
LEGAL REGIME FOR E-BANKING CUSTOMER PROTECTION IN NIGERIA**
Abstract

Banks have commonly been at the forefront of harnessing technology to improve their products and services because of the diversity of their customers as well as the sophisticated nature of their business. They have been using electronic and telecommunication devices to deliver a wide range of value to their products and services. Electronic banking includes the conduct of banking process of deposit, payment, payment confirmation and enquires through the use of electronic medium. Electronic banking may be defined as a means whereby banking business is transacted using automated process and electronic devices such as personal computer, telephones, fax machines, Internet card payments and other electronic channels. Electronic banking in Nigeria has raised a number of consumer protection issues. Despite the legislative developments in the area, the Nigeria banking industry is characterized by consumer exploitation. This includes unrealistic and hidden charges, unjustifiable deductions Automated Teller Machine (ATM) deductions without dispensing cash to the customer, slow complaint handling and redress mechanisms etc. This paper examine the legal regime for e-banking in Nigeria. The paper also examined whether e-banking consumers in Nigeria are adequately protected when compared with international best practice. The paper observed that a lot needs to be done in the area of financial literacy and consumer education as most Nigerians are ignorant of their rights and the enforcement mechanism of pursuing their rights. The CBN Consumer Protection Regulation failed to state the timeline within which e-banking complaints which may have escalated to the CBN Consumer Protection Department may be resolved. The work recommended among others that the CBN Consumer Protection Regulation 2019, be amended to include a timeline for CBN Consumer Protection Department to resolve consumer complaints. The paper also recommended the establishment of an independent body regulated by law and supervised and administered by stakeholders in the banking industry that will ensure that banks comply with the provisions of the Consumer Protection Regulation of the CBN and also handle resolution of consumer complaints.

1. Introduction

It is necessary to understand that before a bank can perform e-banking in Nigeria, it must be a registered company with a banking license¹. Therefore, the legal regime for e-banking customer protection cannot be effectively discussed in isolation without touching some laws and regulations that regulate the traditional banking institutions in Nigeria. This work looked at the relevant laws and institutions relating to e-banking and customer protection in Nigeria.

2. The Banks and other Financial Institutions Act 2020

The Banks and Other Financial and other Institutions Act 2020 was assented to by the president on the 13th day of November, 2020. The Act repealed the Banks and Other Financial Institutions Act 1991² with all its amendments. Section 2(1) of the Act³ provides that it is only an incorporated company duly registered in Nigeria, with a valid banking business that can carry on the business of banking in Nigeria. The above provision protects the bank customers and indeed the general

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¹ Banks and Other Financial Institutions Act (BOFIA) 2020, s (2)1

² ibid s 30

³ BOFIA 2020

public from the likely-fraudulent nature of unlicensed banks and the consequences of bank failures. A number of stringent conditions are required to be satisfied before the issuance of a banking license and this is due to the position of banks in the economy.

3. The Central Bank of Nigeria Act

The Central Bank of Nigeria is the apex prudential regulator of banks and other financial institutions in Nigeria. The Central Bank of Nigeria Act 2007 came into force on the 25 day of May 2007. The Act⁴ repealed the Central bank of Nigeria Act 1991 with its amendments of 1993, 1997, 1998 and 1999, Section 1 of the Central Bank Act 2007 established a body known as the Central Bank of Nigeria as a body corporate with perpetual succession and a common seal and may sue and be sued

It is interesting to note that throughout the 61 Sections of the Central Bank Act 2007, there is no single section that directing accords protection to the banking consumer. The only section closer to the ideals of consumer protection is Section 2 of the CBN Act. Section 60 explains the entrenchment of the sound financial system as part of the rationale for establishing the CBN. A sound financial system is in the banking consumer's interest. It is of equally importance to note that the Act is responsible for implementing and administering the provisions of BOFIA, which aims at ensuring high standards of banking practice and financial stability through its surveillance activities of which banking consumer protection is part of. This is because consumer protection enhances banking quality. In order to cover the above up, and avoid other banking consumer rights violations, CBN in 2010 created the consumer protecting unit that in 2012 attained the status of department. This department deals with relating to consumers' complaints regarding their dealings with banks, and enhances consumer financial capability through consumer education, ensuring fair and responsible market and business conduct amongst financial service provider.

The Central Bank of Nigeria has the powers to make regulations for banks on consumer protection, electronic banking and on all other issues⁵. The Central Bank has in exercise of its powers to make regulations made the following regulations: The Central Bank Consumer Protection Regulation 2019, The Central Bank Consumer Protection Framework 2016, The Central Bank Regulation on Instant Interbank) Electronic Funds Transfers Service in Nigeria 2011. The Central Bank of Nigeria Guidelines on Operations of Electronic Payment Channels in Nigeria 2020, The Central Bank of Nigeria Regulatory Framework for Mobile Money Service in Nigeria 2021, the Central Bank Regulatory Framework on eNaira 2021.

a. The Consumer Protection Framework of the Central Bank 2016

On November 7, 2016 the Central Bank issued the Consumer Protection Framework 2016. The broad objective of the framework is to enhance consumer confidence in the financial services industry and promote financial stability, growth and innovation. Other specific objectives of the framework are: protect consumers assets ensure timely complaints handling and dispute resolutions; ensure financial services operators put in place effective consumer risk management

⁴ Central Bank of Nigerian Act 2007, s 59(1) & (2)

⁵ Salisu Malami and Zurgali M Yusof Legal Regime for the Protection of Banking Consumers in Nigeria: An Overview [2017] (8) *University of Ultra Malaysia Journal of Legal Studies* 88.

framework; empower consumers to make informed decisions; promote professionalism and ethics and outline the right and responsibilities of consumers⁶.

Financial institutions are required by the consumer protection framework of the Central Bank of Nigeria to observe high ethical standards and professionalism in their business transaction with consumers. They are required to assess the financial capabilities of consumers and only offer suitable products and services based on their needs and capability. In addition, they shall provide channels for consumers to make enquires and complaints.⁷ All request for information shall be responded to clearly, in time and in writing or via the customers means of communication with appropriate documentation, for this purpose mere acknowledgement of request would not suffice as a response⁸. Financial institutions must be factual and clear in all communication including advertisements with consumers. Advertisements on financial products and services must not be misleading. Advert shall disclose all conditions associated with the product and services⁹.

The Consumer Protection Framework of the Central Bank of Nigeria issued on 7 November 2017 also aims to protect consumer assets and privacy. The framework provides that appropriate measures shall be establishment to guarantee protection of consumer assets and privacy. Consumer financial and personal information shall be protected by financial institutions at all times and shall not be released to a third party without the consent of the consumer, expect as required by law. The following information are considered to be confidential and shall be protected at all times, contact details, account numbers and balance, statement of accounts and any other information known to the financial institution¹⁰.

The provision of the consumer protection framework is a reinstatement of the common law duty of the secrecy owed to the customer by the hanker as fully discussed in the previous chapter of this work. The banker under the common law owes its customer the duty to keep its affairs secret and is expected to only divulge same if permitted by law. By Section 2.7.2.4 of the Consumer Protection Framework, consumer complaints shall first be lodged with the relevant financial institution and only he escalated to alternative dispute resolution organs in the event that the consumer is dissatisfied or the compliant is not resolved within the stipulated time. If the complaints are not resolved by the financial institution or consumers are dissatisfied with the outcome of the complaints handling process the financial institution must inform the consumer of the alternative recourse mechanism available and the process involved in seeking redress through these channels.

b. The Central Bank Consumer Protection Regulation 2019

On the 20th day of December, 2019 pursuant to the powers conferred on the Central Bank of Nigeria (CBN) by the CBN Act 2007 as amended and the Banks and Other Financial Institutions Act (BOFA) 1991¹¹ as amended, the CBN issued the Consumer Protection Regulations, in order to give effect to the principles contained in the Consumer Protection Framework for institutions licensed or regulated by the Central Bank¹². The Regulation applies to all institutions, licensed and/or

⁶ CBN Consumer Protection Framework 2016, s 1.1

⁷ *ibid* s 2.2

⁸ *ibid* s 2.2.1

⁹ *ibid* s 2.3.3

¹⁰ CBN Consumer Protection Framework 2016, s 2.6

¹¹ Now the Banks and Other Financial Institutions Act 2020

¹² See the introduction to the Consumer Protection Regulation 2019.

regulated by the Central Bank of Nigeria. Financial Institutions shall ensure that the provisions of the Consumer Protection Regulation form part of any consumer related transaction, product or service agreement they may enter into with any other institutions which are otherwise not regulated by the Central Bank of Nigeria¹³.

Any unfair term in a contract between a financial institution and a consumer shall be null and void and shall not be binding on the consumer.¹⁴ The Regulation protects the bank customers from unfair terms in a contract because of the fiduciary relationship between hanker (financial institution) and the consumer. A fiduciary relationship is one of trust and confidence, it involves a party acting for the benefit of another, for this reasons when entering into a contract, it is important for a fiduciary to disclose all facts which could be considered material even if not expressly demanded or asked for by the other party as the law presumes that one person is a superior position, and in this case the banker. The essence of the requirement of disclosure is because the financial institution is in a position of superior party and may take undue advantage of the consumer in any contract the two parties may enter into.

The resolution of dispute shall be the responsibility of the financial institution i.e. banks Consumer complaints shall first be lodged with the banks for timely resolution and redress¹⁵. Financial Institutions shall provide multiple dedicated channels to receive and handle consumer complaints, including verbal complaints. The channels may include letter, e-mail, telephones lines, social media and digital software platform.¹⁶ The institution shall designate a unit for complaints handling independent of other products or business functions taking into consideration, the nature and complexity of their business¹⁷

Section 6.3.6 of the Consumer Protection Regulation provides that the financial institutions banks shall resolve received complaints within the timeline for complaint resolution as contained in Annexure D. annexed to the regulation. After resolution of consumer complaints, the financial institution shall send a Summary of Resolution Communication (SRC) for resolved complaints by the next business day. The Summary of Resolution Communication shall contain the basis of the decision(s), the right of appeal available to the consumer complainant for a second level review by the financial institution and the right of escalation to the CBN or other Alternative Dispute Resolution (ADR) avenues where the complainant is not satisfied with the decision arrive at.¹⁸ Where a complainant is dissatisfied with a decision communicated by the financial institution the complaint shall within 30 days from the date of the receipt of the summary resolution communication request in writing for a 2nd level review.¹⁹

The Regulation however failed to state what a second level review is or the modalities for the 2 level review is humbly submitted that financial institutions shall have a second tier dispute resolution unit made up of persons who did not take part in the first level review, preferable made up of more senior bank, officers so that the second level review will act as an appeal within the

¹³ CBN Consumer Protection Regulation 2019, s 2

¹⁴ *ibid* s 3.3.2

¹⁵ CBN Consumer Protection Regulation 2019, s 6.1

¹⁶ *ibid* s 6.2

¹⁷ *ibid* s 6.3.4

¹⁸ CBN Consumer Regulation 2019, s 6.3.11

¹⁹ *ibid* s 6.3.13

internal dispute resolution structure of the banks in order to encourage consumers to utilize the option This will give the consumer a second hope that their complaint is being handled by different and unbiased staff different from those that already handled the complaint. The second level review is also unnecessary and a waste of time.

Upon the receipt of a request for 2 level review, the institution shall review, resolve and communicate decisions) within the timelines for complaints resolution by institution as contained in Annexure D for second level review.²⁰ Sections 6.3.10 and 6.3.14 of the Central bank Consumer Protection Regulation 2019 provides that financial institutions shall resolve consumer complaints within the time line specified in Annexure D of the Regulation. The Regulation makes provision for consumer complaints review and for 2nd level consumer complaints review. Annexure D is the Regulation provides the various timelines within which a financial institution at resolve consumer complaint. This is encouraging as consumer making complaints to his financial institution is assured of timely handling or resolution of his complaint. Complaints on card activation, card issuance, card functionality, card pin issue and internet banking fraud are to resolved by the internal dispute resolution organ of various banks within two working days and in the case of second review, within two working days.

Domestic ATM fraud complaints are to be resolved with three working days and in the case of 2nd level review within three working days. Complaints on international ATM fraud are to be resolved within sixty (60) working days and in the case of a 2nd level review within thirty (30) working days. Fraudulent withdrawals are to be resolved within fourteen (14) working days and if there is an application for a 2nd level review, it shall be resolved within seven (7) working days.²¹ Complaints boarding on non-functional ATM, non-function POS, POS receipt/slip issues; trapped card. ATM card dispense error claim, mobile banking issues, and chargers on non receipt of transaction alerts, password reset issues, account unlock, login issues (password/user LD issues) online transaction limit, OTP generation issues, Registration issues, failed transaction (web/POS), other POS issues, internet banking Account view inability, internet banking account(s) link request and internet banking funds transfer failure are to resolved within three (3) working days by the financial institution bank in case of an application by the complainant for a 2nd level review, the complaint shall be resolved with two (2) working days.

c. The Central Bank Regulatory Framework on Mobile Money Service in Nigeria 2021

In July 2021, the Central Bank of Nigeria released the Regulatory Framework for Mobile Money Services in Nigeria. A robust payment system is vital for effective monetary policy implementation and the promotion of economic efficiency. The introduction of mobile telephone in Nigeria, its rapid growth and adaptation and the identification of person to person payments as a practical strategy for financial inclusion, has made it imperative to adopt the mobile channel as a means of driving financial inclusion of the unbanked. These factors underscore the decision of the central bank of Nigeria to issue the Regulatory Framework for Mobile Money Services in Nigeria. The framework defines the regulatory environment as a policy path towards achieving availability, acceptance and usage of mobile payment services.²²

²⁰ *ibid* s 6.3.15

²¹ See Annexure D to the Consumer Protection Regulation 2019

²² CBN Regulatory Framework for Mobile Money services in Nigeria 2021, s 1.0

Mobile Payment has evolved as a veritable channel for facilitating the growth of commerce. The use of mobile phone for the initiation, authorization and confirmation of the transfer of value out of a current, savings or credit value account has been recognized as a development that is expanding the growth of commerce among both the financially included and one included units in the economy.²³ Simply put, mobile Money is a technology that allows you to save, receive and spend money from the convenience of a mobile phone. In general, they call it mobile wallet, Mobile money operators in Nigeria are simply mobile money facilitators. Most telecommunications and some fintech companies are now mobile money operators. Mobile money stores exist in an electronic account or wallet. They could link this account to your personal phone number or not. You can receive, store and send money for transactions like buying online, pay bills, school fees and airtime purchase. There are many licensed money agents in Nigeria, from telecommunication companies to commercial and microfinance banks and Fintech institutions there is no shortage of money operations. However some of the most popular ones are: Paga mobile, MTN's Momo Agents First Bank's First online, Opay, Kudi mobile, USA Moni agent and Polaris Sure pad.²⁴ The Central Bank of Nigeria based on the framework also in July 2021 issued a brand Guideline on Mobile Money Services in Nigeria which shall be discussed below.

d. The Central Bank Guidelines on Mobile Money services in Nigeria 2021

In exercise of the powers conferred on the Central Bank of Nigeria by section 470 of the Central Bank of Nigeria Act, 2007 to promote and sustain the development of efficient and effective system for settlement of transactions, including the developing of electronic payment system and pursuant to its mandate of promoting a sound financial systems in Nigeria, the CBN led the Guidelines on Mobile Money Services in Nigeria 2021. All mobile money operators shall be licensed by the Central Bank on such terms and conditions as the Central Bank may determine from time to time, be issued a unique scheme code by the NIBSS for managing interoperability. The Nigeria Communications Commission shall also issue short codes to all mobile money operators and also ensure that the equipments used by the mobile money operators are type approved by the Commission. The mobile money operators shall also ensure that the registration process within its mobile money scheme shall fulfill the entire KYC requirements specified in the Guidelines on Mobile Money service in Nigeria.²⁵

The mobile money system shall require a registered user to activate the service before the commencement of transactions with security code (eg PIN/Password, etc) it is the responsibility of the mobile money operator to ensure that the activation process is not compromised or altered within its infrastructure²⁶. All transaction initiated or conducted with the mobile payment system shall have a unique transaction reference system issued of the system. All mobile money transactions shall have a transaction reference number, payer and payee phone numbers, transaction account, transaction date and time stamp and other relevant details and unique identifiers. No airtime deduction shall be made in respect of charges on any transaction. Mobile money transactions shall be account based, card-account and store based.²⁷

²³ *ibid*

²⁴ ><https://www.investimula-money-operations-in-nigeria-lump> accessed on 27 August 2012.

²⁵ CBN Guidelines on Mobile Money Services in Nigeria 2021, s 7.1

²⁶ *ibid* s 7.3

²⁷ *ibid* s 17(d)

The mobile money operator is required to ensure that the summary of transaction requested must be displayed to the user for confirmation. The transaction summary shall include, the phone numbers of the paying user and receiving user, transaction description, transaction amount, date and time and a unique transaction identifier by confirming the summary, the user commits to the transaction. The customer shall also have option for the user to save such transaction summary. The mobile money operator shall also ensure that upon the completion of a transaction the user receive an electronic receipt which shall confirm to the transaction summary earlier displayed and the option for saving the electronic receipt shall be available to the user.²⁸ The electronic transaction summary of transaction and electronic receipts should be securely logged and the log maintained online for a minimum period of three (3) months and subsequently archived for a minimum period of seven (7) years. However if a complaint arises before the expiration of the seven years, the log in respect of each such pending complaints shall be maintained until the case is completely resolved or discharged.²⁹

The above requirement of the Guideline is to ensure that audit trails are not lost in mobile money transaction. This will assist the law enforcement agencies in their investigation of money laundering, cybercrime and other fraud related offences and also assist the regulators and the CBN Consumer Protection Department in investigating and resolving consumer related complaints which would have been impossible if the audit trails is lost.

e. The Central Bank Regulation on Instant (Inter-bank) Electronic Funds Transfer Services in Nigeria 2018

The Central Bank of Nigeria pursuant to its Powers under the Central Bank of Nigeria Act³⁰ to promote a sound financial system in Nigeria, issued in Central Bank of Nigeria Regulation on Instant (Inter-bank) Electronic funds Transfer Services in Nigeria on the 13th day of September, 2018 with commencement date of 2nd October 2018.³¹ The Regulation covers instant electronic funds transfer services on various payment channels and any- payment platform that seeks to provide instant electronic funds transfer in Nigeria.³²

Instant (inter-bank) fund transfer means:

"Means instant EFT payment system between two distinct entities when delivery from the sending entity to the receiving entity takes place within 1 minute (60 seconds). A payment system where delivery to the receiving entity occurs beyond 1 minute is considered to be ACH system.³³

Instant money transfer accounts for a greater percentage of electronic banking done in Nigeria. Instant electronic bank transfer can be in two forms i.e inter-bank and intra bank fund transfer. Intra bank electronic fund transfer is, fund transfer between customers of the same bank. The Regulation does not cover it. The Regulation covers only inter-bank instant electronic funds transfer, i.e from one bank to the other e.g from zenith bank account to a diamond bank account. The regulation does

²⁸ CBN Guidelines on Mobile Money services in Nigeria 2021, s 17.0 (a-z)

²⁹ *ibid* s 17(d)

³⁰ Sections 2(d), 33(l)(b) and 47(2) of CBN Act 2007

³¹ CBN Circular No. BPS/D1R/GEN/CIR/05/011 dated 13/9/18

³² CBN Regulation on Instant (Inter-bank) Electronic Funds Transfer Service in Nigeria 2018, s 2.0

³³ *ibid* s 13.2

not also cover a transfer that is not instant is a payment system where delivery to the receiving entity occurs beyond 1 minute.

A customer of the bank in an electronic fund transfer which is instant and inter -bank have the responsibility to provide accurate beneficiary account details for every electronic fund transfer instruction issued by the customer.³⁴ The customer has the duty to report problems arising for the electronic fund transfer transaction promptly to the sending/receiving party.³⁵ Whenever a credit has been erroneously applied to the customer's account with the receiving entity, the customer shall promptly notify the receiving entity and authorize the reversal of such erroneous credit,³⁶ where the customer account is unfunded, the customer shall provide funds within 24hours, failure to provide funds shall be a ground for watch-listing of the customer in the banking industry credit Bureau and reporting to law enforcement agencies.³⁷ The limitation on instant inter-bank electronic funds transfer shall be set by customer, sending and receiving entities based on individual entity's appetite subject to the single instant electronic funds transfer limit per transaction as stipulated by the Central Bank of Nigeria.³⁸

The Regulation made provisions for situations where there is an error while transferring money using the instant inter-bank electronic channel. Where a sending entity erroneously sends value (money) contrary to customer's instructions due to wrong account number, wrong amount, duplication e.t.c to a receiving entity and requests the reversal in writing within 14 working days of the transaction, the receiving entity shall oblige within one (1) business day without recourse to the customer (beneficiary) of the receiving entity provided funds are available. An automatic indemnity shall be inferred against the sending entity making the reversal request.³⁹

f. The Central Bank Guidelines on Operation of Electronic Payment Channels in Nigeria 2020

In exercise of the Powers conferred of the Central Bank of Nigeria by the Central Bank of Nigeria Act 2007,⁴⁰ to promote and facilitate development of efficient and effective systems for the settlement of transaction, including the development of electronic payment systems, the Central Bank of Nigeria in June 2020, issued the Guidelines on Operations of Electronic Payment Channels in Nigeria. The Guideline supersedes the Guidelines on Operations of Electronic Payment Channels in Nigeria 2016.⁴¹ The guideline contains four sub Guidelines namely- Guideline on Automated Teller Machine (ATM) Operations; Guidelines on Point of Sale (POS) Card Acceptance Services; Guidelines on Mobile Point of Sale (PMOS) Acceptance Services and Guidelines on Web Acceptance Services.

³⁴ CBN Regulation on Instant (Inter-bank) Electronic Funds Transfer Service in Nigeria 2018. s 5.4(1)

³⁵ *ibid* s 5.4(2)

³⁶ *ibid* s 5.4(3)

³⁷ *ibid* s 5.4(4)

³⁸ *ibid* s 7.1

³⁹ CBN Regulation on Instant (Inter-bank) Electronic Funds Transfer Service in Nigeria 2018. s 10.2.1

⁴⁰ See Sections 2 (d) and 47(2) CBN Act, 2007

⁴¹ See Preamble to the Guidelines on Operations of Electronic Payment Channels in Nigeria 2020.

g. The Central Bank Guidelines on Automated Teller Machine (ATM) Operations in Nigeria 2020

The Guideline provides that all ATM deployers/acquirers shall comply with Payment Card Industry Data Security Standards (PCI DSS) PCI DSS stands for payment card industry Data Security, it was developed to encourage and enhance cardholder data security and facilitate board adoption of consistent data security measures globally,⁴² All ATM shall be able to dispense all denominations of Naira,⁴³ for the deposit taking ATMs, acceptable denominations shall be displayed by the deployer.⁴⁴ All ATM systems shall have audit trails and logs capabilities, comprehensive enough to facilitate investigations, reconciliations and dispute resolution.⁴⁵

A bank or independent organization that deploys an ATN for the use of the public shall ensure that the ATM down time (due to technical fault) is not more than seventy-two (72) hours consecutively, where this is not practicable, the customers shall be duly informed by the deployer.⁴⁶ The deployer of an ATM shall also ensure that the vault is replenished as often as necessary to avoid cash out⁴⁷, there shall also be online monitoring mechanism to determine ATM vault cash level.⁴⁸

A bank or independent organization that deploys an ATM for the use of the public shall ensure that the ATMs issue receipts, where requested by a customer, for all transaction expect balance enquiry, stating at a minimum, the amount withdraw, the terminal identifier, date and time of the transaction.⁴⁹ Precautions are to be taken to minimize the possibility of a card being left by a message or voice, alerting the customer to take his card.⁵⁰ ATM deployers shall install appropriate mechanism to immediately initiate refund without the prompting of the issuing bank or the customer.⁵¹

The reversal of failed on us ATM transaction (failed transaction when customers use their cards on their banks ATM) shall be instant. However, where instant reversal fails due to technical issues of system glitches the timeline for manual reversal shall not exceed 24 hours,⁵² timeline for refunds on failed not -on-us ATM transactions (failed transactions when customers use their card on other bank's ATMs) shall not exceed 48 hours.⁵³

h. The Central Bank Guidelines on Point of Sale (POS) Card Acceptance Services 2020

The CBN Guidelines on Point of Sale (POS) Acceptance Service contained in Guidelines on Operations of Electronic Payment Channels in Nigeria 2020 provides that the object of the Guidelines is to provide minimum standards and requirements for the operations of POS card

⁴² Guidelines on Operations of Electronic Payment Channels in Nigeria 2020, s 5.0 24; see also www.PCIseeirtystandards.cry/PCI-DSS-v3-1.pdf

⁴³ Guidelines on Operations of Electronic Payment Channels in Nigeria 2020, s 1.1.1 (6)

⁴⁴ *ibid* s 1.1.1. (c)

⁴⁵ *ibid* s 1.1.1(e)

⁴⁶ *ibid* s 1.2(k)

⁴⁷ Guidelines on Operations of Electronic Payment Channels in Nigeria 2020, s 1.3(i)

⁴⁸ *ibid* s 1.3(h)

⁴⁹ Guidelines on Operations of Electronic Payment Channels in Nigeria 2020, s 1.3(d)

⁵⁰ *ibid* s 1.3(5)

⁵¹ *ibid* s 1,3(2) *Ibid*

⁵² Guidelines on Operations of Electronic Payment Channels in Nigeria 2020. s 1.6 (1)

⁵³ *ibid* s 1.6(2)

acceptance services in Nigeria. The Guidelines⁵⁴ states that all POS terminal deployed shall be technically enabled to accept all cards issued by Nigeria banks.⁵⁵ A card holder shall store the payment card and protect his/her PIN with due care and shall notify the issuer without delay about missing, stolen, damaged, lost or destroyed card.⁵⁶ If card holder notifies his bank that a POS error involving his card has occurred, the institution must investigate and resolve the claim within 48 hours.⁵⁷

i. The Central Bank Guidelines on Web Acceptance Service 2020

The Guidelines on Web Acceptance services is contained inside the Central Bank Guidelines on Operations of Electronic Payment Channels in Nigeria issued in June, 2020. The issuer shall⁵⁸ be responsible for the issuance of the cards. Only licensed deposit taking banks shall service as the issuer of payment cards.⁵⁹ The issuer shall be held liable for card fraud in the event that payments are made with hot listed cards or where a card is reported as lost or stolen and subsequently used to make payments on any other channel.⁶⁰ The issuer shall also provide means through which cardholder can, at any time, notify the issuer of any loss, theft or fraudulent use of the card and the issuer shall take all necessary steps to stop any further use of the card.⁶¹ It is respectfully submitted that the means through which a cardholder can report the loss of his internet card/token should include several channels including having a dedicated whatsapp line. This will aid consumers/ bank customers in making fast report of loss or theft of cards/token.

The issuer shall maintain internet records over a minimum period of seven (7) years to enable audit trails on card related transactions.⁶² This is obviously to assist in consumer complaints, as resolution of consumer complaints without an accurate record will be difficult if not impossible. Accurate record also enables law enforcement agencies in tracking and arresting of cybercriminals. The Guidelines⁶³ provides that the issuer shall implement authentication at the "highest secured level" requiring 2 factor authentications,⁶⁴ in order to protect the internet banking customers from hackers. The issuer shall immediately acknowledge the dispute or complaints from cardholder and in conjunction with the Acquire and platform provider, resolve such disputes or complaints within 48 hours.⁶⁵ Refunds on disputed/ failed transactions shall be treated within 48 hours.⁶⁶

j. Central Bank of Nigeria Regulatory Guidelines on the E- Naira 2021

The Central Bank of Nigeria pursuant to the Central Bank of Nigeria Act and the Banks and Other Financial Institutions Act 2020 issued the CBN Regulatory Guidelines on the e-Naira on the 25th day of October 2021. The e-Naira is the digital form of the fiat currency (Naira), a legal tender and will form part of the currency in circulation. The e-Naira will complement cash as a less costly,

⁵⁴ *ibid*

⁵⁵ *ibid* s 2.4.4.6

⁵⁶ *ibid* s 2.4.6.1

⁵⁷ Guidelines on Operations of Electronic Payment Channels in Nigeria 2020. s 2.4.6.8

⁵⁸ An issuer is a licensed financial institution that issues payment token to customers, see s 5.0 of the Guidelines.

⁵⁹ Guideline on Operations of Electronic Payment Channels in Nigeria 2020, s 4.5.3.1

⁶⁰ *ibid* s 4.5.3.4

⁶¹ Guideline on Operations of Electronic Payment Channels in Nigeria 2020, s 4.5.3.5

⁶² *ibid* s 4.5.3.6

⁶³ *ibid*

⁶⁴ *ibid* s 4.5.3.10

⁶⁵ *ibid* s 4.5.3.8

⁶⁶ *ibid* s 4.9 (3)

more efficient, generally acceptable, safe and trusted means of payment and store of value.⁶⁷ The e-Naira shall be administered by the CBN through the Digital Currency Management System (DCMS) to mint and issue e-naira.⁶⁸ The consumer who are the end users of e-naira shall create e-naira speed wallets and fund it, utilize e-naira as an alternative payment option for legitimate transactions.⁶⁹ Consumers on boarding shall be self service upon the downloading of the "e-naira speed App" from the App store.⁷⁰

Consumer complaints in relation to the usage of the e-naira shall be referred to Helpdesk of users preferred FI Helpdesk. If unresolved by the FI helpdesk, it shall be escalated to the e-naira Helpdesk via 080 onyenaira (08006962472) or helpfgjenaira.gov.ng. complaints. Complaints from financial institutions as well as disputes arising between financial institutions shall be reported to the e-naira helpdesk Team and resolved within two (2) working days Disputes where one or both partners are unsatisfied with the resolution, the issue shall be referred to an arbitration panel as provided under the extent Arbitration and Conciliation Act or as may be define by the Central Bank of Nigeria from time to time⁷¹

4. An Overview of the Nigeria Deposit Insurance Corporation Act 2006

Prior to the advent of the Nigerian Deposit Insurance Corporation in 1998, the Nigeria banking landscape was besieged by stability-threatening challenges. The sector was inefficient, the non-performing loan (NPL) ration was high and the capital base, return on capital and equity (ROCE) and management quality weakened. Many banks were distressed and public confidence sagged.⁷² The establishment of the Nigerian Deposit Insurance Corporation in 1998 heralded the introduction of an explicit insurance scheme in Nigeria.⁷³ The NDIC is responsible for insuring the deposit of all banks and other deposit taking financial institutions licensed by the Central Bank of Nigeria (CBN). It gives financial and technical assistance, in the interest of depositors, to banks in difficulties and in case a bank fails, it guarantees the payment of insured deposits. Finally, the Corporation assists the CBN in the formulation and implementation of banking policies with a view to ensuring sound banking practices among others.⁷⁴

5. An Overview of the Federal Competition and Consumer Protection Act 2018 (FCCPA)

The Federal Competition and Consumer Protection Act 2018 came into force on the 30th day of January, 2019. The Act repealed the Consumer Protection Council Act⁷⁵ and parts of the Investment and Securities Act⁷⁶ prior to the passage of the Act, the legal and regulatory framework for competition in Nigeria was fragmented. Broadly, the key objectives of the FCCPA include

⁶⁷ See CBN circular No. FPR/DIR/PUB/CIR/001/023 dated 25/10/21

⁶⁸ CBN Regulatory Guidelines on the e-Naira 2021. s.3.1

⁶⁹ *ibid.*4.5

⁷⁰ *ibid.*5.4

⁷¹ CBN Regulatory Guidelines on the e-Naira 2021, s 15.0

⁷² Sunday Oluyemi, Yayangida Umar. Hyeladzira Ochonogor and Ibrahim Alley. 'Deposit Insurance Coverage and public Confidence in the Nigerian Banking system' [2020] (35) (1-2) *NDIC Quarterly* 41

⁷³ Deposit Insurance system maybe explicit or implicit. An implicit scheme does not have any defined arrangement for insurance coverage of depositors funds while an explicit scheme like that of Nigeria has a defined arrangement.

⁷⁴ G.A Ogunleye, 'Deposit Insurance Scheme in Nigeria Problems and Prospects' Being a paper presented at the first annual conference of International Associations of Deposit Insurance (IADI) Basel Switzerland. May 2002.

⁷⁵ CAP C25 LFN 2004

⁷⁶ Sections 115-128 of the Investments and securities Act CAP 124 LFN 2004 was repealed, see S.165 of the FCC? Act 2018

promoting and maintain a competitive market in Nigeria, protecting consumer interest and welfare, prohibiting restrictive and unfair business practices, and ensuring the development of the Nigeria economy.⁷⁷

The Federal Competition and Consumer Protection Act 2018 which repealed the Consumer Protection Council Act⁷⁸ introduced a comprehensive legislation on competition law in Nigeria is meant to be supreme subject only to the Constitution. Section 304 of the Act⁷⁹ provides as follows:

Notwithstanding the provisions of any other law but subject to the provision of the Constitution of the Federal Republic of Nigeria, in all matters relating to competition and consumer protection, the provisions off the Act shall override the provisions of any other Law

However, the applicability of the provision of the Federal Competition and Consumer Protection Act has been limited with respect to the banking industry by section 65 of the Banks and Other Financial Institutions Act. Admittedly both the Federal Competition and Consumer Protection Act 2018 and the Banks and Other Financial Institutions Act 2020 are made by the same authority, which is the National Assembly. However, the Banks and Other financial Institutions Act is later in time and being the main regulatory law on banks in Nigeria, its provisions are superior to the FCCP Act with respect to banks. Therefore, the provisions of the FCCP Act only applied to banks from the 30th day of January 2019 when the law came into force to the 12th day of November 2020, when the Banks and Other Financial Institutions Act 2020 came into effect and limited its application.

6. An Overview of the Cybercrime (Prohibition, Prevention e.t.c) Act 2015

The Cybercrime (Prohibition, Prevention e.t.c) Act 2015 was enacted by the National Assembly in 2015. The Act provides a comprehensive and effective legal and regulatory framework for the prohibition, prevention, detection and prosecution of cybercrime in Nigeria.⁸⁰ The Cybercrime (Prohibition, Prevention e.t.c) Act⁸¹ prohibits the unlawful issuance of electronic instruction by any staff of a bank or financial institution. The provision prohibits the unlawful issuance of electronic banking instruction by the staff of a bank or financial institution where there is an intent to defraud. The Section does not prescribe that the intent to defraud will have to be targeted at either a consumer or banking/financial institution for the criminal liability to attach, and therefore it applies to instances where a consumer is the target. Such instances include where a customer's account has been debited without authorization by the staff of a bank or financial institution with the intent of defrauding the customer. Thus, the provision recognizes that insiders such as employees of banks and financial institutions can engage in cybercrime that may include the unauthorized issuance of electronic banking or payment instructions with the intent of defrauding customers and therefore it aims to criminalize such acts by insiders within a bank or financial institution.⁸²

⁷⁷ FCCPAct2018

⁷⁸ FCCPAct2018

⁷⁹ ibid

⁸⁰ ibid

⁸¹ Cybercrime (Prohibition. Prevention e.t.c.) Act 2015

⁸² Orji(n313) 13

Section 22(2) of the Act⁸³ makes it an offence for anyone to use a password or code including electronic signature without a lawful authority. The Section provides that any person who fraudulent or dishonestly makes use of the electronic signature, password or other unique identification features of any person shall be liable to 5 years imprisonment or a fine not more than N7,000,000,00 or both such fine and imprisonment⁸⁴ Section 30 (I) and (2) of the Cybercrimes Act⁸⁵ criminalizes the manipulation of both the Automated Teller Machine (ATM) and the Point of Sale Terminal (POS). The provisions of Section 30(1) and (2) criminalized the manipulation of ATM and POS terminal with intent to defraud and also prohibits the commission or facilitation of such act by insider such as the employees of banks and other financial institutions. The Section does not prescribe that the intent to defraud will have to be targeted at a consumer or a bank/financial institution for criminal liability to attach. Therefore, the provision applies to situations where an ATM machine or POS terminal has been manipulated for the purpose of defrauding a customer. Thus to a large extent the provision promotes the protection of the customers of the banks or financial institutions that use ATN machines and POS terminals for electronic banking or payment transactions and therefore it enhance consumer trust in the use of such electronic banking and payment channels.⁸⁶

7. Conclusion and Recommendations

7.1 Conclusion

Electronic banking is the conduct of banking services and process through electronic delivery channels. For a bank to provide e-banking services in Nigeria, it must first be registered as a company with a valid banking license. E-banking has raised a number of consumer issues and complaints which includes unrealistic and hidden charges, unjustifiable deductions, ATM deductions without dispensing cash, slow complaint handling and redress mechanism e.t.c.

There are however, a number of legislations in Nigeria that are meant to protect the electronic banking consumer/customers. These legislations include the Central Bank of Nigerian Act 2007, the Banks and Other Financial Institutions Act 2020, the Nigeria Deposit Insurance Corporation Act 2006, the Federal Competition and Consumer Protection Act 2018, and the Cybercrime (Prohibition and Prevention Act 2015. However, the bulk of the legal framework aimed at the protection of electronic banking consumers in Nigeria are subsidiary legislations made by the Central Bank of Nigeria either as a Regulation or Guideline. The CBN subsidiary legislations protecting the electronic banking consumers/customers include the Central Bank Consumer Protection Framework 2016, the Central Bank of Nigeria Consumer Protection Regulation 2019, the Central Bank of Nigeria Guidelines on Mobile Money Services in Nigeria 2021, the Central Sank of Nigeria Regulation on Instant (Inter-bank) Electronic Funds Transfer Services in Nigeria ,2018, the Central Bank of Nigeria Guidelines on Operations of Electronic Payment Channels in Nigeria 2020 e.t.c.

The CBN Consumer Protection Regulation 2019 is the major legal instrument in Nigeria for the protection of electronic banking consumers. The objectives of the regulation include to protect consumers from unfair and exploitative practices by institutions in their dealings with bank

⁸³ Cybercrime (Prohibition, Prevention e.t.c.) Act 2015

⁸⁴ *ibid* s 22(2)

⁸⁵ Cybercrime (Prohibition, Prevention e.t.c.) Act 2015

⁸⁶ Orji (n 313) 15

customers/consumers sand to ensure access to compliant redress mechanisms that are free, fair, timely, transparent, accessible and independent. The Regulation contains elaborate provisions on fair treatment of consumers, disclosure and transparency, responsible business conducts and dispute resolution mechanisms.

The CBN Consumer Protection Regulations 2019 made provisions for the establishment of an Internal Dispute Resolution (IDR) structures and processes for complaint handling and resolution by banks. Banks licensed by the Central Bank of Nigeria are to designate a unit for complaint handling and resolution, independent of other products or business functions. Banks are expected to resolve complaints reported to it within the time frame contained in Annexure D to the Regulation.

Where a complainant is dissatisfied with the outcome of the internal resolution of his complaint to the bank, the customer may within 30 days request for a second level internal review. The bank shall thereupon review and resolve the complaint within the timeline stipulated for the 2nd level internal review by Annexure D to the Regulation. The Regulation however failed to state the composition of the panel/ bank staff to undertake the 2nd level review in view of the fact that a consumer may not be comfortable to apply for a 2nd level review if the review panel is same or is composed of some people who had already participated in the first level dispute resolution. The Central Bank of Nigeria in furtherance of its core mandate to promote a sound financial system, in April 2012 created the Consumer Protection Department which has the duties of resolution of bank consumer/customer complaints and consumer education/financial literacy. An e-banking consumer/customer can escalate his complaint to the Department after exhaustion of the institution (bank) internal dispute resolution process. The consumer/customer has the right of escalation after the decision of his bank. The right of escalation to CBN Consumer Protection Department is not available if an alternative dispute resolution process or litigation in respect of the same matter is ongoing. The CBN Consumer Protection Regulation does not provide a timeline within which the Consumer Protection Department must conclude its resolution of a dispute.

An e-banking customer/consumer whose rights have been infringed may seek redress. The customer/customer has the discretion as to how to enforce his rights. He may even choose not to do so especially where the monetary value involved in small. The e-banking consumer/customer redress may be administrative or judicial. Administrative redress includes internal complaints to the bank, escalation to the Consumer Protection Department of the Central Bank of Nigeria, and dispute resolution by the Federal Competition and Consumer Protection Tribunal. It is however to be noted that from the commencement of the Competition and Consumer Protection Act on the 30th day of January 2019, the Act applied to complaint by e-banking customers up till the 12th day of December 2020 when the Banks and Other Financial Institutions Act 2020 came into effect and limited the jurisdiction of tribunal to banks and banking products and services.

The Judiciary provides the primary avenue for obtaining redress in consumer protection matters especially in e-banking consumer complaints. Judicial enforcement may take the form of civil or criminal enforcement of consumer rights. The civil enforcement of consumer rights may take the form of an action of an action for breach of common law duties owed to a customer by a banker. A bank customer may also sue the banker for breach of contract.

Some of the laws safeguarding the e-banking consumers/customers in Nigeria contain criminal offences and sanctions. The punishment is either in the form of fine, imprisonment or both. Computer related fraud, unlawful diversion of banking and financial electronic mail with intent to defraud, insider collusion to perpetuate fraud on bank customer, theft of payment terminals or electronic devices such as ATM and POS terminals, obtaining the identify of a bank or financial institutions with intent to defraud, phishing scams and electronic card fraud e.t.c are all crimes under the Cybercrimes Act 2015, with different punishment provided for.

An electronic banking customer, who explored the option of judicial enforcement of his civil rights may upon his success in court, may be entitled to a remedy or remedies. The remedies available to him may include damages, the object of which is to give compensation to the plaintiff/e-banking customer. The damages may be in form of special, general, exemplary or punitive damages. The e-banking customer/consumer may also be entitled to an order of injunction, specific performance or an order for restitution.

7.2 Recommendations

From the above examination of the legal regime for e-banking consumer protection in Nigeria, the following recommendations are hereby made.

1. The Consumer Protection Regulation 2019 made by the Central Bank should be amended to include a timeline for handling of e-banking consumer complaints escalated to the consumer protection department of the Central Bank of Nigeria.
2. Amendment of the CBN Consumer Protection Regulation 2019 by removing the Second Level Internal Review of consumer complaints by banks as same amounts to a waste of time and delay injustice delivery.
3. The Consumer Protection Department of the Central Bank of Nigeria should liaise with the National Orientation Agency to enlighten Nigerians on the area of financial literacy as most Nigeria are ignorant of the mechanisms provided by the CBN Consumer Protection Regulation 2019 for the protection of e-banking consumers and indeed all the consumers of banking products in Nigeria.
4. Establishment of an independent body, which is regulated by law and administered by representatives of banks as done in some jurisdictions so as to ensure that banks comply with the objective of both the CBN Consumer Protection Framework and the Consumer Protection Regulation 2019 and also handle consumer complaints and redress. This will separate the CBN duty as a prudential regulator, of banks from its duty of consumer protection and thereby reduce the overlap that may occur in situations where the CBN as the regulator may be reluctant to impose punitive punishment on banks for violation of consumer rights for fear that it may affect the stability of the bank. The independent body should be supervised by the CBN consumer protection Department in view of the multiple channels of electronic banking products in existence in Nigeria and the millions of e-banking transaction done on daily basis in Nigeria.
5. Amendment of the Banks and Other Financial Institutions Act 2020, by specifically removing Section 65 of the Act which barred the Federal Competition and Consumer Protection Tribunal from entertaining consumer complaints emanating from banking products and services.
6. Establishment of special court to handle electronic banking customer complaints. This will ensure easy access to justice and speedy trial. The court if established should be of co-ordinate jurisdiction with the High court.