ argues specifically that;

[...] section 6 provides that a consumer or community that has suffered loss, injury or damage as a result of the use or impact of any product or service may make a complaint in writing to or seek redress through a State Committee. By section 7, the State Committee may take such action as it deems reasonable and just in the circumstance. This provision is rather evasive as there is no compulsion on the part of the committee to take any action.

It seems likely that the use of this agency may not be a viable option for consumers as they have no choice to tell the State Committee what they want and the CPC cannot institute an action on its own, without going through the Attorney-General to institute action.⁵¹⁸ The fact that this provision does not tell the consumers how the CPC may obtain redress for them,

(2014),pp.10; available at < <http://www.consumersinternational.org/news-and-media/resource-zone/consumer-protection-in-nigeria/> > accessed on 17/10/2017

⁵¹³ *ibid*,

⁵¹⁴ Caveat Emptor is one of the common clauses used by traders to avoid refund even when the buyer cannot read or write.

⁵¹⁵ CPC Act 1992, S. 2(a)

⁵¹⁶ Section 2(i)

⁵¹⁷ Felicia Monye, *Law of Consumer Protection*, (Spectrum Books Limited 2003) 62

⁵¹⁸ This provision is also tied in under s. 16 where the CPC can request the Attorney-General to institute action against any offender who refused to comply with a given order.

does not help consumer awareness of what they can expect from the State Committee. As explained in the section above, one of the challenges consumers face is having limited redress options and this also includes information about what they can do if they are not satisfied. By raising awareness of the existence of the Council, State Committee, their powers and functions, the consumers will be able take a decision about whether to make a complaint to the State Committee or go the court if they have the means to do so. In making a complaint to the State Committee, consumers have no right to go to court until the outcome of the State Committee, which has no time limit or guideline.

However, some consumer protection scholars have criticized the role of Council or the State Committee in consumer protection in Nigeria. Muhammed Tawfiqladan⁵¹⁹ observed that ‘the procedure for obtaining redress is cumbersome due to its indirect approach, especially for the illiterate or uninformed consumers, which the majority of Nigerian consumers are.’ An additional concern or problem that affects the role of the Council or State Committee is that many of its provisions are too unfeasible to speed up compliance action on erring manufacturers, companies or traders.⁵²⁰ First, a consumer who has concerns about his products or services (if he is aware of the administrative process) may take his complaint to the Council or State Committee at their state headquarters office, as there are no such services at a local level. The Council or State Committee may therefore, investigate the matter or be compelled to apply to court where the product is considered to constitute a public hazard.⁵²¹ Arguably, the absence of the provision conferring the duty to prosecute in all cases relating consumer abuse is what has hampered the efficiency of the agency to some extent. Secondly, the consumers could seek redress through the civil court. Although the court provides essential measures for obtaining redress in consumer cases, it is questionable how effective this practice is when a consumer is considered not to be a party in the proceedings under the criminal justice system in Nigeria.⁵²²

⁵¹⁹ Muhammed Tawfiqladan, ‘The Limits of Legal and Enforcement/Regulatory Framework in Consumer Protection Against Counterfeit and Pirated Products-The Nigerian Experience’ (2008) 2(1) Review of Nigerian Law and Practice 3, 31

⁵²⁰ S. 2(b) of CPC Act, states that the Council will force offending company to replace hazardous goods from the market and replace it with safer products. It is not clear how long this will take and the means the Council or State Committee could to achieve this lofty aim without causing harm to 170 million consumers Nigeria. It is also noted that not all the 36 States of the Federation have State Committee.

⁵²¹ Section 3(b) CPC Act

⁵²² Where a consumer brings a matter to the court, the offender will be liable on conviction to fine or imprisonment. This case is often between the state and the offender and if convicted the money (fine) goes the court account and the consumer receives nothing. See Joseph Nwobike, ‘Legal Regime for the protection of

A further but related concern is that court powers to make orders for compensation are unrealistic and even when the court wants to make the order, it will consider the respondents means or ability to pay.⁵²³ It is probably necessary to mention that the compensation order does not apply to civil matters. However, it is acknowledged that the prosecutors which consist of the State Counsel at High Courts and the Police Officers at the magistrate courts are not formally trained on consumer matters; they are often interested in prosecuting capital offences rather than consumer cases.⁵²⁴ Ekanem⁵²⁵ observes that ‘consumer protection appears to be a concept that is yet to be fully acknowledged by the court.’ In fact, as he admits that the attitude of the court to consumer protection in Nigeria can be considered as ‘a product of hasty conclusion’.⁵²⁶ However, to date this CPC is far from meeting its initial objectives. It is with the lack of a broader range of alternative redress mechanisms and administrative agencies,’ limited powers of prosecution in consumer cases that this study is concerned. This issue of the agencies’ efficacy and weakness is discussed further in the section on, assessment of the role of the CPC.

4.6.5.1 The role of the CPC

The role of the Council is broadly esteemed though, in furthering enforcement there are four considerations that need to be stressed in this section. First, the Act mandates the establishment of the CPC at the Federal level and a State Committee in each state of the federation,⁵²⁷ with a view to providing awareness and resolving consumer conflicts. However, the provisions in the Act does not provide for establishment of a three-tier structure reflecting the Federal, the State Commissions and the Local Authority but rather two (Federal and State).⁵²⁸ To enhance the CPC regulatory roles, the Act should endeavour to establish

Consumers of Financial Services in Nigeria’ (2000) Seminar in part fulfilment of PhD requirement, Obafemi Awolowo University Ile – Ife.

⁵²³ Section 13 (2) of Criminal Code also makes it clear that anyone who commits an offence, it is considered automatically as State offence. If a consumer reports a trader or producer for breaking criminal consumer law, it automatically turns to offence against the State. In such a situation, the consumer will not be given any compensation from the offending party even when he is convicted. He could file a compensation order but the Judge will only award the order by considering the offender’s ability to pay because the compensation condition is not based on the loss or injury suffered by the complaints. See Section 13(2) of C. 25 of LFN 2004

⁵²⁴ See Joseph Nwobike, ‘Legal Regime for the protection of Consumers of Financial Services in Nigeria’ (2000) Seminar in part fulfilment of PhD requirement, Obafemi Awolowo University Ile – Ife.

⁵²⁵ Etefia E. Ekanem, ‘Institutional Framework for Consumers Protection in Nigeria’ (2011) 2 (1) International Journal of Advanced Legal Studies and Governance 33,38

⁵²⁶ *ibid*, 38

⁵²⁷ Sec. 4(1) CPC Act 1992

⁵²⁸ In Nigeria, the federal system of government consists of the Federal, State and the Local Authority. In that case the consumer protection has to cover the three-tier – federal, state and local council. For a consumer complaint to be dealt with by the CPC it must be made available to the third-tier (local council or authority)

‘Local Forums’ (in all the Local Government Areas in Nigeria). This will not only help to speed-up consumer dispute resolution at a local level but also to bring services closer to people living in rural areas. Despite this Act coming into force in 1992, the provision pertaining to the State Committee was not executed until 2000, when the Council inaugurated the first two State Committees.⁵²⁹ After many years, the Consumer Protection Council commenced establishing further State Committees; to date this has not been fully achieved. Even after 23 years there are few State Committees and CPC offices at geo-political zones. The difficulties consumers face in accessing State Committees can be summed up by the following statement of the Consumer Protection Council Director General:

‘Beyond our offices in the geo-political zones like Osogbo, Port Harcourt and other places, the council is looking at the possibility of opening offices in more states for easy accessibility to consumers’.⁵³⁰

As noted above, the Act provides for establishment of ‘only one State Committee’ in each state, which means that this office, with a limited number of staff is expected to serve more than 20 million consumers living in most states. For example, Lagos State has a population that is over 20 million but there is only one CPC office with few staff. It is clear that the CPC will need to address this issue in a number of ways, and that opening of offices in all the states should contribute immensely to the Council’s objectives. The CPC Act does not have provision for and did not provide for any new enforcement mechanisms, such as tribunals or consumer courts.

According to section 2(f) of the CPC Act, the Consumer Protection Council is responsible, in the interest of the consumers, for encouraging the establishment of trade and professional consumer associations.⁵³¹ Critical questions arise, such as, what is meant by the requirement in the Act to ‘encourage trade, industry and professional associations to develop’? Does the CPC have the authority to fund the professional associations? If the answer is no, then how can the associations perform the expected obligations without financial incentives from the government? The problem in Nigeria is that there is no funding for consumer associations and legal aid does not cover consumer matters. This issue of funding for consumer

which is where most of the consumers live. There is potentially a very wide gap in the provision that established the CPC under two scopes (federal and state) and excludes the local council. See Section 4 CPC Act.

⁵²⁹ Mukhtar Halliru, ‘The Development of Consumerism in Nigeria: Prospects and Challenges’ (2012) 1(4) International Journal of Arts and Commerce 274, 280; Felicia Monye, ‘Consumer Protection and ADR’ 27 October 2006, <http://pubcit.typepad.com/clpblog/2006/10/consumer_protec.html> accessed 20 August 2015.

⁵³⁰ Raheem Akingbolu, ‘Consumer Expectation for 2014’ (3 January 2014) <<http://www.thisdaylive.com/articles/consumers-expectation-for-2014/167845/>> accessed 20 August 2015

⁵³¹ CPC Act, 199, s. 2(f)

associations is crucial, given the need to assist consumers who cannot challenge traders due to lack of resources.

Many countries provide financial assistance to the consumer and professional associations. For example, the Citizen Advice Bureau (CAB) in the UK and Consumer Society of India have access to funding both at the national or local council level, enabling them to carry out some work that can protect and empower consumers. It is obvious that the effort of these organisations needs to be financially strengthened to enable them to assist consumers.

4.6.5.2 Consumer Remedies under the CPC Act

The remedy under the CPC Act provides very little alternative in addition to the limited option that is available to injured consumers by way of civil action. The Act does not make any provision for consumers to appeal to the Council at the federal level if they are not satisfied with the decision of the state committee. The only alternative option for the consumer is the civil suit and there is no provision clarifying any court fees which the consumer may be required to pay.⁵³² If the consumer is dissatisfied with the Council or State committee decision and he or she does not have money to file the case in court, there is no further remedy for the consumer. It remains to be seen how effective this agency will be when the only alternative they have is to point the consumer towards court without making any provision for services of an advocate or legal aid. Obviously, this issue need to be adequately reviewed, primarily to (provide adequate avenues for consumer complaints) protect consumers.

4.6.5.3 Drafting flaws in the CPC Act

This is one of the consumer protection legislation enacted by the Military government.⁵³³ Although this is the most fundamental consumer protection legislation in Nigeria so far, it does suffer from a number of flaws. The Consumer Protection Council (CPC) Act, enacted in 1992 tends to focus on the establishment of ‘the Council’ rather than the ‘protection of the consumers.’ One interesting provision in this Decree which supports this claim is found in Section 1(1) which states:

⁵³² This has been compounded by the absence of small claim courts and the court’s requirement for filing cases with fees.

⁵³³ The Military government enacted most of the Decree that established various the consumer protection agencies in Nigeria in the 1990s.

There is hereby established a council to be known as the Consumer Protection Council (in this Decree referred to as “the Council”) which shall be a body corporate with perpetual succession and a common seal and with power to sue and be sued in its corporate name.

This relates closely to the purpose of the Act, as there is no stated purpose of the Act. There is need to ensure that consumers can bring complaints where they have suffered a loss, injury or damage and that is what this Act has done. The Act is a right step in the right direction for the protection of Nigerian consumers, although it was a Decree, it does not seek to emulate the existing examples from developed economies. This study does not propose to provide comprehensive details on the numerous criticisms levelled against CPC Act, as it will be of little practical relevance and so most of them tend to focus on the composition of the Council and State Committees.⁵³⁴ This study is interested in the areas where CPC Act has failed or, is not particularly clear and is causing difficulties for the consumers which it is intended to protect. It is noted in this study that one of the major weaknesses in the Act is that it does not apply to notices and contracts between a ‘consumer’ and a ‘trader’.

A ‘consumer’ is defined in this Act as “an individual, who purchases, uses, maintains or disposes of product or services”.⁵³⁵ Thus, in general, it seems that the definition of ‘consumer’ in the Decree is unclear as to who it seeks to protect.⁵³⁶ In particular, it can be seen that the act of using words such as ‘maintains’, and ‘disposes’ is unclear. The choice of these words does not demonstrate whether the Decree applies to all consumers, or much wider categories of persons than the individual consumers. The absence of clarity in this area could lead to uncertainty especially in the interpretation of the causes. These flaws call into question the effectiveness of the Decree in relation to the protection of consumers and its implementation.

The definition would have been perfect for our purposes, *albeit* a little wide and it focuses more on individuals. Apparently, we have to take into account the fact that much has changed since 1992 when the Decree was enacted and the scope of protection for all consumers is fundamentally insufficient.

⁵³⁴ See Felicia Monye, *Law of Consumer Protection*, (Spectrum Books Limited 2003) 57, 58

⁵³⁵ S. 32 of CPC Act - Cap 25, LFN 2004.

⁵³⁶ Benedict B. Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy*, (2004) Bekon Books Ltd 17, 19; Ajai O. Olawale, ‘Caveat Venditor! Consumer Protection Decree No. 66 of 1992 Arrives in the Nigeria Market Place’ (1992-93) *Nigerian Current Law Review* 23, 30.

It seems that the limited list of interpretations or definitions in section 32 may have played a vital role in bringing about confusion in the meaning of some ‘words’ used in the Act. Obviously, the problem with this particular section is that since the Act does not define ‘Supplier’, it is not clear whether government owned business entities like the utility companies were exempted by this Act. Under the various consumer protection laws discussed above, victim or consumer compensations have typically not been provided for. Provisions are limited to a ‘fine’ which is a criminal penalty and not every consumer has access to redress mechanisms. These issues are further highlighted in the section below.

4.6.5.4 The Consumer Protection Council of Nigeria: Gaps in Composition and Structure

The CPC Act, 1992 established the Consumer Protection council as a corporate entity which can sue and be sued in its corporate name but also a Federal Government Agency.⁵³⁷ The CPC is headed by a Chairman to be appointed by the President, commander-in-Chief of the Armed Forces on the recommendation of the Minister;⁵³⁸ the Council is to be composed of one person from each State,⁵³⁹ and four other persons representing four Federal Ministries.⁵⁴⁰ The Chairman and the members of the Council shall hold office for a period of three years but can be removed at any time by the president. The decree also envisages the establishment of a State Committee to assist the Council in each state of the Federation.⁵⁴¹ However, to date, not all the States in Nigeria have established State Committee.

Rutledge et al emphasis that “the government and state agencies should consult with consumers, industry associations and financial institutions to help them to develop programs that meet consumers’ needs and expectations.”⁵⁴² According to Rutledge et al, one of the good practices for consumer protection (whether in policy making or enforcement and compliance) is the active involvement of consumers and other stakeholders. The CPC Act, 1992 established the Council without providing for the involvement of stakeholders, most

⁵³⁷ Section 1 of CPC Act, 1992

⁵³⁸ Section 2 of CPC Act

⁵³⁹ This means that there must be 36 persons representing the 36 States of Nigeria on the recommendation of the Governor of each State.

⁵⁴⁰ The four Ministries are as follows: Commerce and Tourism, Industries and Technology, Health, and Petroleum Resources.

⁵⁴¹ S.4 of CPC Act, 1992

⁵⁴² Rutledge S, Annamalia N, Lester R and Symonds R, Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool, (2010) ECSPF Working Paper 001, World Bank, 34

especially the consumers and the private sector.⁵⁴³ The non-involvement of stakeholders and consumers in the Council can affect the enforcement and compliance of relevant rules in the market place. Monye asserts that a 42-member Council is certainly too much and could be counter-productive.⁵⁴⁴ Though the Act provides that each State should produce one person on the recommendation of the State governor, it did not mention the criteria for the selection or the qualification of such a member.

Apart from the gap in relation to a lack of stakeholders' representation, there are other notable defects in the structure and composition of the Council. Firstly, the composition of the State Committee is also problematic. Section 4(2) provides that the State Committee shall consist of the following persons;

- (a) three members to be nominated by the Governor of that State one of whom shall be the Chairman of the State Committee and the remaining two persons to represent other diverse interest; and
- (b) two other members to be appointed by the Minister one of whom shall be the professional officer in charge of the Ministry of Commerce and Tourism in the State who shall act as the Secretary of the State Committee.

It could be argued that the provision of the Act under section 2(2) is open to abuse by the State Governors. It is interesting to point out that in practice the State Governors are using the position to compensate the politicians (members of their political party), rather than experts who will provide required services to consumers. It should be noted that there are no provisions in the Act that mentioned whether the State Committee office will be under the state or federal government.

Even though the law envisaged the establishment of the State Committee, it was unclear how this would be funded. These challenges obviously affect the work of the State Committee in all states with a CPC office. It goes without saying that the promulgation of the CPC Act and the establishment of the CPC in Nigeria, were developed to provide an avenue for protection of consumers in urban areas. There is no doubt that the Act does not provide statutory and institutional avenues for protection for all Nigerian consumers.

⁵⁴³ It is to be noted that the CPC Act, 1992 which was promulgated as a Decree without provisions in relation to representation or involvement of stakeholders and consumers.

⁵⁴⁴ Felicia Monye, *Law of Consumer Protection*, (Spectrum Books 2003), 58

4.7 The Remedies under the CPC Act

4.7.1 Civil Remedies

Generally, an aggrieved consumer can channel his complaints to the CPC or go directly to service providers or producers. Section 8 of the CPC Act requires the CPC to impose some remedies for consumers' whose rights have been violated. By all standards, consumers of banks can, to a reasonable extent enforce their common law and statutory remedies. Generally, there are some consumers that naturally or logically may decide not to enforce their remedies. However, a lot of factors will determine whether or not these consumers will be willing to enforce their rights.

4.7.2 Administrative

Under the CPC Act, two classes of remedies are obvious, namely civil and criminal remedies.⁵⁴⁵ Undoubtedly, the civil remedies directly benefit the consumer while the criminal is meant to punish the offender. The Act further provides several ways in which the consumer can through administrative measures file a complaint to the agencies responsible for administering the laws for the purpose of enforcing consumer rights in the banking sector. For example, the Subcommittee on Ethics and Professionalism⁵⁴⁶ may possibly, in resolving disputes between the financial services providers and their customers, order the banks or the financial institution to refund the customer. This means that the subcommittee can administratively force the financial provider to pay compensation. The subcommittees are not tribunals and as such may not have the statutory powers to make compensation orders. However, it is worth noting that, the Subcommittee's decision can be challenged in a court of competent jurisdiction as they have no statutory authority to make a compensation order. Another challenge the consumers or customers may face if they want to enforce their rights is the requirement to pay fees before filing a case in the subcommittee.⁵⁴⁷

The CPC Act⁵⁴⁸ provides extensive protection from market hazardous products.⁵⁴⁹ This statute empowered the Council to provide speedy redress to consumers' complaints through

⁵⁴⁵ Apinega S, Consumer Protection and Remedies in Nigeria: An appraisal, in Adekunle A and Shankyula T, (eds), Law and Principles of Consumer Protection, (NIALS 2013), 491

⁵⁴⁶ The Subcommittee on Ethics and Professionalism was established on 19 December 2000 by Bankers' Committee to foster discipline in the profession.

⁵⁴⁷ One of the Subcommittee's requirements for handling cases is that 'payment of a non-refundable deposit of N50, 000 or 5% of claim'. Anyone that is lower. See Banker's Committee, Available at <http://www.cibng.org/cb_ethics.asp> accessed on 21 May 2016

⁵⁴⁸ Consumer Protection Council Act No. 66 of 1992; Cap C25, Vol, 4, LFN 2004

negotiation, mediation and conciliation; to encourage the formation of voluntary consumer groups or associations for consumers' wellbeing. Even the additional function of mandating the Council to form consumer associations has not made a significant change, because of the limited budget of the agency and the bureaucracy involved with government agencies.

There are however, prospects for these consumer association to assist consumers who may need assistance to enforce their rights, which will ultimately lead to more protection for consumers of banks and other products. The most common challenges to enforcing remedies for consumers of banks, occur when they live in the rural communities, the nearest Consumer Protection Council office is at the State headquarters, some are not able to read or write and are probably disabled. Under section 6(1) of the Act, the Council requires that any consumer who has suffered a loss shall make a complaint in writing. The Act further stipulates that the State committee shall assist for free those consumers who have an interest in a matter but are unable to write due to illiteracy.⁵⁵⁰

There are also additional protections under section 8 for consumers whose rights have been violated by way of trade, provision of services, supply of information or an advertisement, thereby causing the consumer loss or injury. In addition to the redress which the State Committee will provide, subject to the approval of the Council, consumers have a right of civil action for compensation or restitution in any court of competent jurisdiction.⁵⁵¹ It is interesting to point out that section 8 of this Act is the only consumer protection provision that mentioned 'right of civil action for compensation or restitution' in court with a condition. It is however, not clear whether the Council will assist the consumer to get restitution in court and if this will amount to the offender defending two legal actions at the same time for one offence or not. Even if the Council will assist, the following questions still remain: Why would the consumer need to go through this double process to get compensation? Do administrative penalties have more deterrence effect on consumer law violations than the criminal penalties? To answer or understand these questions, the next sub-section will briefly examine the judicial and criminal remedies.

⁵⁴⁹ CPC Act, 1991 (as amended), s. 2

⁵⁵⁰ CPC Act, 1991 (as amended), s. 6(2)

⁵⁵¹ CPC Act, 1991 (as amended), s. 8

4.7.3 Judicial Remedies

The affordability of the remedies under the CPC Act is also a measure of its effectiveness. As noted above, the majority of the remedies available to consumers in Nigeria are criminal based. In the event of violation of consumer rights, the civil remedies available to consumers through a judicial process are mostly compensation. The most radical change in the history of consumer protection legislation is the introduction of the ‘right to civil action for compensation or restitution in any competent court.’⁵⁵² For example, under section 8 of CPC Act of 1992, the consumer whose right has been violated may exercise his right to civil action for compensation in addition to redress provided by the State Committee, though subject to the approval of the Council.

Section 13 goes further to state that: A court by or before which a person is convicted of an offence may in addition to dealing with such person in any other way, make an order (in this Act referred to “as compensation order”) requiring the person to pay compensation for any personal injury, loss or damage resulting from that offence of such amount as it may deem fit or as assessed by competent professional authority.⁵⁵³

Based on this understanding, the assumption could be that consumers, whose rights have been violated, have two routes to obtain compensation. First, the consumer can take a personal action against the person who violated his rights or made him sustain loss, depending on the nature of the claim. A consumer can do this by filing a case in court. An important point to emphasise, albeit briefly at this stage, is that it is important for the consumer to understand the nature of the claim and in which court to file the case. There are several difficulties with this option because the consumer can only seek relief in contract and tort. The victim consumer can file the case either at the High Court, Federal High Court or Magistrate Court depending on the nature of the claim. Filing such a case in any of the above mentioned courts requires the services of a lawyer and will incur legal fees. Consequently, when the effort and time spent to pursue this matter in a civil court exceeds the amount of the consumer’s actual claim, the victim consumer will prefer to drop the complaint rather than incurring further costs. It is likely to be wealthy consumers who are in need of such a remedy. Poor consumers would seem unlikely to take advantage of such a provision. For example, a bank consumer who has sustained a loss as small as Ten Naira (N10) from bank excess

⁵⁵² Section 8(b) of CPC Act

⁵⁵³ Section 13 (1) of CPC Act, 1992

charges may not consider taking advantage of the provisions. This is due to the cost and the time involve in seeking redress through the court system.

Secondly, another way in which the consumer can enforce his rights and be awarded compensation by the court is through applying for a compensation order after the offender has been convicted for an offence under the CPC Act. There are several difficulties with these provisions that might discourage the consumer from seeking legal redress in court. First, the compensation provision does not require the consumer to file an action for compensation. Secondly, the compensation order can only be filed in criminal proceedings in which the consumer is not a party to the case. Thirdly, even if the compensation order needs to be filed under the criminal proceeding, the court must ensure that the offender has been convicted. In practice, it is only the Attorney-General of the Federation (AGF) who has the authority to institute criminal proceedings against such offenders. In addition to the difficulties above, there may be other facts that prevent consumers getting compensation. An example would be the court's failure to secure the conviction of offenders due to lawyers' unreasonable technicalities and the nature of the Nigerian justice system.⁵⁵⁴

If the court does not make a compensation order, there is certainty that the consumer would bear the violation of rights rather than going to court to incur additional legal costs in cases where success is uncertain. For a consumer, the cost of going to court is unthinkable and there is no help even from the State. According to Nwobike, Consumer complaints are not included under the Legal aid (amendment) Act, No. 21 of 1994.⁵⁵⁵

4.7.4 Criminal Remedies

From the above discussions on administrative and civil remedies, the question arises as to whether these remedies constitute sufficient protection for bank consumers. The extent to which these remedies can be enforced directly relates to the extent to which consumers are aware of their existence or have the means to institute legal proceedings against the offender.

⁵⁵⁴ For more discussions on this area see, Nwobike Joseph, "Legal Regime for the Protection of Consumers of Financial Services in Nigeria" available online at <http://www.jnclawfirm.com/articles.php>, last accessed on 16 June 2016; Apinega S, Consumer Protection and Remedies in Nigeria: An appraisal, in Adekunle A and Shankyula T, (eds), Law and Principles of Consumer Protection,(NIALS 2013), 499

⁵⁵⁵ Joseph Nwobike, "Legal Regime for the Protection of Consumers of Financial Services in Nigeria" available online at <<http://www.jnclawfirm.com/articles.php>>, last accessed on 16 June 2016

Section 12(b) of the CPC Act describes the punishment for any person who contravenes consumer protection law, if found guilty, he shall be liable on conviction to pay a fine⁵⁵⁶ or imprisonment. As Nwobike points out, most of the laws protecting the consumer in the financial services have criminal sanctions.⁵⁵⁷ In the case of criminal proceedings, the consumer who complains about a violation of consumer protection provisions is not directly involved, as the Attorney-General of the Federation will file the case against the offender. Once the violation is reported, the case will be between the State and the offender. In view of the fact that consumers are not party to the criminal proceeding, the only remedies available to the consumer as a victim, is the conviction of the offender. In most cases, the convictions of these offenders are highly unlikely to be secured as the prosecution process and the judicial system in Nigeria is extremely slow.

As Cartwright notes, “punishing through the mechanism of criminal law has several objectives, but the principal objective in the context of consumer protection offences is probably deterrence”.⁵⁵⁸ The questions that arise in this circumstance are (1) whether the punishment of offender contribute any helpful measures to the consumer, and (2) is there any direct remedy to the consumer considering the injury or loss he sustained?

There are several difficulties surrounding the criminal proceedings in relation to consumer protection issues in Nigeria that worth mentioning at this stage. From the discussions in this section, it is quite obvious that the Nigerian criminal justice system is not designed to compensate the consumer but to punish the perpetrator.⁵⁵⁹ As indicated previously, even the payment of compensation has some conditions attached. For example, section 13(2) of CPC Act states as follows:

In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to the means of the respondent in so far as they appear or are known to the Court.

This means that the court has to consider the ‘means’ of the offender rather than the loss or injury sustained by the consumer in considering whether or not to make the compensation order. Therefore, the offender being aware of this provision can easily claim that he has no

⁵⁵⁶ This fine is pigged at N50, 000 or five-year imprisonment. See Section 12 (b) of CPC Act

⁵⁵⁷ Joseph Nwobike, “Legal Regime for the Protection of Consumers of Financial Services in Nigeria” available online at <<http://www.jnclawfirm.com/articles.php>>, accessed on 27 June 2016, 27

⁵⁵⁸ Peter Cartwright, 'Crime, Punishment and Consumer Protection' (2007) 30 J Consumer Policy, 20

⁵⁵⁹ See Section (4.5.5.5) Criminal and Penal Code Provisions in Chapter four of this study.

means to pay compensation and the court may be persuaded not to make the order. Subsequently, research has shown that the Nigeria justice system is more interested and concerned with capital crime/offences and human right matters rather than consumer protection issues.⁵⁶⁰ As a result, the bank consumer in this situation will find it difficult to convince the State to take up his matter. There are resource shortages in the justice department and limited capacity to handle financial consumer protection matters.

Summing up, the remedies available to consumers are not easy to enforce in the court system, as could be expected; resulting in discouraging Nigerian consumers from bringing cases to court.

4.7.4.1 Criminal and Penal Code Provisions

In addition to the provisions and shortcomings in enforcing the consumer remedies discussed above, the Nigerian Criminal Code,⁵⁶¹ and the Penal Code⁵⁶² both contain enabling laws. Practically, such laws have tendency to provide some level of protection to consumers. Section 422 of the Criminal Code may lead to punishment of any person who collaborates with another to defraud the public or affect the market price of anything sold to the public..⁵⁶³ Section 435 punishes a Director and officer of companies fraudulently appropriating property or keeping fraudulent accounts. There are widespread crimes in the financial services like theft and fraudulent activities but the Criminal Code does not cover major violations in the banking sector. As earlier mentioned in this chapter, there have been cases where the directors and senior management of the banks have conspired to defraud the public (consumers), such cases should also be brought to book in order to deter future violations.

Thus, the Criminal Code and the Penal Code focus mainly on consumable items and not financial products. For example, section 243 provides that any person who sells or has in his possession with intent to sell, unfit food or drink, is guilty of a misdemeanour and is liable to imprisonment for one year.⁵⁶⁴ Section 244, provides that any person who deals in diseased meat or knowingly sells an animal that is diseased at slaughter, is guilty of an offence punishable with two years' imprisonment. The Criminal Code under section 248, made the

⁵⁶⁰ Joseph Nwobike, "Legal Regime for the Protection of Consumers of Financial Services in Nigeria" available online at <http://www.jnclawfirm.com/articles.php>, last accessed on 16 June 2016, 28

⁵⁶¹ Cap. C38 of the Laws of the Federation of Nigeria 1990

⁵⁶² Cap. P3 of the Laws of the Federation of Nigeria, 1990

⁵⁶³ Section 422

⁵⁶⁴ Section 243 of Criminal Code Act

sale of matches made with white phosphorus an offence punishable with a fine of twenty naira.

However, it is difficult to consider the provisions of these enabling laws as they currently stand, as a deterrent measure to prevent crime and protect consumers. Thus, scholars argue that ‘the extent to which these provisions have, in practice enhanced consumer protection is debatable’.⁵⁶⁵ This is partly due to inadequacy of prosecution officers from the Nigerian police and the Justice department.

Furthermore, many provisions of the Criminal Code Act can also be seen in other existing statutes in Nigeria. For example, the Consumer Protection Council Act has covered a substantial aspect of the provisions in this Code. It could be argued that some provisions of the Code are mere duplications of the existing provisions which could lead to a choice of law.⁵⁶⁶

4.7.5 The Role of Consumer Associations

The role of consumer associations or the civil society actors are varied. These roles may vary depending on the country, area of focus and of course, the funding or support available from the government and donor institutions. Consumer associations or groups play a crucial role in every market economy, perhaps due to their status as a pressure group. One of the fundamental advantages of these associations is that they tend to bridge the gap by representing the consumers’ interest and opinion in policy making. Similarly, the consumer voluntary groups help to influence the policy.

It is likely that, the role which these consumer voluntary groups play in balancing the interest of consumers with that of the government and the market, made the government acknowledge their importance in the market place. Accordingly, section 2 of CPC Decree mandated the CPC to ‘encourage the formation of voluntary consumer groups or associations for consumers’ wellbeing’.⁵⁶⁷ The consumer protection law does not set out what is meant by ‘voluntary consumer groups or associations,’ requirements to be met in order to act as a consumer group or association, and the purpose of such group. However, it is not clear if this CPC provision entails funding or not, in view of the difficulties in operating the consumer

⁵⁶⁵ Muhammed Ladan, ‘The Limits of Legal and Enforcement/Regulatory Framework in Consumer Protection against Counterfeit and Pirated Products: The Nigerian Experience’ (2008) 2 Cals. Review of Nigerian Law and Practice, 21

⁵⁶⁶ Felicia Monye, Law of Consumer Protection, (Spectrum Books 2003), 70

⁵⁶⁷ Section 2(h) of the Consumer Protection Council Decree, 1992

voluntary groups without funding or any form of incentives. In Nigeria, there are a few consumer organisations but no funding to assist them.

Apart from the fact that there are few consumer organisations in Nigeria, a few devote resources to protecting financial consumers. The Foundation for Defence of Consumer Rights (FODCOR) was founded in 2008. In 2012, the FODCOR joined the Consumers International. Its areas of focus were on the protection of consumers through research, education and enlightenment. Empowerment Organisation of Nigeria (CEON) was formed in 1995.⁵⁶⁸ For many years its focus was primarily devoted to strengthening consumer protection and competition regimes in Nigeria through research.⁵⁶⁹ Perhaps the first consumer organisation was the Consumer Protection Organisation of Nigeria (CPON).⁵⁷⁰ The Consumer Protection Organisation of Nigeria was established in 1971.⁵⁷¹ It played a pioneering role by laying the foundation for other new organisations, engaging in unwavering action such as consumer advocacy, publishing valuable information and getting involved in consumer awareness campaign. A small number of consumer organisations in Nigeria provide consumer information, complaints processes, research through their caseworks, education and campaigning. These consumer associations have not undertaken any specific study of consumer protection issues in the financial sector.

4.7.6 Public Complaint Commission

The Public Complaints Commission (hereafter the PCC) was established based on the recommendation of the Udoji panel to inquire into complaints by members of the public against administrative actions of the public authority and companies.⁵⁷² It is mainly an enforcement and investigative body that has statutory powers to investigate complaints from the general public. In addition, the PCC ‘Commissioner shall have powers to investigate either on his own initiative or following complaints lodged before him by any person’.⁵⁷³ Pertaining to the Commissioner’s investigative function, his responsibilities are, *inter alia*, to

⁵⁶⁸ See Consumers Empowerment Organisation of Nigeria, Available at < <http://www.ceon-camon.org/>> accessed on 21 May 2016

⁵⁶⁹ *ibid*, 2

⁵⁷⁰ Felicia Monye, The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes – 59th Inaugural Lecture of the University of Nigeria, May 26, 2011 (Nsukka: University of Nigeria Senate Ceremonials Committee, 2011), 15

⁵⁷¹ *ibid*, 15,16

⁵⁷² The Commission was established by Decree No. 31 of 1975, amended by Decree No.21 of 1979. The establishment of the Commission was later inserted in section 315 (5) of the 1990 Constitution of the Federal Republic of Nigeria (as amended), Available at <<http://www.pccfct.gov.ng/history.html>> access on 18 May 2016

⁵⁷³ Public Complaints Commission Act Cap P37 LFN.2004 (PCC Act), s. 5(2)

investigate complaints relating to administrative conduct or offence by a government agency or company registered under Company Allied Matters Act (CAMA). The investigation can be from the Commissioners initiative or following complaints lodged before him.⁵⁷⁴ The Commissioner has the absolute discretion to decide whether and if so in what manner, he should notify the public (including the consumers) of his action or intended action in any particular case.⁵⁷⁵ However, the relevant question is whether the ‘consumer’ has a choice of redress option or compensation in any matter reported to the PCC.

The answer is affirmatively no, and for two key reasons: the first as a result of penalties and the second as a result of lack of transparency in the process. On one hand, the Act states that anyone who contravenes the provisions of the Act shall be guilty of an offence.⁵⁷⁶ According to section 13 (2) of the C38 criminal Code Act, ‘offence’ means an offence against the State.⁵⁷⁷ In other words, this is the in-built problem in most Nigerian legislation. In most cases, consumers view the process of reporting problems to the PCC as complex and lacking transparency.

The second problem is one of practical issues; it is important to note that the commissioner does not have prosecuting authority. The commissioner may refer cases where appropriate to the National Assembly or the appropriate House of Assembly of a state.⁵⁷⁸ From the above it is clear that the commissioner has an enormous task and in the researcher’s opinion, this is an unsatisfactory process for the enforcement of bank consumer’s rights.

4.7.7 Statutory Enforcement Provisions and Remedies for Consumers in Nigeria

As can be seen from the analysis in this chapter, the regulatory agencies have an essential role in the enforcement of consumer protection legislation but there are no variations of statutory enforcement options. As Monye observes, apart from the Consumer protection Council Act, the statutory objective of all other consumer protection laws is not to compensate the consumer but to punish the offender.⁵⁷⁹ The consumer protection laws have no provision requiring for payment of compensation to a victim (consumer) of product defects.⁵⁸⁰ Some jurisdictions have well detailed legal provisions on remedies and

⁵⁷⁴ PCC Act Cap P37 LFN.2004 (PCC Act), s. 5(2)

⁵⁷⁵ Public Complaints Commission Act Cap P37 LFN.2004 (PCC Act), s. 5(3b)

⁵⁷⁶ Public Complaints Commission Act Cap P37 LFN.2004 (PCC Act), s. 8(1)

⁵⁷⁷ Criminal Code, Cap. C38 of the Law of the Federation of Nigeria (LFN)

⁵⁷⁸ Public Complaints Commission Act Cap P37 LFN.2004 (PCC Act), s. 7(2)

⁵⁷⁹ Felicia Monye, ‘Law of Consumer Protection’ (Spectrum Books Ltd, 2003), 275

⁵⁸⁰ Ibid, 275

enforcement options available for consumers who have suffered a loss due to product defect or violation of consumer protection provisions. For example, the penalties for non-compliance under the South African Consumer Protection Act, CPA Act, 2008 include the following:

- Criminal offence (up to 12 months' imprisonment and or fine in most instances)
- Administrative fines (fines range in value from up to R1 million minimum or 10% of annual turnover)
- Be ordered to pay damages to successful claimants.⁵⁸¹

Section 69 of CPA, No. 68 of 2008 in South Africa, gives a variety of statutory options for enforcement of rights by consumers.⁵⁸² In giving the consumer multiple options it states that; a consumer 'may seek to enforce any right in terms of this Act or in terms of traction or agreement, or otherwise resolve any dispute with a supplier by – (a) referring the matter directly to the tribunal, if the referral is permitted, (b) referring the matter to applicable ombudsman with jurisdiction, or (c) approach a court with jurisdiction over the matter.'⁵⁸³

In section 69 of CPA, the Act also states that the consumer may seek to resolve any dispute by referring the matter to an alternative dispute resolution (ADR) agent.⁵⁸⁴ It is crucial to note that the enforcement of consumer rights and the remedies available to 'all Nigerian consumers'⁵⁸⁵ are limited under the Nigerian consumer laws unlike the Republic of South Africa. The Act makes it clear that the provisions are designed to punish the offender and not to pay damages or compensation to the claimant (consumer).⁵⁸⁶ The Act does not, however, use the word such as 'payment of damages to claimants' or 'compensate the claimant from the penalty' which makes it difficult for consumers to enforce their right.

Subject to section 8 of the Act, any person who violates the consumer's right or does any wrong by way of trade, provision of services, supply of information or advertisement, causing injury or loss to a consumer; the consumer shall 'in addition to the redress which the State

⁵⁸¹ CPA, No. 68, 2008, Government Gazette, No.467, 29 April 2009; Qdev, 'The Consumer Protection Act: When and How Does It apply' (April 2011), Available at < <http://www.gottaquirk.com/>> accessed on 19 May

⁵⁸² Consumer Protection Act of Republic of South Africa, No. 68, 2008, Government Gazette, No.467, 29 April 2009. See also, Consumer Protection Act 68, of 2008, s. 69

⁵⁸³ Consumer Protection Act 68, of 2008, s. 69

⁵⁸⁴ Consumer Protection Act 68, of 2008, 2008, s.70

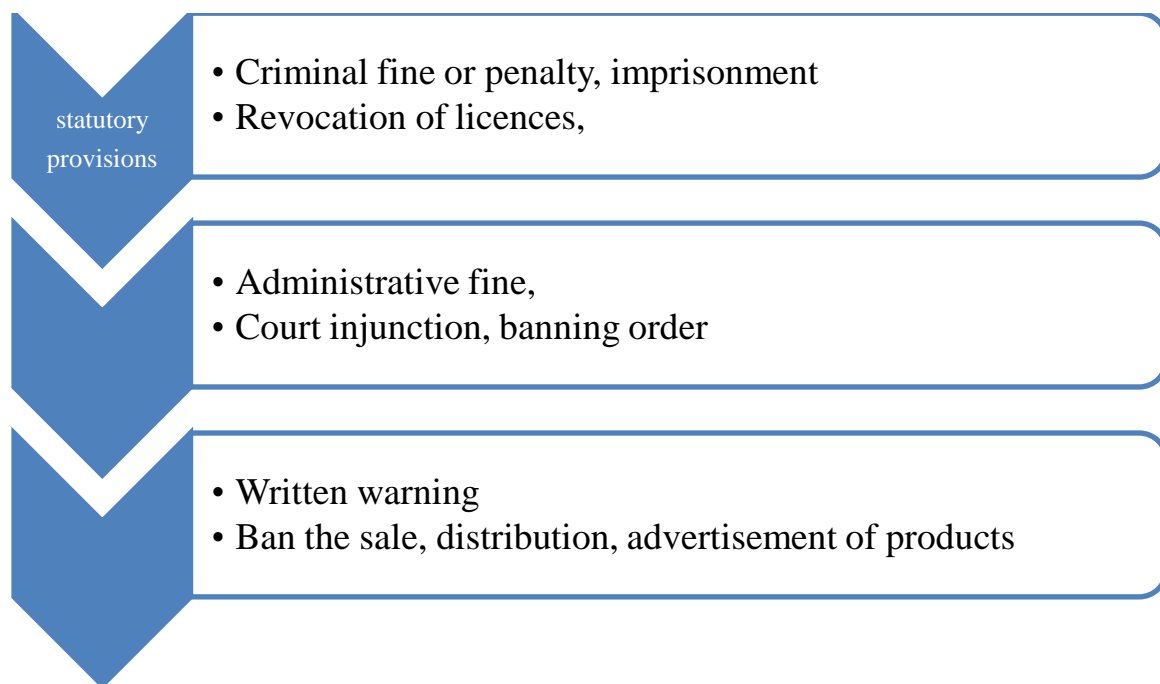
⁵⁸⁵ The term all Nigerian Consumers is used to include consumer of banking sector

⁵⁸⁶ The Act states that, any person who violates the provision of the subsection is guilty of an offence and liable to fine or imprisonment. See CPC Act, 1991, s. 9(2)

Committee, subject to the approval of the council may impose, have a right of civil action for compensation or restitution in any competent court'.⁵⁸⁷

As earlier mentioned the consumers in most cases are interested in quick solutions to their problems rather than embarking on endless civil actions. Civil actions in Nigeria are associated with various challenges ranging from high cost of litigation to stiff legal rules. The need for variety of enforcement and penalty options cannot be overemphasised.

Figure 3: Enforcement Procedures in Nigeria



The above enforcement procedure in Nigeria shows that the penalty and the enforcement options need to be reviewed to reduce the burden of litigation. The consumer protection laws do not have provision for compensation for victims as shown in the above diagram. By inserting the compensation provisions in the Act, the law will save the consumer the problem of having to institute a civil action for compensation. What this means is that the offender will not face double suits, namely, civil action for compensation from the consumer and criminal action for the breach of the statutory provision.

It can therefore be argued that Nigeria can learn from the South African model, in which case, if a person is convicted of breach of consumer protection provisions, he should be

⁵⁸⁷ CPC Act, 1991 (as amended) s. 8

forced to pay compensation to the consumer.⁵⁸⁸ Accordingly, the extent to which a consumer can enforce these rights depends on a number of factors, namely, the range of enforcement options (civil actions, criminal and administrative) statutory provisions, compensation, the powers of these agencies to enforce and execute orders and the availability of alternative dispute resolution. In this regard, however, it can be argued that lack of detailed provision on enforcement is a threat that affects the consumer's right to obtain redress.

Though the provisions of consumer protection laws examined in this chapter are capable of encouraging consumers to report the traders to any of the agencies for breach, there are some defects which may hinder or affect the consumer's rights to obtain redress. The consumer protection laws Act when critically observed, in particular the CPC Act, appears to only provide protection to a relatively narrow range of issues. The CPC Act deals mainly with 'products'⁵⁸⁹ and it does not make reference to bank related products.

The provisions of the CPC Act deal mainly with penalties for product offences and only a small part of its provisions apply to bank consumers. Consequently, its administrative remedies are limited only to criminal penalty. Apart from having limited remedies, and being product focused, legal provisions on consumer protection enforcement in Nigeria have other challenges, which cannot be discussed in this study. However, it has been noted that, consumer protection laws do not make provision for 'consumer court,' 'ombudsman service' or options for alternative dispute resolution processes for consumers to resolve their disputes. These issues on their own can pose potential challenges to effective enforcement of consumer protection because by focusing only on administrative options, it may be difficult if not impossible for rural consumers to enforce their rights, as the agencies are in the State or Federal capitals. Nevertheless, one can argue that the penalties for product offence under section 9 (1) which is N50, 000 (US\$132) are too small, and some of the penalties discussed in this study cannot be substantial enough to deter offenders.

4.7.8 The Role of Government in Strengthening the Legislation

In order to truly protect consumers in any jurisdiction, the government should help to strengthen all aspects of consumer protection regime. The first approach to this is to examine and identify the gaps between those regulatory regimes in Nigeria. The consumer products

⁵⁸⁸ For a more related discussion on the penalty provisions, see Felicia Monye, 'Law of Consumer Protection' (Spectrum Books Ltd, 2003), 274

⁵⁸⁹ CPC Act, 1991 (as amended), s.2(b)

and financial services are potential areas that could benefit from this government overhaul. With the growing rate of new consumers and complex financial products, much enhancement is needed in the financial services to inform consumers about benefits and the risk of the products they purchase on a daily basis. This cannot be done effectively without government support in the form of incentives or funding.

Another area to achieve this is through government encouragement for more coordination between the agencies such as the CBN, Nigerian Deposit Insurance Cooperation, NAFDAC, Standard Organisation of Nigeria and Consumer Protection Council as this will benefit consumers.

The next chapter will explore the new consumer protection framework which has only been drafted recently in line with international guidelines.

4.8 Conclusion

The discussion in this chapter considered consumer protection as well as the way in which the financial regulatory and supervisory authorities have handled the issues of bank consumers. The second part discussed consumer protection in Nigeria from the perspective of the government agencies responsible for coordination and enforcement in different areas in the market place. Nigeria has a long history of using different measures to protect consumers. However, most of these measures are predominantly criminal law and almost all the consumer protection statutes are promulgated as decree by the military regime in Nigeria. It should be stressed that the analysis of consumer protection in the banking industry is important because by identifying the challenges the consumers face on daily basis; it makes it easier to address. In other words, by pointing out the gaps in the law, the role of the agencies, challenges, recommendations and suggestions might be made in order to overcome these problems.

As noted in the introduction, the major consumer protection laws were made by military fiats without consumers and stakeholders' participation, thus, ignoring the recognition of financial services and the welfare of the consumers. The use of these laws raises concerns. First, there is concern that the absence of provisions for compensation of, consumers who become victims of product defects or services. It may be that this concern, in part, explains why relatively few consumers bring their cases to the regulatory agencies. The Consumer Protection Council Decree is the only existing law that makes provisions for compensation orders. However, the provisions have not been tested in the court of law. It is noted above,

that the provisions are an option, which means that the consumer has the option to go to court and make a compensation order or go without a remedy. Nonetheless, there are legitimate concerns in relation to these provisions. Secondly, the penalties stipulated by these substantive laws are very small. While the use of penalties may be effective in some consumer protection measures, minimal penalties might not be an effective deterrent to offenders or potential offenders. Section 248 of the Criminal Code act which contains these minimal penalties (a fine of twenty naira) is undoubtedly an example of a possible weakness of this Act; it may not be an effective measure to deter the offenders or prospective offenders. Thirdly, these laws have substantive defects in relation to its inability to reflect current realities in the market place. For example, the Central Bank Act 2007 was last reformed about nine years ago. The financial crisis of 2008-2009 exposed the weaknesses in the laws and the regulatory gaps in Nigeria.

The CBN in its post crisis reform is playing a key role in drafting guidelines that are geared to protecting consumers in the banking sector. The question of what role, if any, the CBN should play in the protection of bank consumers is a highly topical issue in the Nigerian regulatory agenda for a number of reasons. From the discussions on analysis of the deposit insurance scheme in Nigeria, it is evident that the scheme has not been reviewed since 2006 and the value has been affected significantly by inflation. As mentioned above, the limits on deposit insurance in Nigeria appear low at N100, 000 and may need upward revision to enable schemes to fulfil their mandate and provide sufficient cover for consumers.

As for the banking industry, it is quite clear that though they have received substantial legislative attention, not enough, if anything has been done with regard to protecting the rights of bank consumers. Despite the emerging forms of banking transactions, there is currently no specific form of legislation to regulate the relationship between the banks and their consumers. Apparently, it has been noted in this chapter that a wide range of unfair and unethical practices in the banking sector remain unregulated, thus giving the banks and other financial services providers great opportunities to engage in various activities which ultimately undermine consumer interests. However, the most substantial development has been the move toward creating a consumer protection department within the Central Bank of Nigeria to ensure a fair and responsible market and business conduct amongst financial services providers.

Fourthly, most of the regulatory agencies charged with the responsibility of protecting consumers are not adequately empowered by the law to enforce the rules. Even if they have the powers, a good number of them have no legal departments that are capable of prosecuting matters when they arise. Fifthly, there is a lack of enhanced commitment on the part of the regulators and the government.

Finally, the protection of bank consumers is simply not sufficient, particularly because of the challenges discussed in the chapter. It is commonly assumed in Nigeria that “the consumer is fairly protected, at least on paper”.⁵⁹⁰ However, it should be noted that many consumers live in rural areas; they are not sufficiently informed about the available channels of redress, all the administrative agencies are at the State or Federal Headquarters, and there are no funded NGOs at the local government or community level to assist them to enforce their rights.

Some of these key concerns can be addressed through appropriate reform, which should carefully define the roles and responsibilities of the agencies involved to avoid duplication of work and jurisdictional overlap. Where there is no funding to assist the consumer group, it could be created and managed by the market itself. The regulatory agencies can set up systems to prevent unethical practices and well targeted consumer education can help the consumers make informed decisions about their money.

In the next chapter, I will examine the new CBN consumer protection framework⁵⁹¹ in Nigeria, which will be the focus of the critical discussion in chapter five.

⁵⁹⁰ Felicia Monye, *Law of Consumer Protection*, (Spectrum Books 2003), 269; Joseph Nwobike, “Legal Regime for the Protection of Consumers of Financial Services in Nigeria” available online at <<http://www.jnclawfirm.com/articles.php>>, last accessed on 16 June 2016

⁵⁹¹ This is a new regulatory initiatives developed by the CBN to protect the consumers and fill the gaps that allow the banks to take advantages of the consumer.

Chapter Five

Draft Consumer Protection Framework in Nigeria: An Analysis

5.1 Introduction

The previous chapter addressed the legal, regulatory and supervisory framework, the role of the financial regulator (CBN) and consumer protection in the Nigerian banking sector. This chapter examines the new CBN consumer protection framework⁵⁹² (CPF) and the manner in which it tackled some of the in-built weaknesses in the consumer protection regime in Nigeria. The new consumer protection framework⁵⁹³ is borne out of the Federal Government initiatives,⁵⁹⁴ and the CBN reform agenda,⁵⁹⁵ which was made necessary by the recent financial crisis. The Draft Consumer Protection Framework ('Framework or CPF'⁵⁹⁶), issued by the Central Bank of Nigeria (the Nigeria Financial Services Regulatory Authority) in September 2015, heralds a new era in the regulation of some financial services⁵⁹⁷ providers in Nigeria.

Since the framework is 'a policy document intended to guide the effective regulation of consumer protections practices of financial institutions',⁵⁹⁸ the question that follows is, what is the extent of the consumer protection law in this problem area, and how well-suited are these policy documents to the Nigerian financial sector? It would be recalled that there is no

⁵⁹² The Consumer Protection Framework is not recognized by the Central Bank Act (as amended in 2007) or any of the financial laws.

⁵⁹³ The CBN framework made it clear from its Preamble that this is 'a policy document intended to guide the effective regulation of consumer protection practices of Financial Institutions (FIs) under the regulatory purview of the CBN'; this policy document is in line with international commitments through G20 and other relevant bodies. See Section 1 (2) of the Framework.

⁵⁹⁴ Some of the Federal Government initiatives reinforce the National Strategy for Financial Education; See Central Bank of Nigeria (2012): "National Financial Inclusion Strategy" Summary Report; National Dialogue on Integration of the Consumer's Voice in Trade Policy Process in Nigeria (May 2015)3,4.

⁵⁹⁵ The CBN 2009 reform was necessitated by eight factors that led to Nigeria financial crisis. Some of these factors are lack of investor and consumer protection; failures in corporate governance at banks; gaps in regulatory framework and regulations and uneven supervision and enforcement. See Sanusi Lamido Sanusi, "Banking Reform and Its Impact On the Nigerian Economy" (University of Warwick's Economic Summit United Kingdom, 2012); Kanayo Ogujiuba and Michael Emeka Obiechina, "Financial Sector Reforms in Nigeria: Issues and Challenges" (2011) 6 IJBM.

⁵⁹⁶ This Framework is available and can be accessed through the Central Bank of Nigeria, <www.cenbank.org>with a caption 'Exposure of the Draft Consumer Protection Framework'. The Framework which will soon take effect, includes some new rights in its 'consumer redress' provisions.

⁵⁹⁷ Nevertheless, the scope of the framework extends only to the Financial Institutions (FIs) under the regulatory purview of the CBN. These institutions include the Bank (both Commercial and Merchant Banks), Micro-finance Banks (MFBs), Discount Houses (DH), Development Finance Institutions (DFs), Finance Houses (FHs), Bureaux-de-change (BDCs), Primary Mortgage Banks (PMBs) Mobile Payment Companies and Mobile Money Operators to mention but a few. It does not include Insurance or Securities. See Section 1.2, of the *Draft Consumer Protection Framework*.

⁵⁹⁸ See the Consumer Protection Framework Preamble, 3

framework for consumer protection in the financial industry and this framework will provide a platform for future legislations in this issue area or domain; how its specific provisions are detailed is clearly important. Thus, the provisions of the framework are scrutinized in this chapter to ascertain the scope of the application within the context of the financial services. Therefore, the purpose of this chapter is simply to provide an understanding of the new Consumer Protection Framework, its provisions and to establish whether or not this framework would achieve its intended goal. In addition, if the Central Bank of Nigeria (CBN) has a particular reason for choosing to place its concentration on ‘light-touch’ or ‘soft regulation’,⁵⁹⁹ this is crucial in determining the effectiveness of the new consumer protection regime.

5.2 An Overview of the Draft Consumer Protection Framework

On 17 September, 2015, the Nigerian Financial Regulator issued a consultation paper “Exposure of The Draft Consumer Protection Framework”.⁶⁰⁰ The document is one of the recent CBN initiatives aimed at raising the standard of consumer protection in the financial services sector. However, one of the very noticeable issues about the new framework is that it was drafted by KPMG.⁶⁰¹ The framework represents an initial attempt to create a basic framework within which federal consumer protection policies and standards can be worked out. The Policy Circular set out the draft framework and sought the views of stakeholders, Nigerian financial services consumers, the consumer customers, consumer organisations, the general public and the CBN Steering Committee panel. Despite the recent attention given to the regulatory measures to promote consumer protection in the financial sector, consumers lack variety of statutory enforcement options and remedies. Generally, there are no detailed consumer protection provisions set out in financial laws that provide enforcement options. The absence of such crucial discussion concerning detailed roles of the CBN and CPD may

⁵⁹⁹ Soft regulation is used in this study to mean those non-binding rules such as codes, guidelines, or best practice guidelines issued by the financial regulators (Central Banks of Nigeria) for firms conducting business in the financial sector. These soft regulations have no real binding force but show the position of the regulators. This is particularly important in a situation where a consumer protection framework is designed as a ‘guideline’ by the CBN who is responsible for both prudential regulation and consumer protection. See, Mohammed Hemraj, *Credit Rating Agencies: Self-Regulation, Statutory Regulation and Case Law Regulation in The United States and European Union* (Springer 2015) 75; Dimity Kingsford Smith, "Governing The Corporation: The Role of 'Soft Regulation'" (2012) 35 UNSW Law Journal, 378, 379.

⁶⁰⁰ See **CPD/DIR/GEN/CPF/02/012**, Published on 17September2015,

<<http://www.cenbank.org/documents/policycirculars.asp> > accessed 18 October 2015

⁶⁰¹ See Central Bank of Nigeria: Consumer Protection Framework Draft for discussion purposes only (June 2015) version 3.0, pp. ii. It is worth noting that KPMG is ‘audit, tax and advisory firm, is the U.S. member firm of KPMG International Cooperative’ (“KPMG International”). KPMG is also a group of professional firms providing Audit, Tax and Advisory services. See <http://www.kpmg.com/us/en/about/Pages/Default.aspx>> accessed 6 January 2016; also The Framework Document Review and Approval: Revision History

be due to a lack of knowledge of good practices in many jurisdictions. A question running through this chapter is whether the financial regulator (CBN) can actually provide for the protection of consumers in the financial sector with only policy guidelines.

Therefore, the extent to which the provisions of the draft framework can be taken into account under the relevant regulations can be a huge subject of debate.⁶⁰² Although, the framework implementation plans which are incorporated in section 4 articulate the CBN approach for the execution of various provisions, it seems that this will not extend to the provisions of the general consumer protection act. Instead, the consumer protection provisions are likely to be taken into account in deciding whether a particular financial institution has breached consumer rights. It seems likely that failure to comply with the requirements of the framework could be regarded as evidence of lack of control by the regulators. With the enormous lack of statutory provisions in various aspects of banking business, it is important for the regulators to design a realistic implementation mechanism which will enable the courts to look carefully at the general consumer protection provisions.

As mentioned above, this does not mean that if the regulatory measures are in place, that these mechanisms will be used or that the consumers will be protected entirely from unfair market practices, but it does suggest that it could help to improve the standard of goods and services in Nigeria. It is possible that the draft would create a framework for addressing consumer issues and constitute a very important step towards greater protection of consumers of financial services.

Until the enactment of draft Framework in 2015, consumer issues in Nigeria were addressed under different legislations such as the Consumer Protection Council Act, Criminal Code, Banks and Other Financial Institution Act (BOFIA) and other subsidiary regulations made under some Acts and were enforced by different institutions.⁶⁰³ Therefore, it remains at the mercy of different agencies to determine how much an aggrieved consumer should get and how this money can be collected from the operator. These shortcomings have negative concerns for consumer protection regulation. In 2014, Central bank of Nigeria commenced the process of developing consumer protection frameworks with a view to engage different

⁶⁰² It is important to note that the Preamble states that the framework should be read in conjunction with the provisions of the CBN, BOFIA and subsidiary regulations. See Preamble of the Draft Consumer Protection Framework, 2015.

⁶⁰³ The Central Bank of Nigeria and Nigeria Deposit Insurance Corporation are currently in charge of supervising the insured institutions for issues relating to consumer protection and financial stability. Available at <<http://ndic.gov.ng/about-ndic/>> accessed 5 November 2015.

stakeholders in the design of a framework that will safeguard the interest of consumers of financial products and services.⁶⁰⁴ Although, this framework recognised the representation of major stakeholders, it has some legal and structural limitations, discussed further below.⁶⁰⁵ The framework demonstrated that there are very clear improvements under some sections,⁶⁰⁶ but there are still serious shortfalls that are left unaddressed.⁶⁰⁷

The draft framework contains extensive consumer protection provisions⁶⁰⁸ which it is hoped will establish a sound regulatory framework for the protection of financial consumers, and also create a favourable environment for innovations in financial services. The CPF reflects the CBN principles-based approach to consumer protection. The new CPF is currently receiving public discussions with the industry, Consumer organisations and other relevant stakeholders (at the time of writing and at the time of submission – December 2016).

It can, though, reflect that it is an opportune time for this thesis to be written as Nigerian laws, in most of the significant areas of consumer protection are being reviewed.

5.3 Draft Consumer Protection Framework: A New Development in Nigerian Financial Services Regulation

The Consumer Protection Framework, drafted by the Central Bank of Nigeria demonstrates an important development in the regulation of financial services providers. Following the financial turmoil, the CBN introduced a number of approaches to stabilize the nearly collapsed banking sector and to rebuild the consumer confidence that was lost in the past. Since the start of the CBN regulatory reform in 2009, a considerable number of directives have been issued.⁶⁰⁹ As a result of these reforms, the industry has witnessed a growing demand in financial products and services and the demand for extensive protection in this area has also increased. Millions of consumers in Nigeria make widespread use of banking

⁶⁰⁴ See CBN Circulars requesting for Stakeholders input in the Development of Consumer Protection Framework. See CBN Circular, **CPD/DIR/GEN/CPF/01/011** (20 October 2014)

⁶⁰⁵ This is considered further in this chapter under section 5.2

⁶⁰⁶ See in particular Section 2 (7), where the Draft proposed Financial Ombudsman and a clear dispute resolution workflow in the Financial Services Industry in Nigeria.

⁶⁰⁷ Actually, these unaddressed issues are extensively discussed in this chapter under subsection 5.9.1 (Areas the framework is silent about)

⁶⁰⁸ The preamble of this Draft Framework clearly states that the scope of the framework will be guided by G20 High Level Principles and best practices in various jurisdictions with effective consumer protection regime.

⁶⁰⁹ Some examples of the Directives or Guidelines are as follows; See CBN Guidelines for the Regulation of Agent Banking and Agent Banking Relationships in Nigeria; **FPR/DIR/GEN/CIR/01/045** Circular to all banks, discount Houses and Other Financial Institutions, Time bar for Resolution of Customer's complaints (published 16 February 2015); **BPS/DIR/GEN/CIR/02/069** Regulation Framework for Mobile Money Service in Nigeria Published 1 April 2015.

products and services on a daily basis, giving rise to the need for proper levels of consumer protection.

The Framework was designed to guide the consumer protection practices of all ‘regulated entities,’ including financial services providers that are regulated by the CBN. The list of these financial services providers regulated by the CBN includes retail banks; mortgage Banks, credit institutions (micro-finance Banks), development finance institution and bureaux-de-change, without any exception.⁶¹⁰ The Framework is divided into nine sections based on the nine principles that are peculiar to Nigeria’s financial system. Para 1, sets out the general legal, regulatory and supervisory structures such as the requirements for institutions responsible for financial consumer protection, which is fragmented due to a lack of clear roles or responsibilities among institutions. This section contains lists of mechanisms which the CBN is expected to develop in order to ensure effective supervision of Financial Institutions in this area. This section obviously did not list the consumer rights which the framework intends to protect at the beginning but it highlights some of the rights towards the last section.

5.3.1 A Consumer Framework without Statutory Basis

Besides containing some provisions relating to sanctions for non-compliance, the CPF does not have statutory bases which any aggrieved consumer could rely on to enforce action in court against the operators, rather such redress actions can only be imposed by the financial regulator (CBN) on the erring operators. This study argues that disputes between consumers and financial operators should not only be resolved by the financial regulator (CBN), rather the consumers should have options of external dispute resolution scheme that is independent and impartial. It is worth noting that the new CPF has no provision for civil procedures applicable to any consumer lawsuit. The absence of such crucial provision limits the consumers’ options and chances of pursuing their rights, and obtaining justice through the court system. Following the proposed steps stipulated in the CPF dispute resolution workflow in the financial industry,⁶¹¹ consumers who are dissatisfied with the outcome of the financial operator can forward their complaints to ADR’s. The idea may be to give the consumers

⁶¹⁰ S 1(1) of the Framework

⁶¹¹ Section 2 (7) of the Framework

options but the question that needs to be addressed is whether the ADR is free⁶¹² and also, if they have the power to resolve disputes by ascertaining who is wrong and apply remedies to the other wrong party or parties. The Sub-Committee on Ethics and professionalism states as follows:

- The membership should be made up of NDIC⁶¹³, CBN⁶¹⁴, CIBN⁶¹⁵, FITC⁶¹⁶ and 11 banks⁶¹⁷
- While the Secretariat of the Subcommittee is The Chartered Institute of Bankers of Nigeria.
- The Ethics & Professionalism Division performs the Secretariat functions of the Subcommittee.
- While the Registrar/Chief Executive is the Secretary, Subcommittee on Ethics & Professionalism.

However, there are conditions which consumers or financial operators must fulfil before a Subcommittee would handle their cases. These conditions are stated as follows.

- For the case to be handled by the Sub-committee there must be a payment of a non-refundable deposit of fifty thousand Naira (N50,000.00) or 5% of claim, whichever is lower⁶¹⁸.
- Such case must not be more than six years old.
- The cases must not be before the any Court of competent jurisdiction;
- The cases must not have been adjudicated upon by any court in the past, CBN or any other Statutory Regulatory Institution.
- Consequently, the decision of the Subcommittee confirmed by the Bankers' Committee shall be final⁶¹⁹.

⁶¹² Reading through the Sub-Committee on Ethics and Professionalism (one of the Financial Institution ADR) web site, it is noted that a consumer or Operator is required to pay fee as a condition for handling cases. The Sub-Committee on Ethics states as follows: See the conditions for handling cases below.

⁶¹³ NDIC is the Nigeria Deposit Insurance Corporation

⁶¹⁴ CBN the Central Bank of Nigeria (main financial regulator)

⁶¹⁵ CIBN is The Chartered Institute of Bankers of Nigeria

⁶¹⁶ FITC is the Financial Institution Training Centre

⁶¹⁷ This is an extract adopted from the Chartered Institute of Bankers of Nigeria (CIBN) web site. See <http://www.cibng.org/cb_ethics.asp> accessed 7 February 2016.

⁶¹⁸ It is reasonable to suggest that the Subcommittee requirement to pay a non-refundable fee of N50, 000.00 (US\$250) is a direct way of telling the consumers not to forward their complaint to ADR even when they are not happy with outcome of dispute.

The extract above generally shows that the provisions of the new CPF were not consistent with the provisions on the sub-committee's conditions.

The framework clearly states that it “is a policy document intended to guide the effective regulation of consumer protection practices of Financial Institutions (FIs), under the regulatory purview of the CBN”.⁶²⁰ When these sections of the CPF are read, it is misleading as to the legal status of the document, giving the lack of extensive coverage of consumer protection issues in both the CBN Act and the BOFI Act.

However, the CPF requires that it should be read in conjunction with the provisions of the financial services legislation and the subsidiary regulations made under those laws. It must be pointed out that the purpose of the policy document is to guide the regulators of the financial services industry in matters relating to consumer protection. The CPF also has some explicit requirements for the CBN to issue guidelines on specific areas based on the nine principles discussed below.

Whilst this framework is an important step forward, the opportunity to embark on a more comprehensive statute framework that will deliver an effective protective system for Nigerian consumers cannot be underestimated.

5.3.2 The Role of CBN and CPD in the Financial Consumer Protection

The role of the Financial Services Regulator (for example, the CBN who is also the prudential regulator) in relation to consumer protection has always been problematic⁶²¹. Despite the statutory duty of ‘promoting a sound financial system in Nigeria,’⁶²² the CBN also has an enormous task of protecting the consumers of financial services. This consumer protection responsibility is shared among several bodies within the financial industry⁶²³ without clear statutory mandate. This confusion becomes more pronounced and recognised after the financial crisis. As has been pointed out in the previous chapter, the failure of the financial regulators to impose market discipline enabled operators to take advantage of

⁶¹⁹ It is noted that because the decision of the subcommittee is final, it does not offer any right of appeal to consumers who are not happy with such decision.

⁶²⁰ S 1 (2) of the Framework

⁶²¹ Susan Rutledge, 'Consumer Protection and Financial Literacy' (The World Bank 2010) 18

⁶²² Section 2 of the CBN Act (as amended in 2007)

⁶²³ Apart from the CBN, the Nigeria Deposit Insurance Corporation (NDIC) and Consumer Protection Department also carry out supervisory functions.

consumers.⁶²⁴ This type of confusion could be avoided if the financial laws or statutes in the financial sector clearly state the mandate of the agencies, their role in consumer protection supervision and also a comprehensive consumer protection framework that could create a memorandum of understanding (MOU). Consumer protection in Nigeria is the responsibility of a number of different agencies that lack coordination and co-operation.⁶²⁵

One of the reforms in the financial services sector since after the financial crisis is the establishment of the consumer protection department within the main financial regulator (CBN) in Nigeria. Consumer Protection Department (CPD) within the Central Bank of Nigeria is conducting a range of consumer protection activities (consumer education, customer complaint and management)⁶²⁶ though without clearly defined functions from any of the financial laws. In a number of respects, the CBN's use of their statutory powers to create new department or policy guidelines has proved to be a sound regulatory instrument. This development is considered in this study 'as a new approach that compliments the financial services regulation in Nigeria.'⁶²⁷ In fact, this new development has a limited scope even when the aim is to protect the rights of consumers of financial products and services.⁶²⁸ With this decision, it is expected that the Framework will modernise the existing consumer protection regime by crafting out a clearer role for both the CBN and CPO to avoid conflict of interest with prudential supervision in the financial sector.

The primary focus of the framework may not be to spell out the role of the agencies charged with consumer protection responsibilities in the banking sector, but given the fact that the framework will provide a platform for future legislations; with the need to clearly separate consumer protection from prudential supervision in this case cannot be overemphasized. However, it is stated that "Consumer Protection Department (CPD) shall be responsible for managing all consumer complaints at the CBN but the Central bank of Nigeria shall be responsible for consumer protection in the draft framework."⁶²⁹ Obviously, it is no surprise

⁶²⁴ Sanusi L. Sanusi, "Banking Reform and Its Impact On The Nigerian Economy" (University of Warwick's Economic Summit United Kingdom, 2012) 8.

⁶²⁵ See chapter four of this thesis (4.6)

⁶²⁶ See Central Bank of Nigeria, < <http://www.cenbank.org/Supervision/cpd.asp>> accessed 10 February 2016

⁶²⁷ This is because, whilst the CBN Act failed to include any specific provision with respect to consumer protection and time limit for the resolution of consumer complaints, the CBN has exercised its powers conferred on it by both CBN Act and BOFIA to introduce for example a time lime for consumer complaints. See FPR/DIR/GEN/CIR/01/045 Circular to all banks, discount Houses and Other Financial Institutions, Time bar for Resolution of Customer's complaints (published 16 February 2015)

⁶²⁸ *ibid*

⁶²⁹ S. 2(7.1-7) of the Framework

that, the framework has avoided certain important aspects of consumer protection or defining the line between consumer protection and consumer complaints.

When considering the role of the institutions responsible for consumer protection in the banking sector and the consumer expectations, it is essential to understand the way in which supervisors or regulators deal with fair treatment of consumers and disputes between the consumers and suppliers. The implications of the roles of these agencies, as we discussed, requires identifying 'who' is in charge of rule-making. Enforcement and supervision is important in order to have effective consumer protection supervision.⁶³⁰

In Nigeria, in spite of the enforcement of Consumer law⁶³¹ being a general problem, it could be more difficult when the CBN is not properly structured to effectively supervise or enforce regulations relating to consumer protection⁶³².

In a financial institution where the supervision department was unstructured, to enforce regulation and co-ordinate effective supervision on the banks conducts it would be expected that the new CPF would clearly specify the role of the institutions involved. In the view of this study, it is crucial to clarify the role of the supervisory authority in order to accomplish the government objective of protecting consumers of banking products and services. There are a lot of uncertainties with regard to possible interpretation of the role and the rights of consumers, as this CPF cannot be read in isolation. Before moving to the critical evaluation of the CPF it is important to analyse the purpose, interpretation and scope of the draft. It would be helpful to understand what level of protection if any, is expected from the new CPF.

5.4 The Purpose, Interpretation, Scope and Application

5.4.1 Purpose of the Framework

Section 1 of the CPF sets out a number of objectives of the Draft Framework; stating that the broader objective is to enhanced consumer/investor confidence in the financial services

⁶³⁰ World Bank, 'Technical Note Establishing a Financial Consumer Protection Supervision Department Key Observations and Lessons Learned in Five Case Study Countries' (2014) 6

⁶³¹ Admittedly, the problem of enforcement of Consumer law is not peculiar to Nigeria alone but it is general in developing countries. Usually, in Nigeria, for instance, the consumers do not have incentives to claim because of many issues ranging from the uncertainties about the length of trial, judicial decision and the unwillingness of the persecutor to prosecute consumer matters. See Monye Felicia, '*Law of Consumer Protection*' (2003) Spectrum Books Limited Ibadan; Andrea Castellano and Pamela Tolosa, 'Consumer Protection in Latin American Countries: An Economic Analysis of Implied Warranties' (2015) 1, 72 *The Latin American and Iberian Journal of Law and Economics*.

⁶³² Sanusi Sanusi, 'The Nigerian Banking Industry: What went Wrong and the Way Forward,' (2010) 7, <www.bis.org/review/r100419c.pdf?frames=0> accessed 2 December 2015

sector, while promoting innovation, growth and financial stability. As mentioned above, Nigeria has limited consumer protection framework⁶³³ prior to the Draft Framework. The Consumer Protection Framework had to be drafted for the country to build on as the financial market matures.⁶³⁴ Nigeria needed a comprehensive policy document to provide a framework to ensure enhanced consumer confidence, which was greatly damaged during the financial crisis of 2009.⁶³⁵ The framework now provides an extensive guide to effective regulation of consumer protection practices, and also aims to empower consumers to make better decisions through education.⁶³⁶ The objectives include matters relating to protection of consumers from fraud and sharp practices, facilitating faster complaints handling and dispute resolution.

It also includes enhancing the consumer risk management framework amongst operators of financial services. That involves empowering consumers of financial services to outline consumer rights and responsibilities.⁶³⁷ Section 2, sets out additional responsibilities on how the CBN will develop mechanisms for effective supervision of financial institutions in consumer protection areas. The CBN must take all practical and reasonable steps to promote the purpose of the framework, through encouraging the operators to develop structures for transparency, self-regulation and research.

The document has been designed in line with the G20 High level principles⁶³⁸; other international good practices regarding consumer protection frameworks have been adopted in the draft to cover some areas that were previously not included in the new codes of practice. However, it is important to note that consumer rights received very little attention towards the end of the documents. Can it then be implied that consumers of financial services in Nigeria understand their rights, even when the main Consumer Protection Act did not highlight any of their rights. In order to avoid further hardship to the financial consumers, who may be illiterate without any knowledge of their rights, current frameworks should highlight the basic consumer rights, the operator's obligations will then follow. Such consumers are unaware of

⁶³³ Sanusi Lamido Sanusi, "The Nigerian Banking Industry: What Went Wrong and The Way Forward" (The Convocation Square, Bayero University, Kano on Friday 26 February, 2010, 2010)8.

⁶³⁴ Following the CGAP research on consumer protection regulation in Low-Access Environments, it has been suggested that countries at the early stage of improving financial consumer protection can proceed by small incremental advances starting with 'consumer protection framework' with the rules that will cover as many providers as possible. See Laura Brix and Katherine McKee, 'Consumer Protection Regulation in Low-Access Environments: Opportunities to Promote Responsible Finance' (2010) Focus Note, No 60, 22

⁶³⁵ S 1(1) of the Framework

⁶³⁶ S 1(1) of the Framework

⁶³⁷ S 1(1) of the Framework

⁶³⁸ See G20 High Level Principle on Consumer Protection endorsed by the G20 in October 2011.

their rights or what is expected from them and may end up suffering at the hands of the financial institutions, which may capitalise on their ignorance to exploit them.

In terms of the framework, because of its focus, many providers are brought under one oversight without paying particular attention to numerous transactions⁶³⁹, between consumers and providers. Ideally, consumer protection framework should deal separately with providers that offer similar products and services, in the case of Nigeria, suitable standards are still in the early stage of development. However, a fundamental concern in this case is whether or not the framework will determine the legal standards are not yet appropriate to comment on. The Framework places enormous obligations on the financial services providers and relevant authorities to ensure consumer protection in the financial services industry.

5.4.2 Interpretation of the Framework

The Draft Framework does not have its own interpretation clauses. However, the preamble states that the document should be read in conjunction with other relevant Financial Services Acts as well as CBN written guidelines and Circulars.⁶⁴⁰ This approach is likely to allow the Framework to be interpreted in a broader financial services context, as opposed to a narrow dictionary connotation. However, by having a general list of definitions in section 1(3) of the Framework, which has the potential to introduce multiple interpretation or confusion if not properly addressed as illustrated in section 5.4 of this chapter, it may create ambiguity.

5.4.3 Scope and application of the Framework

The preamble indicates that the document is issued by the CBN, in the exercise of the power conferred on it by both the Central Bank of Nigeria Act of 2007⁶⁴¹ and Bank and Other Financial Institutions Act.⁶⁴² The scope of the draft framework is remarkably broad as it applies to ‘all Financial Institutions’ under the regulatory purview of the Central Bank of

⁶³⁹ As a matter of practice, the CBN includes all the financial institutions under its purview in the new framework. The reason for doing this may be because it will be easier for them to supervise the whole sector with the same resources but it has been widely noted that bringing financial operators that offer loans, foreign exchange, retails services and insurance can be problematic. However, the CBN imposes a duty on each sector to follow the minimum standard set out by the new framework to ensure that consumers are adequately protected. See The Preamble of the Consumer Protection Framework.

⁶⁴⁰ For example, See the Preamble of the Framework

⁶⁴¹ Central Bank of Nigeria Act 2007 (hereafter the CBN Act 2007) is the Act that created the Central Bank of Nigeria.

⁶⁴² Banks and Other Financial Institutions Act 2004, (hereafter the BOFIA Act 2004); see Section 1 of BOFIA 2004.

Nigeria⁶⁴³ and covers almost all aspects of the problems facing the consumers of financial services. The scope of this CPF is limited due to the fact that it was not established by any of the Financial Laws or Consumer Protection Act⁶⁴⁴. The scope of the draft framework does not seek to cover the Insurance and Securities sector or all aspects of consumer protection issues that may apply to the financial services, such as consumer credit. Rather, it focuses on consumer protection challenges that are peculiar to the Nigerian financial services industry in relation to nine key issues for consumers.

The definition of the term ‘consumer’, as provided under the preamble is ambiguous and provides little insight, as it simply says that ‘consumer refers to a person who uses, has used or is a potential user of financial products or services of a financial operator.’⁶⁴⁵ However, it is unclear from the definition of ‘consumer’ in the draft, whether the framework applies to personal or small business consumers. The drafters of the framework seem to have extended the scope to include the big Corporations, Charity Organisations, Small and Medium Sized Enterprises (SMEs) within the definition of consumers. This point is further illustrated in the section of this chapter dealing with definition of consumer and will be discussed in that context. The draft framework seems to apply to everyone, whether consumers, service providers or otherwise, although in different scenarios and to differing degrees. It is perhaps trite to say that the success of the documents depends on the clarity of the draft framework for consumer protection in Nigeria.

Having discussed the purpose, scope and interpretation, the next section will explore the way the terms ‘consumer’ and ‘customer’ are defined in the new framework respectively.

5.5 Definition of “Consumer” and “Customer”

The CBN Draft Consumer Protection Framework defines consumer in its Section 1 as ‘a person who uses, has used or is a potential user of financial products or services of a financial operator’⁶⁴⁶. According to the same section, ‘a customer is a person that has a relationship, by

⁶⁴³ It is noted that financial Institutions under the CBN regulatory purview include Commercial Banks, Micro-finance Banks, Discount Houses, Bureaux-de-change, Finance Houses, Mortgage Banks, Mobile Payment Operators and Mobile Payment Companies. These Financial Institutions deal with different type of financial consumers. See S 1(2) of the Framework

⁶⁴⁴ A single and comprehensive framework for consumer protection framework can be established by a Consumer Protection Act. For example, in South Africa, it is only the new Consumer Protection Act that has the capacity to set a higher standard for consumer protection by establishing a comprehensive framework for consumer protection.

⁶⁴⁵ See Definition of Key Terms in the Preamble of the Framework

⁶⁴⁶ Section 1 (3) of the Framework

reason of benefiting from products or services offered by the financial operator.’⁶⁴⁷ These definitions are ambiguous, imprecise and could result in different interpretations being applied to consumer and customer.

In this case, it may not be easy to make a theoretical distinction between “consumer” and “customer”. If a distinction is to be drawn between consumer⁶⁴⁸ and customer, it will probably lead to imposing different standards of treatment depending on their relationship with the financial operator. However, having different definitions within the same financial services structure can lead to inconsistency.

It appears axiomatic that the definitions which have been put forward in this draft are not from any particular statute or jurisprudence⁶⁴⁹. This section provides that a customer shall have a relationship by reason of benefiting from products or services. It is worth emphasising that the two notions are not defined in the CBN Act⁶⁵⁰ and as such, for the new framework to be effective it should at least offer a clear and consistent definition. Indeed, consumer could be defined in a restrictive view as in the Consumer Protection Council act, which projects it as ‘natural persons acting for the purpose which are outside their trade.’

The framework adopts a remarkably broad definition of ‘consumer’ which is not from any particular statute. These definitions undoubtedly depict the line of thought which has been adopted by the financial regulators and the CPF drafters, in attempting to give meaning to these phrases that are not from any particular statute. It is, therefore, not surprising that the interpretation of the drafter expressly refers to the objective of the policy document, which is protecting consumers in the Financial Services industry while promoting financial stability, innovation and growth.⁶⁵¹ Though, there is no section in the framework that clarifies whether corporate entities or organisations like clubs and charities who participated in consumer relations shall be equated to consumers.

In ensuring that the traders, small and medium enterprises can avail of the protection afforded by the draft framework, it is submitted in this study that CPF definition of ‘consumer’ though not as set out in the Consumer Protection Council Act 1992, is too restrictive to include all

⁶⁴⁷ Section 1 of the Draft Consumer Protection

⁶⁴⁸ Chapter two of this study clarify the issue of who is a consumer

⁶⁴⁹ Actually, there is no Nigerian Financial statute that defines ‘Consumer’ or ‘Financial Consumer’. The only statute that generally defined ‘Consumer’ is the CPC Act but the definition in the draft obviously was not adopted from the said Act.

⁶⁵⁰ Section 60 of the CBN Act 2007

⁶⁵¹ Section 1 of the CBN Draft Consumer Protection Framework

consumers. The reason is that the drafter is constrained by that definition in drafting the consumer protection framework.

It is unclear whether the definition of the ‘consumer’ for the purpose of the framework, will be a natural person who uses, has used or is a potential user of financial products and services; or businesses including partnerships, sole traders, clubs and charities. In this case, there are obviously two angles to the above mentioned definitions – one is to look at the legal definition given to these words and another is to examine the most basic meaning of the words in everyday usage.

As for everyday use of the word, the Cambridge dictionary defines ‘consumer’ as “a person who buys goods or services for their own use.” In theory, whichever goods or services a consumer buys automatically becomes consumer goods in that sense. Given that the meaning of ‘consumer’ varies in different contexts,⁶⁵² their legal definitions vary also in different jurisdictions especially in many aspect of consumer law.⁶⁵³ This study also notes that Nigeria has not developed its own consumer concept, which can be interpreted without making reference to the federal legislation. Two trends often emerge when it comes to the definition of ‘consumer’ in law.⁶⁵⁴ Taking the above issues into consideration, it seems that the first trend often adopts a wider definition in line with the statute, that the ‘consumer’ is whoever purchases for the purpose of consumption,⁶⁵⁵ rather than those who purchases with the intention to resell or make some profit.⁶⁵⁶ Consequently, a childminder who buys a van, for example to facilitate her job is a consumer.

The second trend tends to favour a narrower definition, where the concept of consumer is considered from the perspective of a person who purchases for his personal or family use. This is obviously the trend which was adopted in the Nigerian legal system in 1992 (under the military regime, the Consumer Protection Council Decree was enacted) defining a consumer as an individual who purchases, uses, maintains or disposes of products and

⁶⁵² Geraint Howells and Thomas wilhelmsson, *EC Consumer Law* (Ashgate/Dartmouth 1997) 2

⁶⁵³ See also Great Britain: Parliament: *‘House of Commons: Business, Innovation and Skills Committee, House of Commons - Business, Innovation and Skills Committee: Draft Consumer Rights Bill - HC 697-I: Sixth Report of Session 2013-14, Vol. 1: Report, Together with Formal Minutes, Volume 1’* (The Stationery Office, 2013)14

⁶⁵⁴ See Mahmoud Ahmed Abdul Mahmoud, ‘The Role of Commercial Law in Protecting Consumers: A Comparative Study Between Kuwait, British, French and American Law’ (University of Exeter, Unpublished PhD Thesis 1994) 30

⁶⁵⁵ *ibid*,

⁶⁵⁶ This was the position adopted by the Consumer Protection Council Decree of 1992 in Nigeria. See Section 32 of Cap C25 LFN 2004

services.⁶⁵⁷ To fit the concept of consumer into the mould of consumer protection in the financial services, the drafting process is expected to strictly follow a narrower meaning of the term ‘consumer’ but the reverse is the case. The draft, as previously noted, used the term ‘consumer’ and ‘customer,’ interchangeably to create a continuing concern of who exactly is a consumer for the purposes of the draft. The answer to this question is quite crucial for the draft to have full effect. The definition of ‘consumer’ in Nigeria remains controversial because it does not specify whether it includes financial consumers, small businesses or sole traders.⁶⁵⁸ However, there is an ongoing debate about the need to reform the Consumer Protection Council Decree⁶⁵⁹.

The consumer concept is used quite often in the draft rather than the customer.⁶⁶⁰ The draft also reveals that there was a significant gap between the definition of ‘consumer’ and the ‘customer’ of financial product and services. The CPF does not have a ‘rights-based approach’ towards consumer protection as it did not entrench any consumer rights in the financial services; the Consumer Protection Council Act which should form the nucleus of the Nigerian consumer legislation does not either. It is to be hoped that the CPF represents a signal that the regulator wants to address these important issue

Having discussed the definition of consumer in the draft and its challenges of not having legal backing, the concept of customer as a person that has a relationship, by reason of benefitting from products and services was also analysed. We now need to look at the notion underlying the interpretation of the draft.

5.6 Structure of the Guidelines

The Draft Consumer Protection Framework covers nine principles due to the peculiarities of the Nigerian financial services sector. The discussion in this section focused on the nine principles.

5.6.1 Legal, Regulatory and Supervisory Structures

In this section, the broad question of the legal, regulatory and supervisory framework is discussed under the following sub-sections.

⁶⁵⁷ Section 32 of CPC Act 1992

⁶⁵⁸ Consumer Protection Act of the Republic of South Africa, No. 68, 2008. The Act is one of the most comprehensive consumer protection legislation in Africa and it contained

⁶⁵⁹ Consumer Protection Council Decree 1992

⁶⁶⁰ Section 2 of the Draft Consumer Protection Framework

5.6.1.1 Legal and Regulatory Framework

The legal framework should help to determine the mandate and the responsibility of the financial regulator in enforcing the entire range of banking and financial institutions legislation. In Nigeria, the CBN is responsible for enforcing the whole banking and financial institutions legislation, but so far only very few related legal and regulatory provisions mandate the CBN to expressly deal with aspect of financial consumer protection⁶⁶¹. Consequently, the CBN does not have any explicit provisions that determine the mandate and the role of the CBN in the protection of consumer of financial services in Nigeria.

The draft framework should have provided for a new consumer landscape making sure that the role of the CBN in financial consumer protection is strengthened and clarified. This would avoid unnecessary duplication of duties, which could result in loss of confidence and overlapping of responsibilities. It has been noted that the draft framework states that the ‘financial consumer protection shall be carried out by the CBN’⁶⁶² while the CPD will be responsible for managing all complaints from consumers⁶⁶³. This raises the question of who is responsible for supervising financial consumer protection in the financial services as this is not clearly defined in either the CBN act or BOFIA. The BOFIA should also be given detailed financial consumer protection provisions in addition to all the guidelines and regulations regularly issued by the CBN.

5.6.1.2 Supervisory Framework

The supervisory framework for consumer protection in the financial services varies from country to country⁶⁶⁴. There is no statutory mandate that expressly specifies which agency or institution is responsible for supervising consumer protection matters in the Nigerian financial sector. The CBN carries out consumer protection responsibility with the prudential supervision in the same agency. Although, this model has its own merits and demerits, it could create potential conflicts with the CBN prudential role. Effective financial consumer protection supervision should not only consider a developed mechanism to ensure adequate financial services supervision but also take note of other important points with regard to

⁶⁶¹ S. 2 of the CBN Act 2007; S. 57 of Banks and Other Financial Institutions Act (BOFIA 2004). The CBN Act 2007 mandates the CBN to regulate the banks and financial institutions to promote sound financial system in Nigeria. While the BOFIA 2004 gives the CBN the power to make regulations.

⁶⁶² S. 2 (1) of the Framework

⁶⁶³ S. 2 (7) of the Framework

⁶⁶⁴ The United Kingdom, Netherlands and South Africa operate the Twin-Peak supervisory model while Nigeria has the same agency perform both jobs.

country-specific characteristics⁶⁶⁵, the resources of the financial institution and the country's stage of legal development⁶⁶⁶.

Having been given the financial consumer protection responsibility⁶⁶⁷ for not only banks, Micro-finance Banks, Bureaux-de-change, Mortgage Banks and Discount Houses⁶⁶⁸ but also for prudential regulation of banks and financial institutions, it is unclear how CBN will manage these roles without conflict of interest.

The draft Framework, having specified that the 'CBN shall develop mechanisms which include a compliance plan', and also collaborating with key stakeholders to encourage the protection of consumer rights. It might be of interest to assess in the future what progress could be achieved for consumers when the main Consumer Protection Act, does not have any provision for financial consumer rights. Consumer Advocacy Groups⁶⁶⁹ have no financial incentive from either the CBN or the government and how these stakeholders will be coordinated. An appropriate supervisory framework in a country with the same model as Nigeria should have a stand-alone department responsible for financial consumer protection supervision or a department that will have the same powers as the prudential regulatory department but supervised by different sections in the CBN.

5.6.1.3 Responsible Business Conduct

As noted above, the CPF introduced an obligation for making financial operators to provide essential services and to observe high levels of ethical standards in carrying out their businesses. Some of these services or obligations are not covered by legislation. Prior to the release of the consumer protection framework, there was no law imposing a clear obligation on banks to provide credit counselling or to lend responsibly. Due to the imposition of the responsible lending obligation, the CPF provides that the CBN shall ensure that financial operators put up effective structures to prevent predatory lending.

The 2015 framework imposed financial advice obligation on the banks for the first time, although it did not mention independent financial advisors or set out any specific standard for

⁶⁶⁵ The World Bank, 'Tanzania Diagnostic Review of Consumer Protection and Financial Literacy' (2013) Volume II Comparison with Good Practices 7; The World Bank, 'Czech Republic Technical Note on Consumer Protection in Financial Services (2007)

⁶⁶⁶ *ibid*, 3

⁶⁶⁷ S. 2 (1) of the Framework

⁶⁶⁸ S. 1 (2) of the Framework

⁶⁶⁹ In most jurisdictions a consumer advocacy group complements the duty of public enforcement organisations. They could sometimes influence government debates and participate in the policy making in the industry.

the financial advice. It could be argued that, if financial advice is only provided by the financial operators, there may be a tendency for exploitation or misinformation. However, it is noted that the CPF provides that the CBN shall use different mechanisms to monitor the financial providers but this may not be more proactive in protecting consumers.

Following the release of the framework, there are notable developments by the CBN to protect bank consumers in relation to responsible lending.⁶⁷⁰ In the view of this research, the provisions to prevent predatory lending or ‘shylock’ lending practices in the Nigerian financial institutions could be achieved by introducing Consumer Credit legislations.⁶⁷¹ Although, most Nigerian financial operators assess customer’s credit worthiness before offering credit facilities, there are no clear CBN guidelines requiring them to ensure that products or services are suitable for an individual consumer’s purpose. The CBN does not have established criteria for suitability assessment. Thus, this is one of the ways in which reckless lending could be curtailed as it will help to deal with all the issues surrounding consumer credit. Another notable development after the release of the framework is the review of the guidelines for the licensing, operation and regulation of credit bureaux and credit bureaux related transactions by the CBN.⁶⁷² The 2015 framework requires the financial operators to carry out credit assessments on consumers before granting them credit or loans, to avoid reckless lending. The framework also requires the CBN to set guidelines for debt collection and the operators to ensure that those that handle debts are properly trained.

The CPF set a higher and more extensive standard for protecting consumers than the legislation or the banking code. The CPF impose an obligation on the financial operators to respond to information requests in writing and in the best interests of their customers.

Although the framework objectives are not in general targeted at establishing the criteria for affordability or suitability assessment; the framework can be extended to capture benefits in this direction, especially in Micro Finance Institutions (MFI) where the consumers focus is on their urgent financial needs rather than affordability.

⁶⁷⁰ In the CBN response to the recommendations of the framework, it is noted that a set of guidelines are being drafted by the financial regulator in order to prevent predatory lending. See Gabriel Omoh (2015). CBN moves to halt ‘shylock’ lending. *Nigerian Vanguard*, [online] Available at: <http://www.vanguardngr.com/2015/11/cbn-moves-to-halt-shylock-lending/> [Accessed 13 Jan. 2016].

⁶⁷¹ One example of where Consumer Credit Act has helped to curb reckless lending is in South Africa. See National Credit Act [No. 34 of 2005]

⁶⁷² See CBN, Guidelines for The Licensing, Operations and Regulation of Credit Bureaux and Credit Bureaux Related Transactions in Nigeria, (2013), BSD/DIR/GEN/LAB/06/051

5.6.1.4 Disclosure and Transparency

A small part of the 2015 Consumer protection framework focused on the disclosure and transparency obligations, including disclosure obligations at the time of contract, and notice to consumers on variations during the life of the contract.⁶⁷³ This type of obligation seems to be a usual requirement these days given the recommendation of the G20 High Level Principles on consumer protection.⁶⁷⁴ However, as noted in chapter four of this study, there is no legal framework for financial consumer protection or laws requiring detailed disclosure of financial products and services in Nigeria. This does not mean that disclosure requirements are entirely absent. The CBN guidelines and circulars contain some form of disclosure obligations that are aimed to govern the relationship between the financial operators and their customers; these are not updated to cover different banking products and services. Some of the financial regulations have disclosure requirements in relation to consumer products in some financial institutions; however it is neither comprehensive nor consistent. The CPF has proposed that the CBN should issue clear guidelines to set minimum disclosure requirements in contract agreements for products and services.⁶⁷⁵

At the time of the 2015 CBN consumer protection framework, there was no law imposing a firm obligation on the financial institutions to disclose transparently. In reality, due to the absence of such obligations, the amount and type of information that financial institutions present and disclose to their clients varies from one institution to another. There were disclosure obligations contained in the CBN Guide to Bank Charges but these were not regularly updated.⁶⁷⁶ The consumer protection framework provides for the CBN guidelines to cover areas such as penalties, interests, fees and charges and also payment and termination modalities which have in practice never being implemented. The CPF by requiring the CBN to set minimum disclosure requirements, timelines for variations on contracts, and financial operators' obligation to comply with approved product features, when advertising financial products, will bring significant developments in the consumer protection standards in Nigeria.

⁶⁷³ See S. 2(3) of the Framework

⁶⁷⁴ OECD, G20 High-Level Principles on Financial Consumer Protection, (2011)

⁶⁷⁵ See S. 2(3)(1) of the Framework

⁶⁷⁶ The CBN Guide to Bank Charges was first issued in 2004. Note that it took nine years for the CBN to revise the first guide to charges. See Central Bank of Nigeria, Circular to All Banks and Discount Houses: The Revised Guide to Bank Charges (2013), FPR/DIR/GEN/CIR/03/002

However, following the 2008-09 financial crisis, the CBN imposed more contract and product disclosure obligations on the financial institutions under its purview. Shortly after the financial crisis, the CBN revised the long awaited guide on fees and charges to improve the standard of protection in the financial services.

The inclusion of clearer disclosure obligation on the financial institutions, does however introduce a considerable standard of protection across different financial institutions. It is therefore relevant not just for consumers of financial products, but also for future policy formation in this sector.

5.6.1.5 Consumer Financial Education

There is no doubt that Nigeria like many other developing countries in Africa and around the world have a remarkable level of poverty and a low level of financial literacy and education.⁶⁷⁷ The Framework made considerable emphasis on the crucial aim of consumer financial education being “to enable consumers know their rights and responsibilities and make informed financial decisions when purchasing financial products or services.”⁶⁷⁸ It further elaborates that the CBN shall work in collaboration with different stakeholders to develop a financial literacy framework which will be used as a guide to implement financial literacy in Nigeria. The section also provides five criteria which the consumer financial education shall follow in order to reach different segments or targeted group within the diverse population in Nigeria. Although these five criteria by no means show the full provision of the UN Guidelines on both monitoring and evaluation, they do provide insight into the CBN’s intention to incorporate financial education into the basic curriculum of the educational system in Nigerian. A number of platforms which should be used to encourage participation in Nigerian schools are listed. Reference is made also to encourage financial education as an integral part of corporate culture in financial institutions and to encourage relevant bodies to organize educational programs in collaboration with CBN.

The framework states that CBN shall develop outreach programs through trade associations and pilot financial education to inform the general public. However, the framework did not mention anything about training programmes for individual counselling, teachers, educators, journalist or media experts, and even financial consumer advisers, despite its importance in

⁶⁷⁷ Central Bank of Nigeria, 'Financial Inclusion in Nigeria: Issues and Challenges' (2013)

<<http://www.cenbank.org/>> accessed 29 February 2016.

⁶⁷⁸ S 1(4) of the Framework

building capacity for the fulfilment of the consumer protection framework and the training of trainers' programme in financial education. For example, financial advice is one of the main features in every consumer education framework. For the Framework to fulfil its objectives and be effective, it must ensure that consumers have access to advice and information not only from the banks but also from the 'regulated'⁶⁷⁹ independent advisers. In Nigeria the public agencies, such as the Consumer Protection Council (CPC), the Standard Organisation of Nigeria (SON), and non-governmental organisations, such as the Consumer Empowerment Organisation of Nigeria (which would have been a potential avenue for providing independent advice or information) are all located in urban cities. Rural consumers are left with no option or access to information. The CBN as the financial regulator should ensure in this Framework that information and advice are provided to rural consumers through trained financial education advisers, or planners who are located in both the cities and in the rural communities. This approach will provide a catalogue of opportunities for developing and building capacity of the third-party independent advisers in the context of financial education, with particular focus on educating the rural communities.

Finally, of further concern is the Framework's lack of attention with regard to collaborative research and CBN support in the area of financial education. Collaborative research can be seen as a means of assessing or evaluating the proposed measures in this section. In many countries it is provided by the university research team in various areas with the support of the financial regulatory agency or industrial association⁶⁸⁰. Despite the CBN's financial education program it has not made sufficient progress in implementing its action plans national financial inclusion strategy.

5.6.1.6 Fair Treatment

The Framework explained briefly the concept of fairness within the financial services sector. Consumers have rights to fair treatment devoid of undue discrimination from the service providers⁶⁸¹. Such discrimination could be in the form of denial of access to essential financial services, or offering a different quality of services to different consumers due to financial standing. The Framework requires the financial regulator (CBN) to provide the

⁶⁷⁹ The term 'regulated' is used to mean advisers that are registered and monitored by a designated financial regulatory institution. This will help to avoid conflict of interest.

⁶⁸⁰ Cambridge University Team of Computer Scientists researching on the new Chip and Pin System in the UK recently found flaws in chip and pin and ask the financial system to review. See <http://www.bbc.co.uk/blogs/newsnight/susanwatts/2010/02/new_flaws_in_chip_and_pin_syst.html> accessed 20 November 2015.

⁶⁸¹ S. 2 (5) of the Framework

necessary mechanism to ensure that consumers have access to financial products and services, especially the vulnerable ones. The fairness right in the framework is extended to consider treatment devoid of unfair inducements, threat or deception⁶⁸². It also considered the issue of terms and conditions set out by the financial operators in the contract agreements to include the rights, liabilities and obligations of all the parties involved⁶⁸³. It lists out some terms that may be considered unfair in the contract agreement between the consumers and financial providers. Apparently, it places the responsibilities on the consumers to report contract terms that are not in line with the stipulated regulation. However, the Framework did not contain any provision for allowing consumers a cooling-off period in which they are allowed to revoke the contract without penalty.

5.6.1.7 Protection of Consumer Assets, Data and Privacy

There is no clear discussion in the Framework of what constitutes assets and privacy, or how the operators, consumers and regulators can work together to achieve optimal result. Every bank consumer has the right to privacy as this is a necessary precursor to build trust in the financial sector. The Framework has placed the responsibility to protect personal information on financial operators, also emphasising that it should not be released to any third party unless permitted by law.⁶⁸⁴ The Framework also listed some information that is to be considered confidential and placed a confidentiality requirement on financial providers to protect it at all times. The financial services operators cannot disclose ‘personal information of customers’ to third party ‘without express permission of the customer’.⁶⁸⁵ However, it is still unclear how the financial operators will obtain this permission to disclose information to a third party from the consumers.⁶⁸⁶ The bank is required by the Framework to set out mechanism to enforce protection of consumer⁶⁸⁷ assets and privacy against unlawful usage.

5.6.1.8 Complaints Handling and Redress

The new framework acknowledges that disputes are inevitable in operator-consumer relationship and adequate measures should be established to deal with these challenges. The

⁶⁸² *ibid*, 21

⁶⁸³ *Ibid*, 22

⁶⁸⁴ S. 2 (6) of the Framework

⁶⁸⁵ The personal information in this Framework includes ‘all personal information of customers’ even the information on closed account is also included.

⁶⁸⁶ It is noted that the Framework did not say whether this permission will be in the form of customer’s written or verbal consent.

⁶⁸⁷ The term ‘consumer’ is used interchangeably with ‘customer’ all through the Framework despite giving the term different meanings at the definition of key terms.

framework listed some essential elements for effective complaint handling such as affordability, fairness, timely, transparent, accessibility and independent.⁶⁸⁸ However, it has no clearly defined benchmarks.⁶⁸⁹ A lack of benchmark leads to situations where there are no uniform standards or where a financial operator may not have copies of official redress policies available to consumers and also, no best practice in the financial sector. A criticism that might be levied against the new CPF is the unavoidable risk that the criteria of different financial operators redress mechanisms is likely to be applied inconsistently. A more effective approach could be achieved if the CBN had used this framework to create a benchmark that will design a non-regulatory standard for the financial industry.

Under the draft framework, the financial operators are required to provide multiple channels⁶⁹⁰ through which consumers can seek redress.⁶⁹¹ The draft Framework provides that “each financial operator shall develop a consumer compensation policy to address various classes of complaints and losses”⁶⁹². No clear signals are available to suggest the procedure and decision making of such financial operators will be fair to Nigerian consumers. The framework does not neglect to discuss the primary areas under complaints and redress handling, such as complaints channels, complaint management processes, complaints redress and collaborations with other bodies.⁶⁹³ These provisions seem to reflect the Code of Conduct for all banking officers and the bank obligations, as stated under the heading, handling customers’ complaints.⁶⁹⁴ It specifies a list of financial operators’ obligations and the CBN duty to promote the practice of ADR mechanism in the financial industry. However, such obligations and duties are not enforceable with referring to other regulations or without contacting the CBN. The question that follows is, what effective procedure has this CPF provided to enable consumer to file complaints when they believe that they have been unfairly treated by financial institutions, or when their rights have been violated?

⁶⁸⁸ S. 2(7) of the Consumer Protection Framework of 2015.

⁶⁸⁹ Benchmark as used in this study will provide effective procedure for the financial operators to design their own redress policies based on the specified characteristic. See for example, the Six Australian Benchmarks; Bruce Billson, Benchmarks For Industry-Based Customer Dispute Resolution: Principles and Purposes (Commonwealth of Australia 2015) 3,8

⁶⁹⁰ The ‘multiple channels’ is used in the Consumer Protection Framework to include electronic and non-electronic channels of seeking redress. This only refers to the first stage in the industry (which is when consumers fill complaint with financial operator). See Figure 1. New Dispute Resolution – Three Stages Approach below, 31,32

⁶⁹¹ S. 2 (7) of the Framework

⁶⁹² S. 2. (7.) (3) on the Framework

⁶⁹³ S. 2 (7) of the Framework

⁶⁹⁴ Code of Conduct in the Nigerian Banking Industry, 33

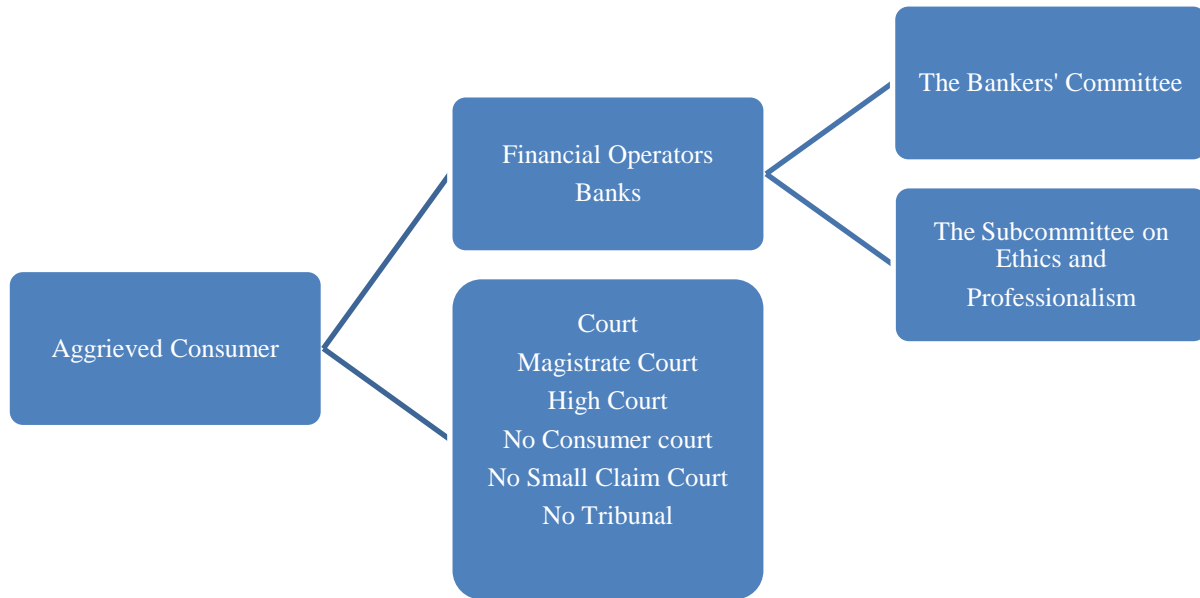
In Nigeria, prior to the CPF, the channels for resolving disputes in the financial sector is limited to two options of either going through the financial operators' route or court-based as shown in the illustration below. Consumers, particularly those in rural areas were unaware of these systems,⁶⁹⁵ and were also unable to resolve high volumes of small-value claims. While the old system does not prevent the consumers from using the judicial settlement mechanism, nor does it mandate them to take their complaint first to the financial operator. This system has been generally criticised, noting that industry-based systems, such as the financial operators' internal measure or bankers' committees, were insufficient to ensure that the redress processes and decisions of these institutions remained unbiased. Following these lines of approach, consumer complaints and disputes resolution are predominantly handled separately by each financial institution. This is often done on case-by-case bases because there are no clear standard procedures or guidelines established in the current regulations specifying how financial institutions can handle complaints. Although, some banks have one form of dispute resolution mechanism or the other, this was not mandatorily monitored until the establishment of the CPD in 2012.

The establishment of the CPD helped the CBN to move the responsibility to handle consumer complaints to the new department. The CBN does not have the explicit statutory powers to handle disputes between consumers and their service providers.

⁶⁹⁵ In practice, there were no clear guidelines or policy that will make the financial operators to promote knowledge of its dispute measures to all Nigerian consumers, let alone the ones in the rural areas.

The old redress channel in the Nigerian financial industry is outlined in the following figure:

Figure 1.1: The Old Dispute Resolution Channel in the financial industry



The above schematic illustrates the old system of redress (a system before the creation of the Consumer Protection Department in the CBN in 2012) which added only one more option (CPD). However, the important omissions of the Act⁶⁹⁶ and the CBN guidelines are that the consumer redress in question did not provide for a consumer court, small claim court, tribunal, or any avenue for rural consumers to enforce their rights; a major gap in the legislation. It is obvious from the analysis above that the protective shell provided for the consumers by the old system is limited. In the rural areas (local government level) most disputes are resolved in the customary courts but not consumer protection cases. Nigeria operates a federal system of government⁶⁹⁷, which means that for all Nigerian consumers to have access to the process it must not be limited to the federal level. The question for this research is where are the few courts located? Where are the bankers' Committees or Subcommittees on Ethics and Professionalism located? It is interesting to note that the courts are

⁶⁹⁶ The Consumer Protection Council Act, 1992 which established the Consumer Protection Council Agency without creating consumer court or tribunal.

⁶⁹⁷ In the Federal system of government you have the following: the federal, the state and the local government.

located in the City and to file a case in the Magistrate court, the consumers are not only required to pay court fees but also to hire a lawyer.

In Nigeria, the notion that consumers in the financial industry are insufficiently protected stems from the argument that the consumers have limited options of redress and the limited framework makes it hard for consumers' rights to be sufficiently protected.⁶⁹⁸ The old dispute resolution mechanism as illustrated above is one of the reasons behind the argument about consumer protection in the financial industry. The above illustrates the very limited options that were used to protect consumers of financial products and services and to enforce or challenge the infringements of their rights. The old regime does not provide any room for an appeal if the consumer is not happy with the outcome of the dispute resolution by the Bankers' committee.

Now under the framework, a bank consumer has the right to seek redress whenever things go wrong between them and their financial services providers. Among the issues that were discussed in the CPF, under which the consumers could bring their complaints to financial operators were banks charges, fraud, and unethical behaviours. However, the CPF did not say whether mobile banking issues that are likely to cause consumers some financial loss are included. Therefore, it is far from clear whether the other issues related to consumer services that are provided by banks and other financial institutions have any specific mechanism to address the consumer concerns.

One of the provisions of the framework is that each financial provider is required to set up internal mechanisms for resolving consumer's questions regarding their products and services. Prior to the framework, there was no provision in financial services law for issues such as, escalation of a complaint if it is not resolved satisfactorily by the service providers. One of the major drawbacks in the complaint handling procedures in banks prior to the commencement of this framework, was the absence of uniform channels of conflict resolution in banks. With the provisions of the Framework, consumers' complaints shall first be made directly to the financial provider and can advance to ADR,⁶⁹⁹ only if the consumers are not satisfied⁷⁰⁰. Prior to the establishment of the Consumer Protection Department in the CBN, the alternative dispute resolution (ADR) system in the financial services sector was run

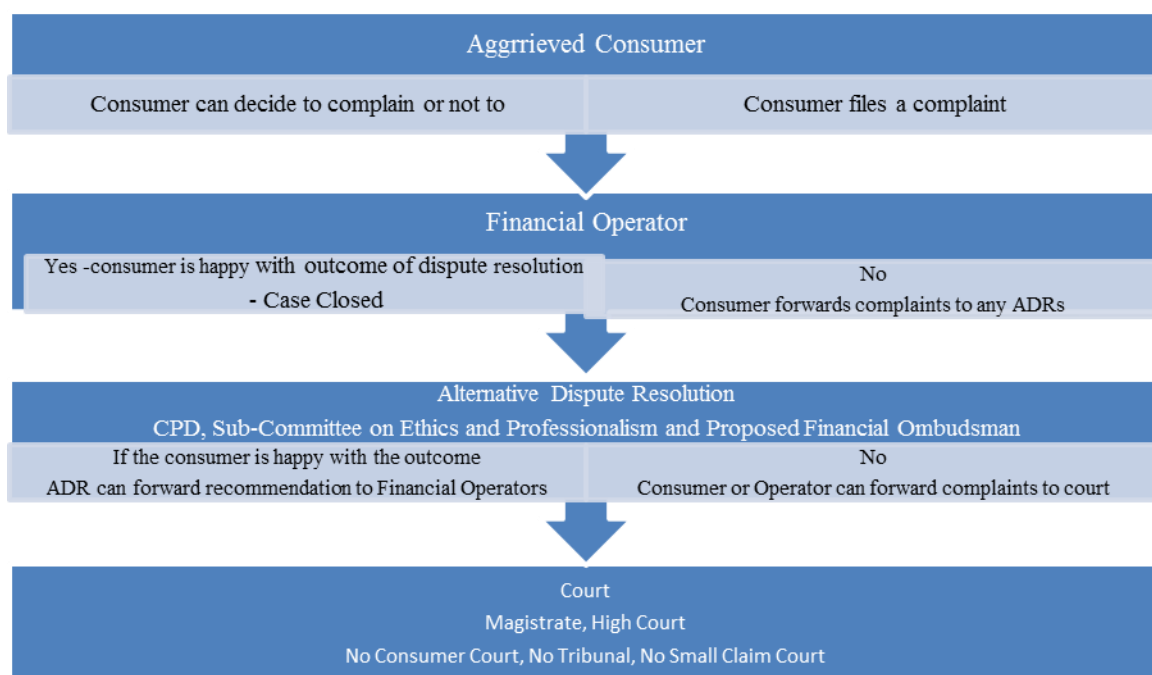
⁶⁹⁸ Sanusi Sanusi, "Banking Reform And Its Impact On The Nigerian Economy" (University of Warwick's Economic Summit United Kingdom, 2012) 8.

⁶⁹⁹ The ADR in this case consist of three agencies namely; (i) Consumer Protection Department, (ii) Sub-Committee on Ethics and Professionalism, (iii) the Proposed Financial Ombudsman.

⁷⁰⁰ S. 2(7) of the Framework

by the Bankers' Committee.⁷⁰¹ This is the only ADR option and it is not free. For a consumer to file a complaint, and for it to proceed, he needs to make a 'non-refundable' deposit of fifty thousand Naira (N50, 000) (approx.US\$170).⁷⁰² The imposition of this payment by the agency will make consumer redress difficult, if not impossible. A further question for this research is; what happens to consumer matters under the amount of fifty thousand Naira (N50,000.)? There are primarily three issues that can discourage consumers from seeking redress through this channel. First, the fees that is required for a consumer to file a case. Second, the locations of the offices make it difficult for any consumer to walk-in and lodge his or her complaint; hence, there is no central call centre that takes consumers complaints by phone. Third, the consumer needs to be informed about the process and must be educated as there is no funding for consumer organisations to offer services these consumers. The schematic below illustrates the new dispute resolution channel as proposed by the 2015 CPF. The proposed grievance redress mechanism is presented in Figure 2:1.

Figure 2.1: The Proposed CPF Dispute Resolution workflow in the Nigerian Financial Industry



⁷⁰¹ The Bankers' Committee is made up of Central Bank of Nigeria (CBN), Deposit Money Banks (DMBs) and Discount Houses. See Obinna Chima, "Bankers' Committee Reiterates Commitment to Economic Transformation" *Thisday Live* (2013).

⁷⁰² See <http://www.cibng.org/cb_ethics.asp> accessed 10 February 2016.

Source: *Dispute Resolution Workflow in the Industry (CPF Draft: 2015)*, p.28

Stage 1	Stage 2	Stage 3
Financial Operator	ADRs	Court

Figure 3:1. New Dispute Resolution – Three Stages Approach

The proposed grievance redress mechanism offers three stages for consumer dispute resolution, the financial operators, ADRs and the court. The financial operator is expected to offer the first stage of dispute resolution. The ADR scheme proposed by the CPF is to provide an expeditious platform to financial institution consumers through three agencies⁷⁰³. As at the time of writing this chapter and time of submission (December 2016) the proposed Financial Ombudsman has not commenced operation and the CPD functions from one office, located at the CBN Headquarters in the federal capital city Abuja. The Sub-Committee on Ethics and Professionalism function from one office at another state capital, Lagos.

It is clear that the CPF proposed workflow for consumer redress needs to be extended to cover the entire country, including people who live in rural areas it must also make provision for appeals.

The draft’s Framework proposed the promotion of an Alternative Dispute Resolution⁷⁰⁴ (ADR) mechanism in the financial services industry (this is a new idea and a welcome development). This is recent development is in line with the CBN policy to enhance consumer education and promote consumer rights in financial dealings with banks and other financial institutions across the nation. It might be seen that the CPF has created an innovative framework to govern the process of complaint handling and the financial institutions in Nigeria by specifying the complaints management procedures⁷⁰⁵ and the missions of different ADR Agencies. Building upon the draft framework, more detailed procedures for awarding compensation to consumers and making of the services accessible and cost effective for all Nigerians need to be promoted.

⁷⁰³ The ADR stage refers to, Consumer Protection Department, Sub-Committee on Ethics and Professionalism and Proposed Financial Ombudsman.

⁷⁰⁴ Section 2.7(1) of the Framework

⁷⁰⁵ S. 2.7 (2) of the Framework

Unlike the old grievance redress mechanism in the banking industry,⁷⁰⁶ aside from the internal mechanism within the banking which started as a result of the financial crisis in 2008, a consumer can only redress his grievances in relation to excess charges or wrongful transactions in Bankers' Committee under the bank code of conduct. Consumer grievance redress for deficient service is one of the drawbacks of the old redress procedures which the new CPF is expected to give further fillip.

There are no relevant provisions in either the financial laws or the Consumer Protection Council Act 2004, stating whether or not consumers can redress their grievances for deficient services, in court. Unfortunately, it fails to provide for consumers' guaranteed access to effective ADR across Nigeria⁷⁰⁷. It also fails to mention where the ADRs will be located and how all the Nigerian consumers can have access, irrespective of where they live (Local Authorities, State and Federal). In other words, the CPF lacks clarity and fails to emphasise that the process will go beyond ordinary dispute resolution, to include practical measures curtailing the prevalence of complaints.⁷⁰⁸

The draft also recommends the creation of the 'proposed Financial Ombudsman',⁷⁰⁹ that would act as ADR, but it failed to mention whether it would have jurisdiction over all consumer financial products and services.⁷¹⁰ The proposed Financial Ombudsman is intended to develop strong regulation of consumer transactions with banks and other financial institutions under the draft framework. Additionally, the Framework is unclear regarding the establishment of the proposed Financial Ombudsman by financial services associations,⁷¹¹ as an industry-based ombudsman. The alternative option would be for a Statutory Independent Ombudsman. This type of Ombudsman scheme whether voluntary or statutory should align

⁷⁰⁶ See Chapter four: Consumer Protection in the Nigerian Banking, sub-section 5.3

⁷⁰⁷ The Composition of the CPD at the CBN Headquarter in the Federal Capital Territory Abuja makes the CPD not accessible by all Nigerians across Nigeria. In other words, to make ADR accessible across Nigeria, a provision should be incorporated in the new CPF that addresses issues of location and guaranteed access.

⁷⁰⁸ Perhaps the main reason the CBN insist that complaints procedures should be pushed beyond ordinary dispute resolution to include proactive processes is because of the extremely high level of complaints in the financial sector. For example, the Consumer Protection Office received 1,526 in 2010 and 1,926 complaints at the end of December 2011. This seems to be too much for one office with limited staff and capacity. See Central Bank of Nigeria Annual Report – 2011, 79.

⁷⁰⁹ Although, the Framework was silent about whether the proposed Financial Ombudsman will have functions and powers set up by the Federal law.

⁷¹⁰ As of the writing of this chapter, the Ombudsman Bill has been passed by the National Assembly but has not been signed into Law by the President of the Federal Republic of Nigeria. However, it is not clear whether the CPF proposed Ombudsman will be different (as financial ombudsman) or a part of the Federal Government initiative of creating a General Ombudsman.

⁷¹¹ It is worth noting that an Industry-Based Ombudsman may prove ineffective in the Nigerian context because their decisions are not binding and the consumers may perceive them as a body that will always favour its members (financial services industry and not the consumer).

with international best practice standards such as transparency, independence confidentiality and impartiality. For the Ombudsman mechanism to provide an additional protective shell for consumers it must have clarity of purpose and be effective. At the time of writing, details of the new Ombudsman were not available. The draft will need further clarification of the method of redress currently proposed.

One major achievement of the Framework is that it introduced the issue of collaboration among all agencies involved in financial consumer protection or dispute resolution. The Framework requires that the agencies shall sign a Memorandum of Understanding (MoU) to avoid duplication of duties and ensure efficiency of the process. It also set out clearly three key things that the MoU will include.⁷¹² However, the CPF did not mention the agency or government institution that will coordinate complaint handling. Presently, at least three institutions in the financial services sector are involved, the Consumer Protection Department, Bankers Committee, Sub-Committee on Ethics and Professionalism, as well as many governmental organisations and law enforcement agencies. Recommendation of the MoU and issues of creating awareness among consumers about the proposed Ombudsman and its role, require policy guidance from the CBN.

The study is hopeful that the draft framework will cast some light on the issue of supervising and monitoring the process to ensure that its objectives are fully realized. It was also hoped that the new CPF would improve the protection of Nigerian consumers which in recent times, has in part depend on whether their location is rural or urban.

5.6.1.9 Competition

The 2015 framework made a number of recommendations to promote a diverse range of financial products, which will encourage innovation and in turn boost a competitive market. In order to ensure that consumers have free entry and exit in the financial sector, the CPF imposed an obligation on the CBN to discourage a few specified anti-market practices.⁷¹³ At the time of writing, there is no codified set of rules that promote competition (as competition law). The absence of a specific legal framework for competition law mandates each industry to regulate competition within its area. In Nigeria, however, the CBN regulates competition

⁷¹² One of the things the MoU will include the following: (1) the parties' roles and responsibilities, (2) recourse in a situation of non-resolution; (3) the issue of escalation during the dispute resolution. See Section 2 (7)(4) of the Framework.

⁷¹³ S. 2(8) of the Framework

in the financial institution within its purview. The CPF illustrates different ways in which the consumer can be encouraged to switch service providers or products.

5.6.1.10 Enforcement

Para 2.9 of the draft framework presents the issue of enforcement under two subheadings (enforcement procedures and enforcement methods). Enforcement is one issue that requires careful management by the financial regulators and relevant stakeholders to ensure that there is no consumer detriment created as a result of the regulators' enforcement actions. The draft stresses that the regulators shall ensure timely enforcement, with a firm objective to promote awareness and increase consumer confidence.⁷¹⁴

The Para 2.9 also clearly states that “to ensure compliance with consumer protection regulations with the financial industry, consumer protection regulators shall ensure effective enforcement of the regulations”. The regulations are intended to be issued under the powers derived from the CBN's enabling statutes⁷¹⁵. The CPF description in the Preamble is, as a “guideline” which should be read in conjunction with the provisions of the enabling Acts. Subsidiary regulations made under these Acts, are in some way misleading as to the legal status of the Framework. We assume, for all intents and purposes, that this policy document seeks to guide the financial services providers and regulators of financial services industry, in the areas of consumer protection enforcement and compliance. Then even though, the CPF contains provisions relating to sanctions for non-compliance, such enforcement sanctions can only be imposed by the financial services regulator on the service providers. In this case, the question of whether an aggrieved consumer can bring action against his service providers with the CPF is highly unlikely.

One can conclude that the efforts made by the CPF in order to provide different methods of enforcement procedures and measures have been quite positive with regard to the introduction of sanctions. Although the CPF did not take a consumer rights approach, it listed some consumer rights and responsibilities which will be discussed in the next section.

5.7 Consumer Rights and Responsibilities

In general, the CPF has the basic consumer rights and responsibilities in the financial services which should have been highlighted at the beginning. Detailing the obligations which the

⁷¹⁴ S. 2 (9) of the Framework

⁷¹⁵ The CBN enabling status are; CBN Act 2007 and BOFIA 2004

financial services providers should uphold ought to be the first; instead these were presented at the end. The consumer protection objective of the CPF, which of course would have established the extent to which consumer rights, if any, were previously provided for under the general Consumer Protection Council Act could have been amended. This continuing absence of serious consideration, even in the CPF, reflects the real experience of Nigerian consumers, especially consumers of financial services.

Section 3 (1) of the CPF prescribed some basic rights for example the right to be informed; which the consumers shall have and which shall be protected by all stakeholders.⁷¹⁶ In practical terms, the CPF provided the basic consumer rights in relation to the financial sector, although there is no provision for a cooling off period or refund policy for newly-purchased financial products and services. Of course, new products or services will require the financial operator to disclose any important information about the product and the consumer's rights to withdraw from the contract within a specific number of days.

It is pertinent to note that the CPF did not mention any person or persons that have *locus standi* to approach the regulatory authority or court, with allegations of infringements of consumer rights in relation to this Framework.

5.8 Framework Implementation

Section 4 (1) and (2) of the Framework provide that the CBN will establish a suitable structure to enhance the implementation of the Consumer protection framework. This approach allows the framework to be executed on different stages⁷¹⁷ based on the established consumer protection framework principles earlier discussed in this chapter.

All of these implementation provisions suggest that the basic process for the framework is intended to be broken into stages, spread across a five year period if required, in three terms. However, this is important but will be more effective only in relation to those aspects of the framework, where evidence of the commitment of banks may be needed. For other aspects of the framework, the CBN should play an important role, not only to guide the roll out of the framework but to ensure that the appropriate structures are in place to galvanize the implementation process. Similarly, an implementation enabler is unlikely to be successful if

⁷¹⁶ S. 3(1) of the Framework.

⁷¹⁷ For example, the CBN first approach will be to create 'implementation enabler' which is deemed to be crucial for a successful implementation of this framework.

the consumers who are intended to benefit from the framework do not understand how to use the financial products and services or even the potential benefit of these initiatives.

This is most likely to happen, if there are no base-line surveys across different target groups, to help the banks understand the level of financial literacy across different segments and how to implement the framework when it is approved. By way of illustration, any consumer protection framework or regulation designed to ensure that Nigerian financial institutions disclose fairly and transparently, the basic features of their products and services must be written in a plain language. This may not have the desired impact on consumers if they are not able to understand why it is necessary to read all the documents and how to apply the information contained in the disclosure documents.

Obviously, the effectiveness of this implementation strategy is largely reliant on having a complete legal framework; bank commitments that are not imposed by regulatory obligations and consumers being aware of the importance and the existence of the framework. It therefore appears that the framework is directed at the financial institutions rather than consumers, as is evident from its formal and legalistic tone. To initiate the implementation, the CBN organize a stakeholder's workshop⁷¹⁸ in November 2015 to initially expose the draft framework and to solicit the stakeholder's opinions on the implementation strategy.⁷¹⁹ However, the framework is now exposed to different stakeholders for their comments,⁷²⁰ which is not easily accessible by all Nigeria consumers and other stakeholders in rural areas. This framework informs financial operators of their regulatory obligations and the consumer's right and responsibilities if the financial institution is acting contrary to the framework provisions. It is noteworthy that unless all the aspects of the framework are effectively publicised and implemented, this initiative increases the possibilities of non-unilateral modification of the framework provisions. It is clear from the above discussion that the provision of the Framework suggests a genuine commitment on the part of the CBN to promote sound financial systems in Nigeria.

⁷¹⁸ This small workshop was organized in November 2015 by the CBN.

⁷¹⁹ The first workshop was carried out to kick-start the implementation process before the framework will be approved, but the main workshop will hold in 2016 to sensitize the key operators and other stakeholders.

⁷²⁰ See CBN Releases Exposure Draft of the Consumer Protection Framework, 2015 (available at: <http://www.cbn.gov.ng/>)

5.9 Contribution of the Draft Framework to the Old Regulatory Approach

Having discussed the most remarkable aspect of the CPF, it is left for us to ask whether the draft has any impact on the regulatory regime. There are two points to note here. First, at present the CPF is relatively new. Second, the problem associated with financial consumer protection in Nigeria is unique, as in most developing countries. Hence evaluation is necessary in the light of what the CPF introduced or proposed. Although regulation and supervision of financial consumer protection is a worldwide problem, it has been most challenging in developing countries.⁷²¹ It is becoming increasingly apparent that in developing countries where the level of financial understanding is relatively low and the protection regime is insufficient to cover all aspect of their day to day financial transactions; that the need to increase the consumer protection regime could pave the way not only for financial inclusion but also consumer confidence in the financial sector. For this reason, the next section will focus on the consumer protection issues which the CPF did not cover or was silent about.

Most importantly, the first question will be whether the formal approach where the CBN powers over financial consumer protection in the areas of banking have been clarified. It would appear that the CPF wants to rely on financial laws, guidelines, and subsidiary legislations in order to achieve its primary objectives. The World Bank notes that for institutional arrangement, the framework should clarify the Regulator's primary responsibilities in relation to consumer protection supervision.⁷²² This study argued the new framework recognised for the first time the representation of major stakeholders in consumer protection issues in Nigeria. Prior to the draft Framework, the stakeholders are not often involved in the formation of policies that affect them. The draft Framework provided a unique opportunity for consumer organisations to present their views in decision making processes in Nigeria.

⁷²¹ The introduction of low-cost branchless channels of banking such as ATM and the adopting of other electronic payment system in the financial services created more challenges for consumers with low level of financial understanding. Consumers of financial products and services are left with no much remedy when things go wrong. The lack of adequate protection framework for financial consumers and the need to build consumer confidence which was eroded in the 1990s and 2008 financial crisis, the CBN initiated the idea of CPF. See Central Bank of Nigeria, 'Financial Inclusion in Nigeria: Issues and Challenges' (2013) Occasional Paper No. 45

⁷²² The World Bank, 'Rwanda Diagnostic Review of Consumer Protection and Financial Literacy' (2013) Vol. 1, 6

One of the most significant contributions of the draft to the old regulatory approach is the need for a formal, independent dispute resolution process that would give Nigerian financial consumers an easily accessible and inexpensive way to resolve complaints with their banks. The draft adopted some of the lessons learned from the financial crisis in order to propose the ‘new Financial Ombudsman.’ However, it is noteworthy that most of the regulatory laws were drafted with the key intention of maintaining sound financial systems in Nigeria or fulfilling the statutory obligation,⁷²³ most of these provisions are very new in Nigeria and the majority of the financial consumers are unaware of their existence.⁷²⁴ According to the aforementioned draft, protection from fraud is regarded as one of the basic responsibilities of the financial operators.⁷²⁵

5.9.1 Areas the Framework is Silent about

The CBN clearly hopes that the draft framework will ensure effective regulation of consumer protection practices in the Nigerian Financial Services Industry.⁷²⁶ The extent to which the CBN hopes this effective regulation can be achieved is open to question. As this study argues neither the provisions of the Draft Consumer Protection Framework and the guidelines on consumer protection nor the provisions on the Code of Conduct endorsed in 2014 by the CBN pay particular attention to the following key issues in financial consumer protection.

5.9.2 Provision of Financial Advice

Financial services are rapidly growing in Nigeria. Over 5 million,⁷²⁷ mostly rural dwellers now have bank accounts, ATM cards and other financial services products, without proper knowledge of fraud or banks self-serving financial advice. Thus, few effective rules exist to mandate the financial institutions to protect consumers. The financial regulators can enhance the possibility for these constraints by reinforcing the financial institutions obligations in protecting consumers through objective financial advice. The issue of financial advice is crucial to consumer protection. The CPF did not provide rights consumers could enjoy in relation to the delivery of financial advice. With the high level of illiteracy and the disparity

⁷²³ Section 2 of the CBN Act 2007

⁷²⁴ It is worth noting that some consumer protection provisions in the financial services sector are new and there is need to educate the consumers, banks, lawyers, judiciary staff and lawmakers about their rights and responsibilities. For example, in Nigeria, there is no legal obligation to inform the consumers about their legal right when things go wrong or requirement to include all dispute resolution information at point of commencing a contract.

⁷²⁵ Section 2.6 (1) of the Draft Consumer Protection Framework

⁷²⁶ Preamble of the Draft Consumer Protection Framework

⁷²⁷ EFINA (2010): Access to Financial Services in Nigeria 2010, Survey

of bargaining power that exist between the consumers of financial services and their providers, it would have been reasonable to expect that the CPF should have contained some provisions for accessible and affordable advice to consumers.

This study argues that the ability to make informed financial decisions is not easy especially when consumers are illiterate, with poor knowledge of technology and therefore limited access to consumer advice. Commenting on the importance of financial advice, McDermott observes that “the financial decisions people make can have long reaching effects. It is important that the market provides accessible and affordable advice when people need it.”⁷²⁸ A question arises as to how the CPF tends to promote the public understanding of financial products and services if it is shifting the responsibilities from the regulators to the individuals. For example, it is stated that consumers should ‘endeavour to obtain accurate information from credible sources and make comparison before subscribing to financial products and services.’⁷²⁹ It may not be reasonable to assume that the ‘consumer’ in the context of this CPF is educated or has access professional to contacts to assure that information obtained is credible. In this case, there is need for regulation to protect consumers of financial institutions and the consumers who need protection are likely to be rural dwellers, on low in-comes and illiterate.

It is important to note that the CPF seeks to ensure that the financial services providers act in the best interests of the consumer.⁷³⁰ This is because the amount of information provided at the time of purchase is often inadequate to prevent the potential challenges of opportunist behaviour on the part of the providers.⁷³¹ In most cases, the consumers do not realise the impact of their decision because it involves long-term products and services. The Framework, therefore, provides ‘duty of knowledge and understanding’⁷³² and expects the consumers to seek for self-education about their rights in financial matters.⁷³³ The question arises whether the consumers will get this ‘self-education’ through advice or information provided by the financial operators or from independent financial advisers.

⁷²⁸ Tracey McDermott, acting CEO of the Financial Conduct Authority FCA, <<https://www.gov.uk/government/news/views-sought-to-radically-improve-access-to-financial-advice>>accessed 8 December 2015

⁷²⁹ S. 3 (2) of the Framework.

⁷³⁰ S.3 (2) of the Framework

⁷³¹ Shyam Bhati, ‘An Analysis of the Financial Services Regulations of Australia’ (2008) Vol. 4 No. 2, International Review of Business Research Paper, 13-25

⁷³² S. 3 (2) of the Framework

⁷³³ Ibid, 37

5.9.3 Independent Financial Advisers

By depending on the financial institutions to provide information and advice on their products, Nigerian law has, to a great extent, failed to provide consumers with an appreciable level of protection. As analysed in 5.9.2, the inexperience and lack of familiarity of most Nigerian consumers in buying financial products increases the possibility of mis-selling. The financial services providers may use the information advantage against the consumer in the process of offering financial advice. As Ennew and Waiter pointed out that:

‘In an ideal world financial advice would represent an important means of mitigating consumer mis-buying, as the adviser assists the consumer in her decision-making by making up for the asymmetry problem’.⁷³⁴

This is not the situation in Nigeria where there is an ineffective competition rule and the financial operators are not adequately incentivised to give unbiased advice. In a market system where consumers are less educated and the only advice available to consumers is from the financial operators, there is an increased risk of market abuse. It is argued in this study that the introduction of CPF without provisions that will offer consumers a wider choice of advice in the financial services sector, will not only encourage conflict of interest but also confusion about the financial providers responsibility to advise. The introduction of multiple channels of advice (for instance ‘independent financial adviser’⁷³⁵) is necessary in a jurisdiction like Nigeria as it will provide greater consumer protection; hence, consumers are no longer bound to receive advice from only their financial providers but also from independent advisers.

Considerably, the new framework has not provided any information on whether and how the advisors follow the regulatory requirements on provision of information to consumers, or other legal requirements, let alone a set of minimum rule on how financial advice can be accessed.

5.9.4 Role of the Oversight Agency

The role of oversight agency or supervisory agency using its enforcement and administrative powers is crucial in consumer protection. To achieve this multitude of functions ranging from enforcing standards to educating consumers, the CBN should help the consumers to make

⁷³⁴ Christine Ennew, and Nigel Waite, *Financial Services Marketing: An International Guide to Principles and Practice* (2013) Routledge, 2.4

⁷³⁵ The term ‘independent adviser(s)’ is used in the study to mean professional agents who are capable of giving objective, unbiased advice or recommend products that are free from financial services-induced bias.

informed choices by designing practical and effective programs that will educate them. The financial crisis has revealed that ‘Nigeria does not have a tradition of consumer activism or investor protection and as a consequence many Nigerians made investments without a proper understanding of the risks.’⁷³⁶ In some cases, the CBN may have played a role in directing the banks in matters relating to information disclosure and consumer education. However, their regulatory powers need to be strengthened to ensure uniform standards across the sector and curtail abusive practices. It is important that a uniform standard is maintained across all the financial institutions within the purview of the CBN.

Actually, critical issues of the independence of Consumer Protection Department or other regulators in institutional design are not addressed in the CPF. It is quite clear that the consumer protection framework favours a single national regulator, but acknowledges the need to establish a financial ombudsman. When the Consumer Protection Department was established in 2012 as a stand-alone department, its primary role was not to enforce consumer protection but rather to ensure that consumers have effective recourse mechanism. The CPD is now a full-fledged department at the CBN but reports to the Deputy Governor in charge of Financial System Stability.⁷³⁷

The Draft Framework stipulates that:

Institutions responsible for consumer protection shall have the necessary authorities to fulfil their mandate, clear responsibilities supported by appropriate governance structures, operational independence and high professional standards.⁷³⁸

However, the Draft Framework has not suggested any particular measures related to operational independence in practice or any role the regulators could play in addressing the situation in the financial services. In 2012, when the Consumer Protection Department was created, it was given a mandate to promote and implement policies that would enhance consumer financial capability through consumer education; develop a grievance redress mechanism that is fair, transparent, accessible, timely and inexpensive, amongst others.⁷³⁹

⁷³⁶ Sanusi Lamido, “The Nigerian Banking Industry: What Went Wrong and The Way Forward” (Square, Bayero University, Kano, 2010) 8.

⁷³⁷ See CBN Organisational Structure, available at < <http://www.cenbank.org/aboutcbn/organogram.asp> > accessed 14 January 2016

⁷³⁸ See Section 2 (1) of the Draft Consumer Framework 2015

⁷³⁹ See Consumer Protection Enlightenment Series, Consumer Protection Department Central Bank of Nigeria (April, 2013) 3

In the case of this CPD, it could be argued that the CBN does not have a clear legal and strong mandate to undertake financial consumer protection supervision⁷⁴⁰. Given the evidence that gaps and weaknesses in the financial regulatory and supervisory framework are the key contributors to the 2009 banking crisis in Nigeria⁷⁴¹, it would be appropriate to amend the CBN Act of 2007. Without this overdue amendment, the CPD may not have a full set of comprehensive regulatory powers for oversight, rule-making and even enforcement to perform their functions.⁷⁴² To date, many countries like Armenia⁷⁴³, South Africa⁷⁴⁴ and Zambia⁷⁴⁵ have amended their main law on financial institutions to accommodate these clauses.

The central question is how to amend the CBN legislation and build its capacity so as to undertake financial consumer protection supervision. There are two fundamental considerations in doing this. First, the CBN monitoring and oversight powers might be curtailed. Second, the consumer protection supervision interest might cause conflict of interest with prudential supervision.⁷⁴⁶

When compared with the United Kingdom regulatory structure, the Nigerian regulatory approach seems to have some unique features. First, the Consumer Protection Department is not the sole authority in relation to consumer protection or prudential regulation across all the financial services in Nigeria. This department was neither created by any Act nor does it have any statutory-backed mandates. Some of their duties are also performed by different departments in the CBN and other regulators, thereby resulting to duplication of duties. This is unlike the UK, the Financial Conduct Authority (FCA)⁷⁴⁷ is mandated by a statute⁷⁴⁸ to regulate the financial services industry with the aim to protect consumers, the Prudential

⁷⁴⁰ CBN Act of 2007 did not specify the CPD or CBN legal mandate with regard to financial consumer protection supervision in the Nigeria financial sector.

⁷⁴¹ See Sanusi Sanusi, 'The Nigerian Banking Industry: What Went Wrong and The Way Forward? (2010)10, <<http://www.bis.org/review/r100419c.pdf?Frames=0>> accessed 14 January 2016

⁷⁴² See World Bank, 'Establishing a Financial Consumer Protection Supervision Department: Key Observations and Lessons Learned in Five Case Study Countries', (2014) Technical Note, 9

⁷⁴³ The Law on the Central Bank of Armenia (1996 as amended) in 2008, Article 5, S 1(f) CBA to reflect specific mandate on Consumer Protection.

⁷⁴⁴ No. 68 of 2008: Consumer Protection Act, 2008.

⁷⁴⁵ See No. 24 of 2010, The Competition and Consumer Protection Act, 2010

⁷⁴⁶ See World Bank, 'Establishing a Financial Consumer Protection Supervision Department: Key Observations and Lessons Learned in Five Case Study Countries', (2014) Technical Note, 9

⁷⁴⁷ The Financial Services Authority (FSA) which was then created by Financial Services and Market Act 2000(FSMA) has now become two separate authorities namely, the Financial Conduct authority and the Prudential Regulation authority. In the UK, the Financial Conduct Authority regulates the financial services industry with the aim to protect consumers.

⁷⁴⁸ Section 1L of Financial Services Act 2012

Regulatory Authority does the regulation and supervision of banks.⁷⁴⁹ The fact that the roles and responsibilities of such institutions are defined by an Act, allows for operational independence in various aspect of their duty. Comparably, the CPF is silent about whether or not the role of the proposed Financial Ombudsman is mandated by any statute in the context of the Framework.

5.9.5 Creating Consumer Protection fund

In Nigeria, there is no clear precedent of Consumer Protection Fund⁷⁵⁰ or Consumer Welfare Fund. Because of these, the stakeholders have no incentive to undertake consumer protection services to the general public⁷⁵¹. The new CPF is important because it is expected that it would have several legal platform provisions for the Consumer Protection Fund. In the view of this study, the Consumer Protection Fund should not ‘free-for-all’ money⁷⁵² or loan. This should be a fund or money made through contribution from financial institutions, assistance from the Federal Government budget or voluntary donation from the general public. Its key function will be to provide financial assistance to stakeholders that undertake consumer protection activities⁷⁵³. This is important because the consumer organisations or activist consumer bodies need financial support either from the government or the financial regulators.

Conversely, in order to establish a fair and evenly regulated market in the Nigerian financial institutions, the new framework should create an incentive structure in the form of a welfare fund.

5.10 Conclusion

This chapter has evaluated the CBN consumer protection framework and considered the issues of the scope of the framework, accessibility of the proposed redress mechanism, and the role of both the CBN and CPD. The consumer protection framework has made significant

⁷⁴⁹ For a more informed detailed, see <<http://www.fsa.gov.uk/>> accessed 6 November 2015

⁷⁵⁰ Consumer Protection Fund in this case should not a Government Agency or not-for-profit organization rather it could be created as a ‘fund’ in the Central Bank of Nigeria or as Independent Consumer Protection Fund. This fund should also be exempted from the federal government tax.

⁷⁵¹ In the United Kingdom for example, the Citizen Advice (formally Citizen Advice Bureau) who undertake consumer protection services to the public are funded through ‘financial inclusion fund’ and even lottery fund. See <<https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/cuts-in-cab-funding-leaving-thousands-with-nowhere-to-turn-for-help/>> accessed 6 January 2016.

⁷⁵² The CPF should have provisions or criteria on how an organisation will apply for the fund and the conditions to qualify for it.

⁷⁵³ With this fund, consumer protection programs or activities like advice issues ranging from debt counselling to consumer advice online would be funded.

strides in providing a platform for the CBN to build on and fight some issues that consistently undermined the protection of consumers in the financial services sector in Nigeria. Furthermore, the CPF recognized the need for CBN to issue guidelines in various aspects, given the lack of extensive coverage of consumer protection in the Nigerian financial services sector. As highlighted above,⁷⁵⁴ it is noteworthy that the protection of consumers of financial products and services was introduced and managed in various ways by the Central Bank of Nigeria but without a specific legal framework.

It might seem that the Framework has created comprehensive provisions to govern the process of protecting consumers of financial institutions and the financial operators in Nigeria by introducing the Memorandum of Understanding (MoU) that will specify the agencies roles and responsibilities and the escalation path along the different institutions that handle dispute resolution. In other words, the Framework is quite exhaustive in dealing with the question of ‘what should and what should not’? Unfortunately, it fails to answer other crucial question, ‘how and when,’ and also does not explain clearly who is responsible for financial consumer protection supervision in the banking sector. Failure to separate the CBN prudential responsibility from the consumer protection roles⁷⁵⁵ may cause conflict of interest. In addition, the framework has not clarified the role of the CBN, CPD and the proposed or forthcoming ombudsman in relation to consumer protection in the financial services.

Furthermore, it fails to provide incentive mechanisms to encourage other stakeholders like the Consumer Associations to assist in carrying out research or consumer education training in the country. Owing to these failings, it is not surprising to see that the Framework received a lot of responses from different stakeholders as being too broad, being unnecessarily prescriptive, and lacking balance between consumers and their service providers.⁷⁵⁶ Although, an array of impressive financial laws has been made in the last few years, some of them have very little provisions for financial consumer protection or are limited in scope. The legislative system has been unable to review these financial laws to include consumer protection as one of their objectives in Nigeria.

⁷⁵⁴ See the analysis of the Draft Consumer Protection Framework and a few relevant discussions in the subheadings under para 5.5 above

⁷⁵⁵ Perhaps one would think that since there is a Consumer Protection Department in the CBN, the reason for the Draft Consumer Protection Framework could have been to separate the CBN prudential responsibility from the Consumer Protection in order to avoid conflict of interest.

⁷⁵⁶ See Henry Uzokwe, ‘Submission to the CBN on the Draft Consumer Protection Framework’ (2015)

The CBN has done well by initiating the idea of drafting the framework but failed to use it to improve the financial laws and regulations to protect banking consumers. Yet the need to reform the consumer protection regime should not be ignored if consumer protection is to be seen as an independent base for regulating the conduct of financial operators.

It is always tempting to assume that if we have a consumer protection framework, we might be able deal with all the consumer problems. The study has argued, instead, that consumer issues will always arise and will always differ somewhat, from past consumer problems due to the complex nature of the financial instruments and lack of clearly defined roles and responsibilities among agencies. This is particularly so because regulation and supervision will continue to change to prevent abusive practices in the market place. Accordingly, a firm reliance on the old policies or directives and adoptions of unrealistic models is likely to provide limited help in protecting consumers of financial services or providing answers the Nigerian consumers need in this changing financial environment.

Given all the above, as this chapter has stressed, it is doubtful that the draft framework will provide an additional protection for consumers of financial products and services unless various gaps are filled by the statute. To make this framework work for consumers, banks or regulators, it has to expressly set out its policy goals and clear all the ambiguities to make it comprehensive on its own. In this aspect, Nigeria can learn from the relevant provisions of the United Kingdom to establish a legal and regulatory system that is capable of sustaining dispute resolution and effective consumer empowerment.

In Chapter six, I will undertake a comparative analysis of consumer protection in the banking industry in Nigeria and the UK to see how some issues were addressed and what the two jurisdictions can learn from each other.

CHAPTER SIX

The Analysis of Consumer Protection Model in the Banking Sector in the United Kingdom and Nigeria

6.1 Introduction

Having discussed *inter alia* the basic provisions of the Draft Consumer Protection Framework, which is deemed to provide a foundation on which the current and future regulatory regime for protecting consumers in the Nigerian financial services sector, this chapter will analyse the current consumer protection framework in the United Kingdom and Nigeria. The preceding chapter also explored the provisions of the new framework. The objectives are to ensure we have a better understanding of the new framework, its provisions and whether it undertakes any special measures to address the inherent weaknesses in the current protection regime. As highlighted in chapter one, the prime objective of the study is to analyse the legal framework for consumer protection in the banking sector and to determine whether it offers sufficient protection for bank consumers. This was done through assessing the regulatory approach and consumer protection practices from the United Kingdom which has extensive experience in this area, evident in many books,⁷⁵⁷ as this may also offer some help in settling some of the inherent problems in line with Nigeria's immediate and future needs.

This chapter examines the United Kingdom *vis-a-vis* the Nigerian consumer protection regime in the banking industry and explores experiences, for lessons that may inform regulatory choices in Nigeria.

The banking and financial services sector plays a crucial role in any country's economy and the UK has one of the most innovative banking systems in Europe.⁷⁵⁸ The UK is selected as a model for this analysis for a number of reasons which were also highlighted in the introduction. In order to achieve the stated objective, the chapter will discuss some

⁷⁵⁷ Iain Ramsay, *Consumer law and Policy: text and materials on regulating Consumer Markets*, 2nd edition (Hart Publishing 2007); David Oughton and John Lowry, *Textbook On Consumer Law* (Blackstone 2000); Oughton David, *Consumer Law: Text Cases and Materials* (London: Blackstone Press Limited. 1991); Peter Cartwright, *Banks, Consumers and Regulation* (Hart publishing 2004); Geraint G Howells and Thomas Wilhelmsson, *EC Consumer Law* (Ashgate/Dartmouth 1997); Toni Williams, 'Empowerment Of Whom And For What? Financial Literacy Education and The New Regulation Of Consumer Financial Services' (2007) 29 *Law & Policy*;

⁷⁵⁸ Jan Putnis, Benjamine Hammond and Nick Bonsall 'United Kingdom' in Jan Putnis, (eds) *The Banking Regulation Review* (May 2014), 872;

substantive aspects of the effective consumer protection measures recommended by the World Bank.⁷⁵⁹ This analysis will primarily focus on four substantive areas and the way in which the United Kingdom tackled the challenges the bank consumers may face in dealing with their financial services providers. Thus, the chapter will examine the key regulations, regulators, redress and compensation and the objectives of financial regulation in the UK and Nigeria. Furthermore, the chapter will explore the issues of consumer education and awareness and the role of consumer association and support.

Accordingly, the question that arises in this chapter is, why are these measures working differently in Nigeria and the UK? What type of measures can be adopted to improve the existing consumer protection in the banking sector? In order to answer these questions, the chapter started by exploring the banking laws and regulators. Once the legal infrastructure is determined, the consumer protection measures or tools will then be discussed accordingly.

6.2 Overview of Bank Regulation in UK and Nigeria

The past few years have seen a number of remarkably important regulatory initiatives in the banking sector in different jurisdictions around the world⁷⁶⁰. This sections aims to highlight briefly the UK and Nigerian bank regulatory regime and the main regulators in the banking sector pointing to the key developments that are important for the subject matter of this thesis. As the financial services sector in the UK and Nigeria are areas which have undergone constant change within the last two decades, especially in banking sector, this study will indicate more specific changes, designed to protect consumers.⁷⁶¹ Accordingly, the underpinning of two conditions of consumer protection is discussed in this section namely:

- Consumer Protection which arises because the financial institution that holds the consumer funds might fail.

⁷⁵⁹ See Oya Pinar Ardic, Joyce Ibrahim and Nataliya, *Consumer Protection Laws and regulations in deposit and loan services; A cross-country analysis with a new data set*. World Bank Policy Research Working Paper, (2011), 2

⁷⁶⁰ Examples might be seen from the United Kingdom establishing new regulatory regime following implementation of Financial Services Act 2012, in the United States, the Obama administration signed into law the Dodd-Frank Act which introduced significant changes into the financial regulation. In Nigeria, the 2008 financial crisis sparked-off a lot of financial regulatory reforms led to the establishment of the first Consumer Protection Department in the Central Bank of Nigeria.

⁷⁶¹ David Llewellyn, *The Economic Rationale for Financial Regulation*, Financial Services Authority Occasional Paper, 1 April 1999, 10, available at <<http://www.fsa.gov.uk/pubs/occpapers/OP01.pdf>> accessed 8 August 2016

- Consumer protection which arises because of the unacceptable conduct of the businesses towards its consumers or customers.

This thesis is, of course concerned mainly with the protection of bank consumers (rather than the financial services consumers as a whole) and for this purpose, more attention will be focussed on the conduct of business and market conduct regulation. With this in mind, we examine how these banks are regulated, the few regulatory techniques adopted by the regulators in the selected countries and the importance of financial education.

The UK and Nigeria, as previously mentioned, have been chosen as method of assessment to identify the weaknesses in the consumer protection framework. In the same line, an analysis has been undertaken due to the shortage of legal framework that governs consumer protection in relation to banking industry in Nigeria. In choosing these two countries, our choice was informed by the dedication of the regulatory institutions in both countries around the issues of protection for consumers in the banking sector. The UK is picked for a number of reasons. Notably, it has undergone two major reforms in the banking and financial services in the last two decades. The labour government promised to reform the financial services industry in 1997, which resulted in the FSA, which promotes the UK statutory goal of consumer protection.⁷⁶² In Nigeria there has been heightened interest in the protection of consumers, initiated by the 2008 financial crisis and the post-crisis reform. The most renowned example of these protection measures is, indeed the establishment of the Consumer Protection Department in the Central Bank of Nigeria analysed in the previous chapters. The analysis and examination of the UK experience will provide a unique insight into the discussion about regulation for consumer protection and systemic stability. The discussions on key regulations, regulators, redress procedures and the objectives of regulation, in this chapter points out measures taken by these two countries in addressing the consumer protection issues in the banking and financial services sector.

6.3 The Major Regulations in the UK and Nigeria

6.3.1 The main UK Regulations

In the UK, the financial institutions were regulated by the Financial Services Authority (FSA) from 2001 until 2013 following the implementation in 2013 of the Financial Services Act 2012 which ushered in a new regulatory regime. Historically, the Banking Act of 1979

⁷⁶² Anu Arora, *Banking Law* (Pearson 2014) 172

brought about the first formal system of banking regulation and supervision in the UK.⁷⁶³ The supervision of banks was predominantly the function of the Bank of England, which was founded in 1694.⁷⁶⁴ As highlighted earlier, this supervisory function of the Bank of England was not based on any statute until Banking Act of 1979 took effect. The supervision of the UK banks is based on the well-understood distinction between the deposit-taking and non-deposit taking institutions.⁷⁶⁵ It is remarkable to note that ‘deposit-taking alone does not constitute a bank’.⁷⁶⁶ It includes all legal entities or partnerships that take deposits from consumers and lend them on.⁷⁶⁷

One of the issues that led to the change in the UK supervisory regime in the 1970s was the Secondary Banking crisis which was triggered by the 1973-76,⁷⁶⁸ collapse of the property market. Thus, the effect of the Secondary Banking Crisis led to the enactment of the first legislative regime of regulation in the UK banking sector.⁷⁶⁹ The Banking Act 1979 brought about a series of reforms and also allowed the Bank of England to continue its flexible system of self-regulation. For example, the Act introduced the Deposit Protection Scheme⁷⁷⁰ and also mandated the regulated institutions to comply with the requirements of the Act. With the Banking Act 1979, the banking supervision seems to be working with the fragmented and different separate regulators who were unwilling to cooperate with each other. The Act gave the Bank of England the latitude to operate a flexible supervisory regime. The Banking Act 1979 was repealed by the Banking Act 1987 due to some weaknesses inherent in the earlier regime. The key feature of the 1987 Act was that it abolished and replaced the initial two-tier system of banking supervision with one single system that covers all institutions that accept deposits.⁷⁷¹

⁷⁶³ Ibid, 170

⁷⁶⁴ For further discussions about the History of Bank of England, see Bank of England: History, available at <<http://www.bankofengland.co.uk/about/Pages/history/default.aspx>> accessed on 15 August 2016

⁷⁶⁵ See; The Secondary Banking Crisis and the Bank of England’s Support Operation, Bank of England Quarterly Bulletin, June 1978, 230, available at <<http://www.bankofengland.co.uk/archive/Documents/historicpubs/qb/1978/qb78q2230239.pdf> > accessed on 15 August 2016.

⁷⁶⁶ Ibid, 230

⁷⁶⁷ However, what determines whether or not a deposit-taking institution is considered as a bank is its involvement in various banking activities.

⁷⁶⁸ See, Reid Margaret, *The Secondary Banking Crisis, 1973-75; Its Causes and Course* (Macmillan, London 1982); Anu Arora, *Banking Law* (Pearson 2014), 170

⁷⁶⁹ The first formal Banking Act 1979 also paved the way for the regulation of the present-day deposit institutions.

⁷⁷⁰ The Deposit Protection Scheme introduced by the Banking Act 1979 tends to cover consumer deposit up to £20,000 maximum.

⁷⁷¹ For an analysis see Anu Arora, note 5 above at 171

The collapse of the Barings Bank in 1995⁷⁷² prompted a review of UK banking supervision and subsequently led to reforms. Discussion of this regulatory history can be extensive; however, it will not go beyond this level as the intention of this section is to highlight how the formal system of Banking regulation and supervision was introduced in the UK. The following section discusses the main banking legislation in the UK.

6.3.1.1 The Financial Services and Market Act 2000 (FSMA)

The Financial Services and Markets Act 2000 (as amended) (FSMA) which is the key legislation governing the regulation of the UK financial institutions took effect on 1 December 2001.⁷⁷³ FSMA established the Financial Services Authority (FSA)⁷⁷⁴ and gave it wide regulatory powers over all the financial services. According to Briault, it is intended that the FSA ‘will be the broadest financial regulator in the world, combining prudential, conduct of business and market conduct regulation across the full range of financial services.’⁷⁷⁵ The FSMA has mostly played the predominant role in the establishment of effective measures for addressing consumer protection issues in the UK financial services. The FSA regulated the UK financial institutions until the Financial Services and Market Act 2012 came into force.

This promoted “tri-partite” system in which the UK banking sector was overseen by three bodies, namely the Financial Services Authority (FSA), the Treasury and the Bank of England.⁷⁷⁶ It is important to note that the FSA was established to ensure that there is effective regulation in the UK financial institution; however, the 2007-2009 financial crisis forces the coalition government to embark on important regulatory reform.⁷⁷⁷

6.3.1.2 The Financial Service Act 2012 (FSA Act 2012)

The FSMA 2012 Act establishes the FCA as the regulatory authority and assigns it with the powers to regulate financial institutions. This Act is not limited to retail banks but cuts-across the whole range of financial services. Section 1 (B) of the Act assigns to two major objectives to the FCA namely strategic and operational objectives. The FCA strategic

⁷⁷² *ibid*

⁷⁷³ For elaborate discussion of the Act, see Thomas M, et al, ‘United Kingdom’ in Kent R, (eds), *Global Legal Insights banking regulation* (Global Legal Group 2013);

⁷⁷⁴ The Financial Services and Market Act 2000 (FSMA), s. 1(A)

⁷⁷⁵ Clive Briault, *The Rationale for a single National Financial Services Regulator* (May 1999) FSA Occasional Paper in Financial Regulation

⁷⁷⁶ For an overview of structure of the UK financial Services see Jan Putnis, (eds) *The Banking Regulation Review* (2014); Shelagh Heffernan, *Modern Banking* (England 2005)

⁷⁷⁷ For more discussion on the new regulatory reform see Anu Arora, note 5 above at 174

objective is geared towards ‘protecting and enhancing confidence in the UK financial system.’⁷⁷⁸ Secondly, the FCA’s operational objectives are divided into three;

- a) consumer protection objective means – to secure an appropriate degree of protection for consumers;
- b) integrity objective means – to protect and enhance the integrity of the financial system; and
- c) efficiency and choice objective means – to promote efficiency and choice in the market for financial services.⁷⁷⁹

These FCA listed objectives are intended to maintain the well-functioning of the financial services and consumer confidence while protecting consumers and ensuring market integrity. The Act provides that the Financial Conduct Authority should perform its task in a manner that is compatible with its overall strategic objectives.

6.3.2 The Nigerian Bank and Financial Services Regulatory Regime

As discussed in chapter four of this thesis, the main piece of legislation regulating banking activities are Central Bank of Nigeria Act 2007 (CBN),⁷⁸⁰ the Banks and Other Financial Institutions Act (BOFIA)⁷⁸¹ and the Nigeria deposit Insurance Corporation Act 1988(NDIC). These will now be examined in briefly in this section.⁷⁸²

6.3.2.1 The Central Bank of Nigeria Act 2007

The Central Bank of Nigeria Act established the CBN as the regulator of the banking activities, and these roles are pursued in accordance with the Banking Act. Section 2 of the Act sets out clearly the five distinct objectives of the CBN, namely “to ensure monetary and price stability⁷⁸³, issue legal tender currency in Nigeria⁷⁸⁴, maintain external reserves to safeguard the international value of the legal tender currency⁷⁸⁵; promote a sound financial system in Nigeria⁷⁸⁶; and act as banker and provide economic and financial advice to the

⁷⁷⁸ FSMA Act 2000, s. 1B (2)

⁷⁷⁹ FSMA Act 2012 (as amended), s. 1(B). For more elaborate discussion on the provisions of the FSMA Act 2012 see Thomas M, et al, note 17 above,

⁷⁸⁰ Central Bank of Nigeria Act, Cap. C4, Law of the Federation of Nigeria, 2007

⁷⁸¹ Banks and Other Financial Institutions Act Cap B3, Laws of the Federation of Nigeria, 2004.

⁷⁸² For more elaborate discussion, see chapter four of this thesis.

⁷⁸³ CBN Act 2007, s. 2(a)

⁷⁸⁴ S. 2(b)

⁷⁸⁵ S.2(c)

⁷⁸⁶ S.2(d)

Federal Government.”⁷⁸⁷ However, the Banking Act does not define an explicit mandate for consumer protection. Although, the Act was not specifically envisioned to deal directly with consumer transactions, it has extensively addressed the issue of consumer protection through its Circulars and Guidelines. The CBN Act⁷⁸⁸ however, seems to assign the authority of the CBN to regulate the conduct of banks and other financial institutions under its purview in the interest of consumer protection. The CBN in carrying out of its mandate of promoting a sound financial system in Nigeria tends to exercise a range of interventions to prevent the ‘regulated persons or institutions’ from engaging in business or activities that are not in the best interest of consumers or the general public. Section 51 of the Act empowers the CBN to make rules for good order and management of Banks.⁷⁸⁹ Nevertheless, the CBN rules and guidelines set out the basis on which regulated institutions under their purview should operate. Thus, these rules are not set out in the handbook like the UK FCA handbook.⁷⁹⁰

The Act also provides that the CBN should ‘issue guidelines to any person and any institutions under its supervision’⁷⁹¹ on practices that affect consumers. The Act gives the CBN the power to enforce, to punish any regulated financial institution for non-compliance with the guidelines. However, the question that arises is whether the penalties or fines are sufficient to deter these institutions from engaging in abusive or fraudulent conduct. Section 33 stipulates the offences and the penalties. It goes further to state the fine not exceeding ₦2,000,000 (two million Naira) for failure to comply with any requirement of the Bank.⁷⁹² Nevertheless, there is no record at the time of writing that shows any financial institution that has been fined by the CBN for non-compliance.

The interest of bank consumers may be unlawfully compromised by the regulatory authorities through their ineffective enforcement and regulatory mechanism. In Nigeria, some banks’ specific practices are already addressed in the CBN regulation and guidelines. However, there are some areas where regulations and guidelines do not seem to apply. For example, in August 2011 the CBN issued a Circular addressing the issue of redress processes in the financial institutions by mandating the Deposit Money Banks institutions, to first expand the

⁷⁸⁷ CBN Act 2007, s.2(e)

⁷⁸⁸ The Banking Act has a long history. For more details in relation to the history of the legislation see History of the CBN, Available at < <http://www.cenbank.org/AboutCBN/history.asp>> accessed on 13 August 2016

⁷⁸⁹ CBN Act 2007, s. 51

⁷⁹⁰ The FCA or PRA Handbook are well details guidance to the ‘regulated persons’ and the general consumers. The FCA Handbook covered different areas ranging from Market abuse dispute resolution.

⁷⁹¹ CBN Act 2007, s. 33

⁷⁹² CBN Act 2007, s. 33(4b)

existing ATM Help Desk to handle complaints and for other financial institutions to establish their own complaint Help Desk.⁷⁹³ The Circular requires all the financial institutions under the regulatory purview of the CBN to establish e-mail addresses, specifically meant for customers' complaint handling.⁷⁹⁴ However, the Circular was not a Guideline and was also not designed with the guidance of the Organisation for Economic Co-operation and Development (OECD) Recommendation on Consumer Resolution and Redress.⁷⁹⁵ These measures have helped consumers to file their complaints to the financial institutions and many disputes have been resolved within the internal process since 2011.

6.3.2.2 The NDIC Act 2004

The legislation established the Nigeria Deposit Insurance Corporation which commenced operation in 1989. As the name of this Act suggests, the *Nigeria Deposit Insurance Act* was enacted to address the issues of deposit insurance (or guarantee payment to depositors) in Nigerian financial institutions. Section 16 requires all deposits of licensed banks or any financial institution to be insured with the corporation. To avoid repetition, the provisions discussed earlier in chapter four and the comments given under chapter four (sub-section) should be noted here as well.⁷⁹⁶

6.3.2.3 The Banks and Other Financial Institutions Act 2004

The BOFIA addresses issues relating to the issuing of licences and regulating the banking and financial services institutions,⁷⁹⁷ such as applying for a licence, conditions of licence and banking business.⁷⁹⁸ However, any person desiring to undertake banking business has to apply in writing for grant of a licence.⁷⁹⁹

The Act introduced the condition on which a licence could be revoked which was not included in the Banking Act.⁸⁰⁰ The act also addresses issues of operating financial business in Nigeria, such as ensuring that the company is incorporated with licence granted under

⁷⁹³ Babajide Komolafe, when you are not satisfied with your bank (2), available at <<http://www.vanguardngr.com/2014/11/satisfied-bank-2/>> accessed on 21 August 2016.

⁷⁹⁴ *ibid*

⁷⁹⁵ OECD Recommendation on Consumer Dispute Resolution and Redress, available at <<https://www.oecd.org/sti/consumer/38960101.pdf>> accessed on 20 August 2016

⁷⁹⁶ See chapter four (4.2.2)

⁷⁹⁷ Banks and Other Financial Institutions (BOFI) Act, Cap B3, LFN

⁷⁹⁸ BOFI Act 2010, Cap B3, LFN, s. 2 and s. 59

⁷⁹⁹ BOFI Act 2010, Cap B3, LFN, s. 3

⁸⁰⁰ BOFI Act 2010, Cap B3, LFN, s. 5

section 59 of BOFIA, it prescribed the list of requirements for the licence and application must be made within six months.⁸⁰¹

6.4 The Major Bank Regulators in UK and Nigeria

This section will discuss the key banking regulators in UK and Nigeria. It then considers the regulatory objective which detects the parameters within which the regulators are authorised to act.

6.4.1 The UK Banking Regulators

The UK has recently experienced a new wave of regulatory regimes, following the implementation in 2013 of the Financial Services Act 2012 which led to closure of the Financial Services Authority and the establishment of three new regulatory bodies, namely the financial Conduct Authority (FCA), the Prudential Regulatory Authority (PRA) and the Financial Policy Committee.⁸⁰² The principal aim of this new structure is to ensure that regulatory bodies have more focussed and clearer roles rather than the fragmentation of responsibilities in the old structure. This new regime came into force on 1 April, 2013.

6.4.1.1 The Prudential Regulation Authority (PRA)

The PRA is one of the regulators that replaced the Financial Services Authority and was established as a part of the Bank of England. Under the new regime, the PRA is responsible for prudential supervision and regulation of ‘systematically important firms’ covering the banks, building societies, credit unions, insurers and major investment firms.⁸⁰³ The principal feature of this new regime was to encourage interaction between the PRA and other authorities. This will help to ensure that the PRA’s objective of promoting safety and soundness will also be complementary to the Banks’ financial stability objectives.⁸⁰⁴ Both the PRA and FCA are under a statutory duty to cooperate when performing their regulatory functions with regard to ‘shared regulated’ firms.

⁸⁰¹ Cap. N102, LFN 2010, s.59(2)

⁸⁰² Michael Thomas, Dominic Hill and Steven McEwan, ‘United Kingdom’ in Rachel Kent, (eds), *Global Legal Insights banking regulation* (Global Legal Group 2013), 246; *The UK’s New Financial Service Regulatory Landscape* (2013, Policy Briefing), available at <http://www.cii.co.uk/media/4372607/regulatory_landscape_update_april_2013_vfonline.pdf> accessed on 8 July 2016

⁸⁰³ Policy Briefing: *The UK’s new Financial Services Regulatory Landscape* (April 2013), 9

⁸⁰⁴ Bailey, Andrew (et) ‘The Prudential Regulation Authority, Bank of England Quarterly Bulletin (Fourth Quarter 2012), 1-2

6.4.1.2 The Role of Financial Conduct Authority (FCA)

The Financial Conduct Authority was one of the bodies created by the Financial Services Act 2012.⁸⁰⁵ The FCA replaces the former Financial Services Authority and builds upon their regulatory approach to conduct of business.⁸⁰⁶ The Act provides that the FCA should act as prudential regulator of all regulated persons except those under the regulatory purview of the PRA. The key objective of the FCA is to ensure that the UK financial system functions well⁸⁰⁷ and to protect consumers.⁸⁰⁸ The Act goes further to provide FCA with an extensive range of powers as a conduct regulator to enable it to make regulated persons address areas of concern when such needs arise.

6.4.1.3 The Financial Policy Committee (FPC)

The Financial Policy Committee (FPC) is an arm within the Bank of England which has no direct responsibility for regulation or supervision of any firm but has a macro prudential duty to identify risk, monitoring inequality and to take action to avoid sudden systemic damage.⁸⁰⁹ Nevertheless, the FPC is positioned to recommend that the FCA or PRA immediately take action considered necessary to foster financial stability in the UK financial services. The FPC key objective is to assist the Bank of England in ensuring financial stability. In most cases, the FPC implements its measure through the two new bodies that have direct responsibility with the regulated firms.

6.4.2 The Nigerian Banking Regulators

Having thus examined the key regulations in the Nigerian banking sector and the enabling laws that established the regulatory regime, the focus will now turn to the banking regulators. There are two key banking regulatory bodies in Nigeria, namely the Central bank of Nigeria (CBN) which plays the predominant supervisory role; secondly the Nigeria Deposit Insurance Corporation (NDIC) and also, the External Auditors (EA).

6.4.2.1 The Central Bank of Nigeria (CBN)

The regulation of banks in Nigeria is largely the responsibility of the CBN, though the NDIC clearly complements the effort of the CBN especially in the area of bank supervision. As the

⁸⁰⁵ Financial Services Act 2012, Ch. 1; see also FSMA 2000 (as amended) s. 1A (1)

⁸⁰⁶ Financial Services Act 2012, Ch. 1 or FSMA 2000 (as amended) s. 1A (1)

⁸⁰⁷ Financial Services Act 2012, Ch. 1 or FSMA 2000 (as amended) s. 1D

⁸⁰⁸ Financial Services Act 2012, Ch. 1 or FSMA 2000 (as amended) s. 1C

⁸⁰⁹ Anu Arora, note 5 at 174

major regulator, the Act provides the CBN with the power to grant banking licences to firms who want to engage in banking business. The NDIC Act promoted cooperative regulatory functions between the Corporation and the Central Bank. This has been exhaustively discussed in chapter four. One question that is posed under the discussion in this chapter, which is important to repeat here is, why is the UK approach to consumer protection different from Nigeria? It is also important to consider whether consumer protection objectives should be introduced in the key banking legislation. Without answering these questions, it might be unlikely for both the CBN and NDIC to actually perform these regulatory expectations.

6.5 Objectives of Financial Regulation

The bank regulatory regimes in the UK and Nigeria and the recent initiatives that led to structural reforms have been outlined above. What remains now in this discussion is to consider the concept of financial regulation in the two countries and to understand whether the regulatory approach works. Until 1979 the UK did not have formal regulatory law relating to banking business.⁸¹⁰ It might be important to mention the events that led to the enactment of the first UK Banking Act of 1979.⁸¹¹ In order to understand the key concept of regulation and the regulatory approach in the UK and Nigeria, it is necessary to consider the approach to consumer protection under one section, while considering consumer compensation and education in the following sections.

6.5.1 The UK Approach

The UK has a well-defined statutory focus on consumer protection and the FSMA clearly designed these objectives in the FCA operational mandate. Moreover, the financial regulation in the UK is more inclined towards retail financial services providers. The following section examines the compensation scheme under the UK financial services.

6.5.1.1 The UK Financial Services Compensation Scheme

At the heart of the Banking Act 1979 was the establishment of the UK Deposit Protection Scheme which was meant to compensate the depositors if their banks are unable to repay their deposit on demand. The FSMA 2000 addresses the issue of the Deposit Guarantee Scheme and provides for the establishment of a single Financial Services Compensation

⁸¹⁰ Ola, (note 4 above) 209

⁸¹¹ For discussion of the History of the UK, see Anu Arora, (note 5 above) 170

(FSCS) under part xv.⁸¹² Part XV (212) of the Act provides for the establishment of a corporate body (“the scheme manager”) to carry out the functions of the deposit protection arrangement.⁸¹³ The Act advised, ensuring that the two agencies (FCA and FSCS) enter into Memorandum of Understanding (MOU) which will encourage operational independence as well as co-operation.⁸¹⁴ As Cartwright points out, there are two major objectives of deposit protection schemes, namely to protect individual consumers from losses, and secondly to maintain confidence in the financial system by avoiding systemic risk.⁸¹⁵ With regard to payment of compensation for consumers who make claim against regulated persons, FSCS is empowered through its statutory functions to assess and pay depositors accordingly.⁸¹⁶ The Deposit Protection Scheme is a very important procedure for protecting consumers, by providing compensation when the regulated persons are unable to fulfil its obligations. This is a positive effort in protecting consumers. The challenge that is not addressed in most countries especially in Nigeria is, ‘when’ and ‘how these deposit protection schemes should be reviewed.

6.5.2 The Nigerian Approach

The Nigerian approach differs from the UK; hence, no Nigerian legislation defines consumer protection as its core objective. Until the 2008 financial crisis when the financial services were heavily hit by the rippling effect of the global financial crisis, the regulators were forced to embark on consolidation reform; consumer protection in present-day meaning did not exist.

6.5.2.1 The Nigeria Deposit Insurance Scheme

The deposit insurance scheme in Nigeria was first enshrined in the repealed NDIC Act of 1988. The legislation provides for the establishment of the Nigeria Deposit Insurance Corporation with perpetual succession and a common seal.⁸¹⁷ Prior to the establishment of the

⁸¹² FSMA 2000 (as amended), Part XV

⁸¹³ FSMA 2000, s. 212

⁸¹⁴ Available at < http://www.fscs.org.uk/uploaded_files/mou_fscs_-_fca_.pdf > accessed on 22 August 2016

⁸¹⁵ Peter Cartwright, *Banks, Consumers and Regulation* (Hart Publishing 2004), 190

⁸¹⁶ FSMA 2000 (as amended), s. 213 (3) (a)

⁸¹⁷ NDIC Act 2006, s. 1; (Ph.D. Dissertation, Centre for Commercial Law Studies Queen Mary, University of London, Olanipekun, 2008) at 291-297 [unpublished]

corporation and the scheme, the government ordinarily adopted a policy geared to prevent loss of confidence in the banking system as a consequence of bank failures.⁸¹⁸

6.5.2.2 Consumer Education and Awareness

Over the last decade, the proliferation of financial products and services throughout Nigeria has highlighted the need for consumer protection and financial literacy. The 2008 financial crisis in Nigeria also emphasised the importance of financial education and empowerment⁸¹⁹. The Nigerian government has in recent times recognised the need for educating and empowering consumers. In 2012, the National Financial Inclusion strategy was launched with the primary aim to increase financial inclusion.⁸²⁰ The Financial Literacy Framework (FLF) was developed in 2013 and was later renamed National Financial Literacy Framework (NFLF) in 2015. The NFLF adopts a multi-stake, (stakeholder) approach in its implementation of the financial literacy in Nigeria. According to the National Inclusion Strategy, the provisions provided are geared towards achieving financial inclusion and financial stability.⁸²¹ It is important to note that this development is based only on a framework which has no statutory backing. In Nigeria, there is no institution with statutory task to promote financial education or literacy, perhaps because it is a new phenomenon.

Furthermore, consumer protection has been introduced in the statutory objectives of regulatory bodies due to its importance in the modern-day business world. In the UK for example, the FSMA Act 2000 (as amended) charged the Financial Conduct Authority (FCA) with responsibility of consumer protection and financial education.⁸²² Accordingly, the FSMA Act 2000 and the 'FCA Handbook' emphasised that the FCA must protect consumers from misconduct or unfair business practices, ensure that financial institutions designed policies and procedures to implement consumer protection and also, ensure adequate compliance with consumer protection measures.

⁸¹⁸ For extensive discussions on Deposit Insurance in Nigeria see Ogunleye Ganiyu, 'Perspectives on the Nigerian Financial Safety-Net' (NDIC 2010); Olanipekun (2008) note 52 above

⁸¹⁹ Empowerment can be defined as 'an increase in the bankability of the population through the increase of financial literacy and coordinated national financial literacy initiative that are complemented by consumer protection. See for discussion the *National Financial Inclusion Strategy (2012)*

⁸²⁰ See Preface of the National Financial Literacy Framework

⁸²¹ *ibid*

⁸²² Section 2 (2) of the Financial Services and Market Act 2000 sets out the task of consumer protection

6.6 Redress and Compensation

Generally, the issues affecting consumers of financial products and services are growing daily as the market evolves. Chapter four of this thesis indicated the challenges that the bank consumers in Nigeria face when seeking redress and the lack of effective and efficient ways of dealing with complaints against financial institutions. The Nigerian and the UK approach to consumer redress in the banking and financial services are fundamentally different, as will be seen in this section. The different approach to consumer redress will be explored to understand the UK model and the role of the regulators in protecting the consumers in the banking sector. In the UK, the regulation for consumer protection made provisions for Alternative Dispute Resolution (ADR) such as Ombudsman and encouraged the consumers to use the process, while in Nigeria the use of ADR is relatively new. No Nigerian financial services legislation establishes ombudsman for consumers of financial services, and it would appear that the approach to Alternative Dispute Resolution differs in the two countries especially in this area. Therefore, the following sections will examine the consumer redress mechanism under the UK model, to see what Nigeria can adopt or learn in the form of good practice.

The FSMA 2000(as amended) provides for different methods of redress to the advantage of the consumers. In this case, consumers can see redress from different avenues without necessarily going through the court system as in the case of Nigerian consumers. In the UK the Financial Services Act 2000 (as amended) requires the financial institutions to, firstly establish a standardised internal procedure for receiving, resolving and dealing with complaints. Secondly, it requires that the process of submitting any complaints should be made known and be clear to a consumer at the time of signing his or her contract. The Financial Ombudsman Service is one of the primary methods of redress in the UK financial services.

6.6.1 The Financial Ombudsman Service

The UK Financial Ombudsman Service (FOS) which was formerly the responsibility of the Financial Services Authority (FSA) has been taken over by the new FCA in the recent legal cross over. However, prior to the Financial Services and market Act 2000 (FSMA), there were about eight different ombudsman services in operation.⁸²³ The Financial Ombudsman

⁸²³ Iain MacNeil , Consumer dispute resolution in the UK financial sector the experience of the Financial Ombudsman Service, (2007) Law and Financial Markets Review, 1:6,515-524

scheme was established under the Part XVI of the FSMA 2000 (as amended)⁸²⁴ The Act places on the Ombudsman, the mandate to deal efficiently and independently with disputes.⁸²⁵

The FCA in their handbook has a provision that requires and assists the regulated firms to have effective mechanisms for dealing with consumer complaints.⁸²⁶ The FCA handbook stipulates the procedures in which the regulated firms should follow in designing their redress mechanism.⁸²⁷ This could be an effective provision and as well as offering effective role model for the Central Bank of Nigeria – Consumer Protection Department. The same can be said of the FCA Handbook which provides that all the regulated financial institutions should ensure that consumers have access to information before the contract is signed.

6.6.2 The Nigeria Redress Method

Having discussed the UK approach to consumer redress, this section addresses the consumer redress mechanism by identifying the problem in Nigeria. The purpose of this section is to examine the current concern of the lack of sufficient avenue for seeking redress. The fact that there are no legal provisions addressing issues arising from lack of legal assistance for consumers within the few administrative agencies⁸²⁸ and the impact of this problem has been illustrated in several discussions in this study.

It is important that this problem is rectified when addressing mechanisms for resolving disputes in the banks and financial services transactions.⁸²⁹ However, prior to the financial crisis which exposed the weaknesses in the regulatory regime, the CBN has, through its regulatory measures, indirectly or directly introduced policy guidelines that are geared towards protecting consumers of banks and financial services. These problems are analysed carefully.

⁸²⁴ See also Financial Services Act 2012, Ch. 1

⁸²⁵ Financial Services Act 2012, or see also s. 225 (1) of FSMA 2000 (as amended)

⁸²⁶ FCA, Handbook, DISP 2.1.1, available at <<https://www.handbook.fca.org.uk/handbook/DISP/2/1.html>> accessed on 21 August 2016

⁸²⁷ Ibid,

⁸²⁸ Under the Legal Aid (Amendment) Act, No. 21 of 1994, there is no civil legal aid available for consumers to receive free legal aid to pursue their reliefs in consumer protection matter in courts in Nigeria. See Chapter four of this thesis (4.6.5.2); Joseph Nwobike, “Legal Regime for the Protection of Consumers of Financial Services in Nigeria” available online at <<http://www.jnclawfirm.com/articles.php>> accessed on 11 August 2016

⁸²⁹ It should be noted that the first Consumer Protect Framework in the Banking Industry was drafted in 2015.

In Nigeria, consumers can submit complaints to a few institutions before taking the matter to court. As mentioned in chapter four, different administrative bodies⁸³⁰ are responsible for receiving consumer complaints and also, mandated to take some action. Of note, none of these administrative bodies is responsible for taking an appropriate view of consumer complaints and finding solutions that are fair and reasonable to those consumers. It has been noted that there is provision under the Consumer Protection Council Act 1992 for bodies or community, including the consumer associations, to seek redress on behalf of consumers following complaint from them. The few institutions in Nigeria where a consumer can submit complaints are,

- 1) The customer services department in banks or other financial institutions
- 2) Consumer Protection Department in the Central Bank of Nigeria (CBN)
- 3) The Sub-committee on Ethics and Professionalism
- 4) Non-governmental Organisations, (one only focuses on financial consumer protection)⁸³¹
- 5) The Consumer Protection Council (CPC)
- 6) The Standard Organisation of Nigeria (SON)
- 7) The National Agency for Food and Drug Administration and Control (NAFDAC)
- 8) The National Communication Commission (NCC)
- 9) The Public Complaint Commission (PCC)
- 10) The Court of competent jurisdiction.

It could be argued that each of these institutions take a narrow approach in handling consumer complaints. For instance, the approach used by these agencies in handling consumer dispute is optional as defined by its functions and their decision can be influenced by the financial institutions. One notable example is the case of a bank consumer who operates two accounts with the same bank, one personal (savings) and one corporate account and the bank deducted a monthly maintenance fee of ₦100 each from both accounts.⁸³² Consequently, if the bank consumer takes this complaint to the Customer Service Unit of the bank, the Unit would see the issue as one of the normal monthly charges for internet use. The

⁸³⁰ See chapter four (4.6.3)

⁸³¹ The Consumer Advocacy Foundation of Nigeria (CAFON) is the only NGO that is dedicated to deal with financial consumer matters.

⁸³² These charges are in breach of the Revised Guide to Bank charges (RGBC); see 2015 Consumer protection Annual Activity Report, 27.

Consumer Protection Department in the CBN would review such cases to see if the bank followed the regulatory guideline for bank charges and the related laws or regulations. The Public Complaint Commission could investigate this matter on his own initiative or following complaints lodged by consumers. The Consumer Protection Council may take the complaint but its jurisdiction is not extended to financial services nor does it cover matters relating to financial institutions. The financial consumer protection NGO could assist the consumer in this situation but its role would be more of advocacy and again, it is not funded to take consumer complaints. The Sub-committee on Ethics and Professionalism would require the consumer to pay money to register the complaints.

In order for these bodies to fully represent consumers, any redress method put forward needs to have a clear process, be accessible, be known to consumers and to safeguard the consumers' welfare. The lack of powers to take a broad perspective of consumers' complaints and their protection in the mandates of the above mentioned institutions is clear evidence of the gap that exists in this area. Another factor that may need to be explored in this section is the Alternative Dispute Resolution (ADR), Mediation and Arbitration. This is a new phenomenon which has been recommended by the 2015 draft consumer protection framework. The framework mandates the CBN to encourage the use of ADR. The Consumer Protection Department has a mediation process which the consumers are not fully aware of. According to the 2015 CPD Annual Activity Report, the department handled 32 mediation meetings in 2015 as against the 18 mediation meetings in 2014.⁸³³ However, this department handled a limited number of consumer complaints in 2016 due to inadequate office space and a professional skill gap.

The court might provide another option for the consumer but its approach will be to determine whether the financial institution in question has breached the regulation or guidelines. Pursuing the matter through the court is not only time-consuming but also costly. In addition, the Administrative justice system in Nigeria is complicated, comparatively expensive and unresponsive to fast dispensation of justice,⁸³⁴ making it difficult for consumers to take the court option. It is believed that the consumers in this situation would rather bear the breach of their consumer rights than the uncertainty of going to court. There

⁸³³ See 2015 Consumer protection Annual Activity Report, 27.

⁸³⁴ Tosin Osasona, 'Time to Reform Nigeria's Criminal Justice System' (2015) 3 Journal of Law and Criminal Justice, 74; Ojukwu-Ogba N, 'Towards Effective Bank Customer Protection In Nigeria: The Legal Imperative Of The Banking Ombudsman System' (2015) 30 Journal of International Banking Law and Regulation, 3.

are bodies that offer legal aid services in Nigeria,⁸³⁵ however, most of these legal aid services are used to assist social justice cases and human rights abuses. The financial consumer complaints, as previously noted, are mostly not being assisted through these government financed legal aid services in Nigeria. Furthermore, the legal aid services offer assistance to people who are unjustly detained and people who cannot afford to procure legal services. Moreover, most of the institutions such as SON, NAFDAC and NCC deal with specific matters but not financial consumers complaints.

Apart from the above mentioned institutions, the other segment of the financial services such as the Securities, Insurance, Pension Funds and Credit institutions have different types of consumer redress methods.⁸³⁶ The process of submitting and handling consumer complaint are slightly different from the other bodies. Even today, the insurance organisations and securities in Nigeria still have very complex redress methods unlike the UK that has a uniform financial consumer protection system established by an Act. Access to justice is a very important issue in financial consumer protection. It is therefore surprising that the current system did not establish a standardised internal procedure for receiving complaints across all segments of the financial institutions. One of the factors that lead to inaccessibility of redress to consumers of financial services is the absence of specific laws providing access to justice. The discussion in the next section will highlight the current situation and the need to have more redress channels for consumers to address their complaints against financial services.

6.6.2.1 The Financial Ombudsman Service

Given the relatively complicated administration of justice system in Nigeria and the importance of financial services to emerging economies like Nigeria, we argue that at least some redress methods should be seen as an ‘essential approach’ to bank or financial institution-consumer relationships in the country. The ombudsman scheme is becoming the hub of the consumer protection process.⁸³⁷ The advantages for financial institutions had been noted by Cartwright, who argued that ombudsman schemes ‘have become a central part of

⁸³⁵ The Legal Aid Council of Nigeria, which was established under the Legal Aid Act No. 56 of 1976 and was amended by the Legal Aid Act cap L9, 2004 Laws of the Federation of Nigeria, available at <<http://www.legalaidcouncil.gov.ng/>> accessed on 31 July 2016; Nigerian Federation of Women Lawyers; Action Aid Nigeria

⁸³⁶ It should be noted that Nigeria has a fragmented regulatory approach in the financial services (rather than uniformed regulatory approach)

⁸³⁷ There is copious literature on the importance of Ombudsman Scheme in consumer protection. See, for example, Ojukwu-Ogba, ‘The Banking Ombudsman System’ above n8 at 5;

the consumer protection processing where financial services are concerned'.⁸³⁸ It is apparent that the financial ombudsman should be established precisely to ease the way in which consumers resolve their disputes with financial institutions, without incurring cost or using the court services. Despite its importance, there is no banking or Financial Ombudsman Scheme in Nigeria. Ojukwu-Ogba in his recent paper sums up the situation in Nigeria and suggests the need to create a banking ombudsman thus:⁸³⁹

The Nigerian populace and, by implication, the banking public is not highly literate. Some people in that class would ordinarily not be too well informed or enlightened about their rights with regard to their relationship with their banks. Therefore, they may not be in a position to enforce their rights against their banks under the present dispensation. Secondly, the judicial process as an avenue for the enforcement of rights in Nigeria is very expensive, slow and may not be easily available to the average bank customer. Thirdly, the complaints that need to be addressed may be too trivial to be taken through civil litigation and would best be resolved through alternative dispute resolution process of arbitration.

This seems to state the true position of the bank consumer in the consumer protection process in Nigeria. However, while highlighting these concerns, the researcher recognises that there are advantages to having one financial ombudsman rather than encouraging different segments of the financial service to create their own ombudsman scheme. Indeed, it seems that the Nigeria Deposit Insurance Corporation recognised the existence of such weakness in the current regulatory regime and push for one financial ombudsman for the whole financial market. It is certainly obvious on this basis alone, that there is a need for the government or financial regulators to establish financial ombudsman.

In 2011, the Nigeria Deposit Insurance Corporation (NDIC) proposed and sponsored a Financial Ombudsman Bill which is still before the National Assembly.⁸⁴⁰ The proposed Bill is meant to establish a Financial Ombudsman in the Nigerian financial industry.⁸⁴¹

⁸³⁸ Peter Cartwright, 'Banks, Consumers and Regulation' (Hart Publishing 2004)175

⁸³⁹ Ojukwu-Ogba, above n8 at 5

⁸⁴⁰ Umar A. Oseni, 'Dispute Resolution in the Islamic Finance Industry In Nigeria' (2012) 40 Eur J Law Econ, 558.

⁸⁴¹ The Financial Ombudsman Bill was one of the 46 Bills which was passed by The 7th Assembly of the Nigerian Senate few days before its dissolution. The Bill is currently waiting for the presidential seal. See Aderinsola Fagbure, '46 Bills in 10 Minutes- The Financial Ombudsman Bill Has Finally Seen the Light of the Day' available at < <http://olisaagbakobalegal.law/wp-content/uploads/2015/Articles/Financial-20Ombudsman-20Bill.pdf> > accessed on 31 July 2016

This Bill aimed to establish an independent body charged with the responsibility of receiving and resolving financial consumers' complaints and related disputes arising from financial products and services in Nigeria. It is noted that at the time of writing this thesis, the Ombudsman has not been signed by the President and Commander-in-Chief of the Armed Forces of Nigeria, Muhammadu Buhari. In relation to the Ombudsman scheme, the 2015 draft consumer protection framework has enthusiastically proposed the establishment of ombudsman in the financial sector. It is not clear if the proposed ombudsman will be 'one financial ombudsman' or more as much detail was not given in the framework. However, at present, there is no banking or financial services ombudsman options to ease the way in which consumers resolve their disputes with financial institutions in Nigeria. In the banking sector, there are two key alternative dispute resolution options and this will be examined in the next section.

6.6.2.2 The Alternative Dispute Resolution

In Nigeria, prior to the 2008 financial crisis, there were no consumer protection regulations that prescribed specific procedures for financial institutions to follow in resolving consumer complaints or to encourage consumers to use Alternative Dispute Resolution⁸⁴² (ADR) mechanisms; however, some banks do have complaint procedures set up by various industrial associations through their professional code of conduct.

Nigeria has one key self-regulatory organisation, the Nigerian stock exchange⁸⁴³ and various industry associations, including the Chartered Institute of Bankers of Nigeria (CIBN), the Nigerian Insurers Association and Nigeria National Association of Microfinance Banks. The Subcommittee on Ethics and Professionalism was created by the Bankers Committee to act as ADR mechanism following the growing concerns about unethical practices in Nigerian banks.⁸⁴⁴ However, none of these associations or the Subcommittee provides the necessary mechanism for resolving consumer complaints. For example, the Subcommittee takes complaints but not for free and not useful for small consumer claims.⁸⁴⁵ It is also worth

⁸⁴² For discussion on the Alternative Dispute Resolution in Nigeria, refer to Chapter five of this thesis.

⁸⁴³ The Nigerian stock Exchange (NSE) is a self-regulatory Organization which works to protect and maintain the investors' confidence in the market place. For details about their role and locations see, NSE available at <<http://www.nse.com.ng/regulation>> accessed on 2 August 2016.

⁸⁴⁴ The Membership of the Subcommittee is made up of NDIC, CBN, FITC and 11 banks, See also, available at <http://www.cibng.org/cb_ethics.asp> accessed on 2 August 2016

⁸⁴⁵ As discussed in the chapter four of this thesis, the Subcommittee has a condition for handling cases. The conditions involve a 'payment of a non-refundable deposit of N50, 000 or 5% of claim, whichever is lower'. See also <http://www.cibng.org/cb_ethics.asp> accessed on 2 august 2016.

noting that the Subcommittee of the Chartered Institute of Banks is comprised of the regulatory institutions and 11 banks without any consumer or member of the consumer association, which suggests that this recourse mechanism is perhaps designed for special cases.

Section 51 of the CBN Act of 2007 gives the Central Bank of Nigeria the power to make regulations for good management of the banks. As the regulator of banks and as required under section 50 of the enabling laws, the CBN created the Consumer Protection Department, to provide mediation services to consumers and financial institutions. This department is not created by enactment but it is responsible for monitoring consumer protection practices in banks under the supervision of the CBN. The Consumer Protection department however, does not handle any complaint from insurance or any other segment of the financial services.

6.6.2.2.1 Consumer Complaints in the Banking Sector

It is important that the laws and other regulatory efforts in consumer dispute resolution should not only have clear and designated unit but also take into consideration the socio-cultural factor, especially when the rules involve consumers from diverse groups. This was not the case in Nigeria before the 2008 financial crisis which exposed the fact that there were no specific regulations that set uniform standards for internal dispute resolution mechanisms in the banking sector.

There is no recorded research on complaint handling procedures in the banking sector in Nigeria, however, the CBN's comprehensive study after the 2008 financial crisis found a prevalent lack of investor and consumer sophistication, inadequate disclosure and gaps in the regulatory framework and regulation of banks.⁸⁴⁶ All the provisions discussed above are important for addressing consumer complaints concerns in the banking and financial services.

6.6.2.3 The Nigerian Legal System

An efficient court system and access to justice is an important component in consumer protection. Nigeria is primarily a common law jurisdiction which is heavily influenced by the English legal system. The Nigerian legal system has gone a considerably long way from its colonial origins. In Nigeria, there are different types of court systems, namely the Supreme Court, Federal High Courts, State Courts, Magistrate Courts and the Customary Courts.

⁸⁴⁶ Lamido Sanusi , "The Nigerian Banking Industry: What Went Wrong And The Way Forward" (Square, Bayero University, Kano, 2010);

However, none of these courts has distinct jurisdiction rules applying to protect users of bank products and services. The importance of the judiciary in any economy cannot be overemphasised, therefore the constitution provides for its independence, to enable it to perform its role without fear or favour. The constitution provides for the jurisdiction of each court and the appointment of the principal officers or judges.

The courts have not been keen in taking up consumer protection matters due to the problems discussed in chapter four of this thesis.⁸⁴⁷ It is evident that consumers seeking remedies in court will be confronted by not only the legal cost but also with the delay in the court process. The injured consumers can only seek remedy through the civil court. Furthermore, a critical issue is the lingering lack of small claim court system like in the United Kingdom, which prevents consumers from bringing little claims to court without legal representation.

The absence of sufficient avenues for addressing and adjudicating banks and other financial services consumer concerns in Nigeria is a huge problem for consumers. Most consumers may not be able to seek redress, either because the transactions involved are minimal compared to the legal costs, or that there are no guarantees of compensation due to the gap in the law.⁸⁴⁸ In order to address these challenges, there is a need to establish a small claims court (legally suitable), easily accessible and providing effective redress mechanisms for all Nigerian consumers.

The discussion on the role of the UK court reveals the emphasis of having an effective court system and multiple avenues for resolving consumers' disputes. While this is important, other means should also be taken into consideration, especially to enable the consumers living in the local areas or rural communities to have access to justice. To meet the dispute resolution needs of rural communities and low income consumers on a wider scale, the government should consider the idea of providing consumer organisations with legislative roles to bring complaints before regulatory agencies on behalf of groups of consumers. The use of such channels must be provided in a way that it will offer assistance and representation for consumers who are in need, or else they may still not prove beneficial, if the services are not designed for consumers in the local areas with limited access to essential services. It is also crucial to ensure that the consumers are aware of these services, especially those who have limited use of the English language.

⁸⁴⁷ Refer to discussion on Judicial Remedies in Chapter Four

⁸⁴⁸ For extensive discussion on remedies and compensation for Nigerian consumers see, Chapter Four of the thesis

6.6.2.4 The Role of Consumer Association

The Consumer Protection Law provides in Section 2(f) of CPC Act the following, as the basic function of the Council; ‘to encourage the formation of voluntary consumer organisations or associations for consumers’ well-being’.⁸⁴⁹ Section 2(h) of the Consumer Protection Law also establishes as consumer rights and a function of the Council, to “encourage trade, industry and professional associations to develop and enforce in their various fields, quality standards designed to safeguard the interests of consumers”⁸⁵⁰ However, as highlighted in chapter four, the Act did not define the requirements to be met by these organisations in order to act as a consumer group Such as registering as a non-profit organisation, not to derive income from members’ subscriptions, they must be independent and not accept commercial sources of funding. In the researcher’s view, for these consumer associations to work effectively in representing and working to protect and strengthen the rights of general consumers, the government should recognise their important roles through the provisions of important basic funding. For example, in the UK and European Union (EU), the efforts of the consumer associations and their funding challenges are encouraged and valued by the government.

As the consumer associations are independent, their role is important in demanding clearer transparency, better protection and proper ethical standards for the benefit of all Nigerian consumers; however, it is a crucially urgent issue that they are recognised in the consumer protection law and policy. By taking this approach, the government is able to ensure that full recognition and funding opportunities are given to consumer associations to continue their core role.

6.7 General Discussion on Consumer Protection in the UK and Nigerian Banking Sector

This section endeavours to carry out a comparative analysis of Nigeria and the UK. The regulators in Nigeria and the UK vary greatly in the area of consumer protection. However, there are a number of lessons which a country like Nigeria, which is developing its consumer protection framework, can draw from the UK. The UK and Nigerian banking sectors have some remarkable similarities and differences in the sense that both have, over the past decades experienced major institutional and functional changes which lead to more new

⁸⁴⁹ Cap. C25, Vol, 4, LFN 2004, s. 2(f)

⁸⁵⁰ S. 2(f)

responsibilities to banks.⁸⁵¹ The examination and analyses of these two countries have shown that the rise of the regulatory changes was prompted by the failings in the system which was exposed during the recent global financial meltdown.⁸⁵²

The bank regulatory reforms of these two countries have indeed represented a sweeping response to the financial crisis by taking crucial steps in ensuring that consumers are adequately protected. However, provisions in UK legislation are carefully designed, with some parts focusing on regulating different aspects of consumer protection.⁸⁵³ The Nigerian bank regulatory laws adopt a comparable approach, though not as exhaustive as the UK regime. The Nigerian CBN Act, 2007 has some serious basic flaws. The Nigerian CBN act, 2007 has no link with the main Consumer Protection Council Act 1992 (as amended in 2004), more critically the CPC Act does not have any provision for financial services.

In Nigeria, while the regulatory reform to ensure financial stability is welcome, the creation of the Consumer Protection Department within the CBN is a considerable change, which is improved by the associated change in the main financial objective of the bank regulators. The problem of coordination and the demarcation line of responsibilities between these two authorities should be reconsidered in order to provide a framework that is capable of protecting consumers while promoting sound financial systems.⁸⁵⁴ However, the Consumer Protection Department is bound by a number of objectives that are intended to protect the consumers but which lack statutory recognition. The separation of consumer protection activities from the financial regulator is therefore a fundamental reform, as it is always advocated by legal scholars. The recent financial crisis exposed the regulatory gaps in the current regulatory model. The current model created multiple regulatory bodies within the financial sector.⁸⁵⁵ These bodies need coordination to avoid supervision loopholes. According

⁸⁵¹ Emma Murphy, 'Changes to the Bank of England' (2013) Quarterly Bulletin, 20

⁸⁵² According to the former CBN Governor, 'the Nigerian banking system experienced crisis in 2009 which was triggered by global event.' For the CBN Governor, there are eight factors that prompted the CBN and the government to introduce general changes in the Nigerian banking sector. The three most important areas which this study is concerned about are as follows: lack of investor and limited consumer framework, critical gaps in regulatory framework and regulations and uneven supervision and enforcement. See Sanusi Lamido, "The Nigerian Banking Industry: What Went Wrong and The Way Forward" (Square, Bayero University, Kano, 2010)5, 8.

⁸⁵³ By way of illustration, the UK Unfair Contract Act 1977

⁸⁵⁴ Section 2 of the CBN act, 2007

⁸⁵⁵ A Consumer protection office was created alongside with Corporate Affairs Department within the Prudential Regulatory Authority – the CBN. There also, the Financial Steering Committee which is headed by the Governor of the Central Bank of Nigeria.

to the CBN former governor, there was lack of coordination among these regulators which prevented the CBN from having comprehensive performance of its functions.⁸⁵⁶

One of the measures that could be adopted from the UK model to make coordination and accountability easier is the Memorandum of Understanding (MOU). The legislation should be able to offer statutory MOU to offer assurances and a certain level of joint and single regulatory roles.

6.8 Conclusion

In this chapter, we have examined the UK and Nigerian approaches to banking regulation and consumer protection measures in the two countries. The analyses are intended to demonstrate that there is no doubt that Nigeria has systems that regulate the banking sector; indeed the bank regulators have various measures which directly or indirectly protect the financial consumers' interests, in their dealings with the financial institutions. However, the question of why these measures work differently in the UK and Nigeria, and whether there is some type of measure that could be adopted from a country with a good history of consumer protection in the banking sector, is discussed fully. This is so because until the 2008 financial crisis, the issues of consumer protection in the banking sector had remained mainly theoretical.

Also highlighted in this chapter is the fact that consumer protection is not a core objective of any of the banking or financial services regulation. The role of consumer protection is shared by many agencies without statutorily defined roles.

The next chapter will provide the summary of the entire research and suggests areas for further research.

⁸⁵⁶ Sanusi L, "The Nigerian Banking Industry: What Went Wrong and The Way Forward" (Square, Bayero University, Kano, 2010), 9.

Chapter Seven

Conclusion

7.1 Introduction

The study sets out to examine the problems of consumer protection in Nigeria, with specific reference to the ‘banking consumers.’ The aim is to consider whether the current consumer protection regime provides ‘sufficient protection to bank consumers or is there any need for a reform?’ The findings of the research conclude that while the Central Bank of Nigeria (CBN) has made notable efforts, there is a strong need to reform the consumer protection regime, this is because consumers are not sufficiently protected and the need for consistency, efficiency and accessibility of the system to resolve disputes arising from banking transaction of consumers.’

The following sections will briefly present the summary of the thesis key findings and recommendations.

7.2 Summary of key Findings

The primary issue which this study was concerned with revolves around the question of whether the Nigerian consumer protection regime provides sufficient protection for bank consumers. Chapters Two, Three, Four, Five and Six have been used to explore the research questions and the conceptual framework.

It has been established that there are challenges with the framework for consumer protection in Nigeria which could have a direct negative impact on both consumers and the financial system. More specifically, in areas such as compensation of victims, dispute resolution, penalties, consumer education and seeking of funding for consumer associations were mentioned in the preceding chapters with no specific legal provision to cover these issues, thereby leaving weaker party in an unfavourable position in the market place.

This research has submitted (in chapter five) that the new Consumer Protection Framework in Nigeria has certain weaknesses and gaps which could be exploited by financial services providers to the detriment of bank consumers.⁸⁵⁷ The thesis has also demonstrated (in chapter six) that Nigeria could adopt some measures from the United Kingdom which has extensive experience and good history of consumer protection and banking regulation.

⁸⁵⁷ See Chapter five (5.3.1)

This study concludes that, there is no one size-fits-all or command control approach in providing solutions to consumer protection problems in the financial services sector. Rather, a holistic approach which would promote the growth of financial sector and at the same time afford consumers some form of protection.

7.2.1 Consumer Protection and Banking Regulation in Nigeria

This study has examined the current consumer protection regime in Nigeria, the role of the CBN in relation to consumer protection and the mechanism for resolving disputes in the financial sector. It has found out that the current protection regime is not adequate due to the following Legal and practical challenges.

The findings of the study were that the Central Bank of Nigeria is solely responsible for the enforcement of consumer protection and financial system regulation and supervision. Consumer confidence is an important factor for the growth of the financial system. While improved consumer protection policy will benefit both the consumers and the service providers, the study also shows that the current policies aimed at raising awareness of consumer rights are not enough. The Nigerian laws and regulations are yet to provide a clear consumer protection rules regarding any banking products and services. A comprehensive consumer protection framework which has recently being drafted remains to be implemented.

In short, the financial regulatory agencies have made remarkable efforts under the enabling laws to comply with global best practices, but the laws have substantive defects.

7.2.2 Legal and Regulatory Framework

The discussion in this study revealed the complexity of the legal and regulatory framework for consumer protection in the financial sector. Generally, the main consumer protection legislation in Nigeria – Consumer Protection Council Decree No 66 of 1992, was made by military fiats without consumers and stakeholders participation. While this law seeks to provide speedy redress to consumer complaints through negotiations, mediation and conciliations⁸⁵⁸, it does not make explicit reference to the protection of consumer who acquire or seek to acquire financial products and services. The definition of consumer employed in the CPC Act as ‘an individual, who purchases, uses, maintains or disposes of product or services⁸⁵⁹ is broad enough to cover both individual consumers and financial institutions.

⁸⁵⁸ Section 2(a) of Consumer Protection Council Decree No 66 of 1992

⁸⁵⁹ No 66of 1992 (C25, Vol, 4, Law of the Federation of Nigeria (LFN) 2004

However, two possibilities arise here: either that the definition includes all or it is limited to the individual as natural person and does not extend to legal entity or small business.

It was also revealed from the analysis of the Central Bank role,⁸⁶⁰ that lack of clarity as to the CBN supervisory responsibilities in relation to consumer protection matters and the limited consumer protection laws relating particularly to financial services which make it difficult for the current initiative to regulate consumer concerns. It was further demonstrated that prior to the global financial crisis of 2007 to 2009, there was no legal framework for consumer protection in the financial services in Nigeria. These measures need to be well developed if the regulators are determined to protect financial consumers. Even in the case where the available consumer protection laws in Nigeria are effective, it is highly likely that they would not be adequate in the financial services sector because of the reasons highlighted. This is due to the complex nature of the financial products and diverse group of consumers and economic conditions which are the determining factors of financial services sector in Nigeria.

As identified in the study, there are absences of uniform and standardized requirements for internal dispute resolution regimes in the financial institutions. These limitations make it difficult, if not impossible for consumers to be provided with a consistent, efficient and accessible system of resolving disputes arising from banking transactions.

The study has shown that consumer organisations lack support through funding and training. Although the Act encourages the formation of voluntary consumer groups or association, it has not proven to be effective in providing any funding or capacity building to these organisations. This has an undesirable practical effect on consumers who would need assistance or advice in relation to their financial challenges.

7.2.3 Institutional Framework for Consumer Protection

The findings of the study were that the consumer protection in the financial sector, especially the banking industry would benefit from strengthening and clear delineation of responsibilities. To avoid duplication and overlap in the consumer protection responsibilities, this study recommends two key ways in which this can be improved. First, to create an effective regime for consumer protection in the financial sector, the government could consider introducing a new Act (for example, Financial Consumer Agency of Nigeria Act). This new Act would establish the Financial Consumer Agency of Nigeria which will be

⁸⁶⁰ See Chapter Four (4.3.2.2)

responsible for the protection of consumers of financial products and services. A single agency that will handle all enquiries and complaints could benefit both the consumers and the industry. However, this may not be a quick fix option considering the time it may take to pass the new legislation in the Nigerian Senate and House of Representative. The second option would be to consider the amendment of the Central Bank of Nigeria Act to include consumer protection in the mandate. Notably, the CBN has been using the regulatory powers to issue regulations, circulars and directives which directly protect consumers.

The main weakness with the current institutional framework which consists of government agencies responsible for coordination and enforcement of consumer issues in Nigeria are summarized and addressed in this section. There are six basic issues that impede the effective working of the regulatory agencies, which also prevent consumers from receiving sufficient protection. These issues are; the lack of a self-sustaining legal unit within the regulatory agencies prosecuting the offenders and scarce human resources. Minimal penalties stipulated by the substantive laws, lack of provisions for compensation of victims, lack of support for consumer education and lack of adequate awareness of channels of redress. On one hand, there is severe lack of enforcement and coordination efforts among these agencies, which leads to administrative gaps in consumer protection. It has been observed that many of the agencies have improved in regard to enforcement of consumer rights. However, the challenges that Nigerian consumers still face regarding these rights may come from, first, the need to create awareness and secondly, the need to comply with global best practices.

7.2.4 Consumer Protections Issues

Regarding the protection of consumer rights, which was discussed in Chapter two, four and five, the findings of the present research have shown that although the Constitution of the Federal Republic of Nigeria, 1999⁸⁶¹ contains the fundamental rights of all citizens and persons in Nigeria, these rights can be said to have no explicit bearing to consumer protection. The Consumer Protection Council Act, CAP C25 Laws of the Federation, 2004 which is the main consumer legislation was made by military fiat without consumers and

⁸⁶¹ See Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999. The rights of citizens contained in this chapter is as follows; rights to life, dignity of human person; personal liberty; fair hearing; private and family life; freedom of thought, conscience and religion; freedom of expression and the press; peaceful assembly and association; freedom of movement; freedom from discrimination; and the right to acquire and own immovable property anywhere in Nigeria.

stakeholders participation. This legislation established the Consumer Protection Council (CPC) in Nigeria whose functions include awareness campaigns and speed redress.⁸⁶²

Overall, this research has found that the CPC Act does not provide the consumers with substantial rights and entitlements or important remedies, such as the right to cancel any agreement that does not immediately comply with the Act. In addition, it was found that neither CPC nor CBN exercises full and effective regulation and supervision of consumer protection in the banking industry. This is due to the absence of a comprehensive consumer protection framework and lack of guidance on interpreting the CBN Guidelines on fees and charges.

7.2.5 Other Issues

Generally speaking, the provisions of the laws establishing the Consumer Protection Council Act 1992 and other consumer protection legislations in Nigeria, give the aggrieved consumer the authority to approach any of the agencies for relief. Clearly however, these regulatory agencies may not redress the financial harm suffered by consumers, due to the following reasons. Firstly, in spite of the provisions of section 4 of the CPC Decree of 1992 encouraging the establishment of State Committees, the present thesis discovered that there are a number of States that have not established a Consumer Protection Council Office at the State level. This means that a consumer who lives in a State for instance Jigawa where there is no CPC office will need to travel to the Federal Headquarters Abuja to make his complaints. It has also been observed that having a State office without sub-offices at the local council level in Nigeria, inhibits the aggrieved consumers' access to justice. It is worth noting in particular, that governance in Nigeria is split into three-tier levels of authority which are Federal, State and Local Government.

Secondly, there are many consumer protection administrative agencies focusing on different consumer protection issues but not financial consumer protection matters. For example, aggrieved consumers have to go to the National Agency for Food and Drugs Administration and Control Act (NAFDAC) for redress relating to fake drugs or food. Accordingly, an aggrieved Nigerian consumer can go to the Standard Organization of Nigeria (SON) for the prevention of adulterated products and to the Public Complaint Commission for complaints against public authorities or companies and many more. Consequently, these consumers will

⁸⁶² See chapter four (4.2.2.2)

not only have to spend money to travel to State Headquarters or Federal Capital Territory where the offices of these agencies are, but also they have to struggle with the procedure of getting redress via these various agencies. Some of these agencies lack transparency and may have other regulatory issues which limit their powers.⁸⁶³ For example, when a consumer approaches the Public Complaints Commission (PCC) for redress, the Commissioner has the discretion to decide whether and if so in what manner, he should notify the public (including the consumers), of his action or intended action in any particular case.⁸⁶⁴

Thirdly, there is no uniform procedure for seeking redress in the financial institutions prior to the global financial crisis of 2008 and the regulation did not specify the procedure. The regulatory guidelines in the financial institutions only act as a guide to banks and other financial institutions. The guidelines require all the financial institutions to open customer service units in all their branches and inform customers about the availability of consumer redress procedures. Although, this is a suitable provision which safeguards bank consumer interests, it poses some problems regarding its application and efficiency. In most cases, the financial institutions do not follow vehemently the guidelines, hence they know that the punishment for non-compliance is very little compared to the monetary gain. At present, there are no effective mechanisms to ensure that the financial services institutions are abiding to these CBN guidelines.

Fourthly, there is an overwhelming lack of access and awareness of redress mechanisms, especially among consumers who live in the local communities (local government areas) and even in urban areas. Most of the financial institutions' and regulatory agencies' headquarters are located in the urban areas, therefore, consumers from more remote communities or rural areas may not have adequate access to representation.

This study reveals the difficulties which the consumers face on daily bases, especially the bank consumers, in seeking redress with the relevant regulatory agencies. The 2015 Consumer Protection Department Activity Report⁸⁶⁵ shows that the number of consumer protection complaints has grown (the Department received 1,777 complaints in 2015 and 1,215 complaints in 2014) due to financial institutions engaging in unethical practices, without risk of heavy penalties. In ensuring that consumers get redress, the unscrupulous

⁸⁶³ See Moses Ediru, Drug Administration and Consumption: Some Pharmaco-Legal Issue for Consumer Protection in Adedeji, Adekunle and Shankyula T.Samuel (eds.) (2013) Law and Principles of Consumer Protection: National Institute of Advanced Legal Studies, 370

⁸⁶⁴ Public Complaints Commission Act Cap P37 LFN.2004 (PCC Act), s. 5(3b)

⁸⁶⁵ See 2015 Consumer Protection Department Activity Report, 3

traders or financial institutions can be asked to refund consumers and may also be prosecuted, resulting in criminal punishment, but these penalties imposed in the Nigerian consumer protection legislation are either too small or not enough to deter the offending traders.

The findings in this study have important implications for financial regulators, policy-makers, researchers and students interested in financial consumer protection.

7.2.6 Conclusion

This study provides an explorative analytical framework to view the protection of bank consumers through the lens of regulatory institutions. Consumer protection is a topical issue which has gained prominence in the last few years due to the global financial crisis of 2008.

Nigeria has become one of the most recent countries to join the consumer protection crusade by drafting a consumer protection framework that allegedly set standards on how financial institutions should treat their customers. Although, it is important to realize that regulation by financial regulatory institutions play a role in protecting consumers and depositors, there are challenges that come with this especially when it is being handled by the same institution without an explicit or unclear mandate. In this regard the role of the regulator in protecting consumers becomes essential. These challenges may undermine the inherent potential in the banking sector and the usual guaranteed consumer rights. In the view of the researcher, safeguarding the optimal protection for bank consumers in the financial market requires an adequate regulatory and supervisory framework which is lacking presently in this sector in Nigeria.

In this context, I reached two conclusions; first, while progress is being made in the banking sector, it is uneven. Secondly, I conclude that the current legal regime, regulatory and supervisory framework have not been able to provide a consistent, efficient and accessible system of resolving disputes arising from banking consumers' transactions. The need for these measures closely reflects the need for effective regulation, uniform procedures, enforcement, and adequate supervision in the Nigerian banking industry. Insufficient attention to the five areas highlighted above, under 'summary of key findings'⁸⁶⁶ is a clear example. In addition, the thesis established that all the shortcomings in the Nigerian consumer protection regime highlighted in this study alone, demonstrate that bank consumers are not sufficiently protected. Finally the study makes some recommendations for reform.

⁸⁶⁶ See chapter seven (7.2)

The next section will discuss some suggestions as to how these protection regimes could be improved.

7.3 Recommendation for Reform

This research provides the following recommendations for reform.

Recommendations on Institutional Framework for Consumer Protection

- a) This research recommends that a clear division of responsibilities between the Consumer Protection Department and other CBN departments involved in business conduct supervision should be encouraged. This will help to improve efficiency for example by reducing overlapping responsibilities and improve organizational effectiveness.
- b) Considering that the separation of market conduct supervision requires effective collaboration between the two departments or institutions, this study recommends that the Consumer Protection Department must be well-resourced to fulfil this task.

Recommendations on Dispute Resolution

This research recommends that the financial ombudsman⁸⁶⁷ which was proposed in the 2015 Consumer Protection Framework should be an independent statutory body established by law to resolve disputes between banks and consumers. The UK model ‘Financial Ombudsman Service’⁸⁶⁸ can serve as an example for Nigeria to create or adopt a similar model. The findings in this research have shown that Nigerian consumers lack practical access to justice. For instance, where the new Consumer Protection Department is unable to resolve the complaint, the only recourse available to the consumer, is to go to court. The establishment of Consumer Protection Department which can be used by consumers to seek redress and get information presents clear benefits in terms of consumer dispute resolution. However, this new department needs to be well-resourced to improve the current consumer protection regime.

The current research recommends that a more specific and uniform approach should be introduced in the banking sector which will help in handling consumer complaints. In the

⁸⁶⁷ The Central Bank of Nigeria –Consumer Protection Framework 2015 ‘Proposed Financial Ombudsman’ as part of the Alternative Dispute Resolution (ADR) under its complaints management processes or procedures; See Central Bank of Nigeria Consumer Protection Framework 2015, pp.27-29.

⁸⁶⁸ The UK Financial Ombudsman Services was established in 2000 by the Financial Services and Markets Act 2000.

researcher's view, unclear procedures could create uncertainty and may discourage consumers from enforcing their rights.

Recommendations on the Central Bank of Nigeria Regulatory Measures

This study has shown that the major changes and the banking reforms in relation to consumer protection in Nigeria started in 2008, after the global financial crisis. An effective regime for consumer protection should be proactive and not reactive. The Nigerian financial regulatory institution(s) should undertake special measures to address the dispute resolution gap and the lack of awareness of services, not only those facing the urban consumers but also the information needs of rural dwellers. This is important not only for the welfare of financial consumers but the whole financial system. In this regard, it is suggested that the financial regulator should establish an ongoing dialogue with volunteering consumer associations or Non-governmental Organisations that are providing services to consumers, and request their input regarding draft guidelines or regulations on consumer protection. Their role in promoting consumer protection should be encouraged and should be assisted in obtaining funding. The fact that there are no small-claims courts and no specific provisions addressing issues of consumer redress (especially at the rural areas or local council level) the services of these organizations cannot be overemphasized. These organizations if adequately funded can create jobs and encourage consumers to seek redress with moderate assistance.

This research recommends that registered or voluntary consumer organizations and other designated agencies should be adequately funded to enable them to carry out their mandates effectively and efficiently.

In line with the recommendations on the amendment of the CBN Act, the current research recommends that the Act should strengthening the legal powers of the Consumer Protection Department (CPD) to make orders, initiate proceedings and impose penalties in cases of contravention of the consumer protection provisions.

Recommendations on Administrative and Regulatory Issues, Penalties and Punishment

The fact the sanctions or financial penalties for inappropriate business conduct by financial institutions are too low to create deterrent effect and incentivise institutions that treat their consumers fairly; there is tendency if this is not corrected, inappropriate treatment will continue in this industry. The consumer protection laws do not include compensation

provisions among the rights of consumers. Therefore, it is recommended that financial institutions should be thoroughly liable for satisfactorily compensating consumer

Regarding the administrative agencies, the present study has found that all the consumer protection bodies are government agencies with limited budgets. In this regard, it is important to note that even where there is availability of resources for each agency, there is need to prioritise consumer protection issues in the national political agenda. The government should actively aim to protect consumers by providing adequate resources for both administrative agencies and the court system.

7.4 Concluding Remarks

The discussion in this study suggests that there is need to protect bank consumers in Nigeria and the protection requires a holistic approach to achieve effective result. It should be stressed that the need to combat the unethical market conduct in the financial industry to protect consumers reflects the importance of addressing the issue of collaboration between all the stakeholders and the banking regulators. Interestingly, over the last decade several notable efforts have been made under the Nigerian legislation to tackle the consumer problems in this regard. However, the complex nature of financial products and services and the unique nature of the Nigerian financial consumers should be taken into consideration.

Furthermore, considering the significant potential harm that the unregulated market conduct and weakness in the major legislation can cause to financial stability and consumers, the following issues should be given considerable attention: enforcement of consumer rights, involvement of consumers in policy making, provision of multiple avenues for dispute settlement and comprehensive consumer protection framework. Finally, the low income and uneducated consumers living in the rural areas deserve careful consideration.

7.4.1 Further Research Opportunity

The discussion in this research has highlighted several pertinent areas for future research to emerge. The present study is one of first to examine the legal regime for consumer protection in the banking sector, from the perspective of regulatory and supervisory regime. Therefore, there is need for more research to emerge from other aspects of financial services in Nigeria, for example, Insurance Sector, Microfinance Banks, Primary Mortgage Institutions and Community Banks in Nigeria.

Another area that requires future study is that of over-indebtedness and dispute resolution in micro-finance industries. Whereas this thesis has exhausted the discussion of the problems of consumer protection in Nigeria, there are still room for discussion on consumer lending and the risk of over-indebtedness in the micro-finance industries in Nigeria.

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