February 6th, 2019

Delivered by email: FCAC.Seniors-Aines.ACFC@fcac-acfc.gc.ca

Financial Consumer Agency of Canada

Re: Response to request for comment on development of a voluntary code on banking products and services for seniors

The Ombudsman for Banking Services and Investments (OBSI) is pleased to provide our comments to the Financial Consumer Agency of Canada (FCAC) on the development of a voluntary code on banking products and services for seniors.

OBSI is Canada's national, independent and not-for-profit organization that helps resolve and reduce disputes between consumers and financial services firms from across the country in both official languages. OBSI is responsive to consumer inquiries, conducts fair and accessible investigations of unresolved disputes, and shares its knowledge and expertise with stakeholders and the public. If a consumer has a complaint against an OBSI participating bank or investment firm that they are not able to resolve with the bank or firm, OBSI will investigate at no cost to the consumer.

We support the central premise of the initiative to establish increased protections for senior consumers of banking products in Canada. Greater protections for senior consumers and enhanced awareness of senior's issues among financial services providers are positive steps that reinforce Canada's strong, stable financial services sector and maintain the public's confidence and trust.

As noted in the FCAC discussion paper on this topic, Canada's banks are dynamic and changing financial institutions, engaged in a continuous process of modernization and adoption of new technologies and business methods, some of which can present challenges for senior consumers.

OBSI is well positioned to observe the difficulties that senior consumers face. In recent years, over 30% of consumers seeking assistance from OBSI with their banking-related complaints and 45% of those relating to investment complaints are over 60 years of age. Seniors with banking complaints contact us most frequently with concerns about their credit cards, mortgages and personal bank accounts, particularly raising issues of fraud, bank errors and service problems.

Our case data also demonstrates that OBSI participating banks generally reach appropriate conclusions with those seniors' complaints that have been escalated to us. In the past two years, following impartial investigation, we have found that compensation was appropriate for consumers in roughly 25% of banking cases escalated to us, and in more than half of those cases, we found that the bank had already made the consumer a fair offer of compensation.

Our comments below respond directly to the queries posed in FCAC's recent discussion paper, *Seeking input on the development of a voluntary code*.

Definition of "seniors"

QUESTION 1: FOR THE PURPOSES OF A VOLUNTARY CODE OF CONDUCT THAT APPLIES TO BANKS IN THEIR DELIVERY OF SERVICES TO CANADA'S SENIORS, DO YOU HAVE ANY CONCERNS WITH THESE DEFINITIONS?

We note that some financial service providers and regulators use the age of 60 to represent the threshold age of "senior", however, we believe that the definitions used by the National Seniors Council are reasonable and in particular that the concept of "near senior" is appropriate considering that people in this age category can generally be differentiated from younger people on the basis of their access to the workforce, relatively shorter investment and saving time horizons, increased focus on pension and retirement income related concerns, and diminished focus on other financial concerns such as home purchase and funding the education of children.

We do have some concern relating to the potential for discrimination based on age and would urge drafters to be cautious about this and about overgeneralizing what are undoubtedly highly diverse client needs. Many of the policy issues relating to seniors and near seniors, for example, relate more to concerns regarding vulnerability than age, per se. Naturally, people can be vulnerable at any age, though certain vulnerabilities are clearly more common among older consumers.

If protections and recommendations are to be based on categories based on age, then we would also encourage drafters to consider adding an additional category of "older senior" or "super senior" for those aged 75 or 80 and above, with additional considerations and/or protections for this category of seniors. In our experience, older seniors are much more likely to be affected by key vulnerabilities, such as cognitive decline, lower levels of access to technology, impaired physical access to services through disability or limited access to transportation, and/or hearing and vision impairments, as well as increased dependency on others to manage their finances. In our experience, older seniors are also generally less able to recognize their own rights and responsibilities and to advocate on their own behalf. These older seniors would therefore benefit most from default measures established for their protection.

Effective communication and obtaining information

QUESTION 2: WHAT DIFFICULTIES DO SENIORS EXPERIENCE IN OBTAINING THE INFORMATION THEY NEED FROM FINANCIAL INSTITUTIONS? WHAT ARE THE MAIN REASONS FOR THESE DIFFICULTIES? WHAT BEST PRACTICES OR POLICIES COULD IMPROVE COMMUNICATION WHEN DELIVERING BANKING SERVICES TO THEM?

In our experience, seniors often experience difficulties in obtaining information because they do not ask the right questions, which leaves them ill equipped to assess the risks and benefits of any given situation. There are multiple reasons for this, including physical barriers like disability or limited access to transportation; emotional and social barriers, such as trust in authority or the desire not to be seen as rude or unknowledgeable; and economic barriers, because consumers with lower assets may be less profitable for an institution but need extra services that are expensive to provide. Some seniors may also incorrectly assume that they know everything they need to know.

In our experience, seniors often do not read printed information that is provided to them or do not read the details of such documents, which limits their understanding and can lead to confusion and conflict. Seniors have reported to us being overwhelmed by lengthy disclosure documents that contain too much information and require extended periods of attention and focus. Seniors also report being provided with written disclosure but urged to “act now”, reducing their ability to carefully read the documentation provided, which may take them longer than a younger person would require.

We have also observed situations where written disclosures are read but are confusing because of how they are drafted (which is often in a manner required by relevant regulations). For example, when a statement for a credit card that is automatically paid each month is sent to a senior indicating that it requires immediate payment or uses a phrase like “you owe”. Such correspondence can lead to confusion, stress and overpayment.

We have also seen situations where seniors have multiple new accounts opened for various specific purposes or to take advantage of certain promotions, and they subsequently have difficulty keeping track of all of these products. This can lead to confusion for both the senior and any helper who is assisting them with their financial matters. A possible solution to this problem might be the introduction of a specific, integrated banking product for seniors, onto which promotions can be added, or a restriction on opening new accounts for seniors, especially older seniors, relating to specific promotions or purposes.

Many seniors rely on a helper or helpers to assist them with their financial affairs. Often a child, friend or neighbour, and such individuals may or may not be acting pursuant to a power of attorney document. When a formal power of attorney is not in place or is not appropriate, banks should act to accommodate such arrangements, perhaps through “trusted person” agreements with their clients.

QUESTION 3: IN WHAT WAYS COULD BANKS PRESENT INFORMATION SO THAT IT IS MORE USEFUL TO SENIORS FOR MAKING FINANCIAL DECISIONS (VIA TEXT, GRAPHICS, VIDEOS, ONLINE, IN-PERSON, TELEPHONE, ETC.)? ARE THERE METHODS THAT WORK BETTER FOR DIFFERENT SEGMENTS OF SENIORS?

Shorter, simpler documents would alleviate some of the challenges outlined above, especially those that the senior can take away and share with trusted family members or advisors before making decisions.

Banks could also improve in their communications with seniors by reducing the onus on seniors to ask the right questions and providing key information proactively instead, presenting information when it is relevant to the senior consumer (i.e. at the time of a decision, rather than as part of a general information campaign). Banks should consider increasing the number of specific warnings to the consumer at key junctures or moments of risk. Such tailored communications are timelier and more actionable than general education about risks.

These warnings or information items should be delivered by personal outreach wherever possible. When they are delivered in writing, they should be as concise as possible, with fine print replaced with FAQs or similar smaller information items where feasible.

Employees should be encouraged to ask seniors carefully about what they want to achieve with a given service and inquire about their concerns. In verbal interactions, if questions are being asked of the senior, the reasons for the questions should be provided so that the senior does not rely on their own assumptions when giving their answers. When responding to a senior's question, providing a clear description of all relevant benefits and risks should be prioritized, without assuming that the senior has relevant background knowledge. Written confirmations of the advice given should also be provided to help the senior to recall the discussion and for later consideration.

Providing seniors with the ability to carry on all or a majority of interactions through repeat contacts with the same bank representative should be prioritized where possible. In our experience, those seniors who have experienced difficulties with their financial institutions often prefer communicating in person or by telephone. They prefer repeat contact with trusted individual advisors. Seniors often report frustration when they perceive that they are required to repeat themselves to multiple employees.

Information may be more useful to seniors where it is provided by peer communications in the form of bank employees who are themselves mature or "near seniors" and have specific training for assisting seniors, as well as performance expectations aligned with the provision of services to senior clients.

We note, however, that efforts to increase levels of financial knowledge among seniors, especially older seniors, will be challenging and is perhaps not the most effective way to protect the most vulnerable senior consumers because it places the onus on them to protect themselves, which they are often ill-equipped to do for reasons other than their level of knowledge.

Training and education for employees of financial institutions

QUESTION 4: IN WHAT AREAS WOULD ADDITIONAL TRAINING HELP FRONT-LINE BANK EMPLOYEES TO BETTER ADDRESS THE NEEDS OF SENIORS? WHAT TYPE OF TRAINING DO YOU SUGGEST AND WHAT TOPICS SHOULD BE COVERED?

Training for employees should encourage them to recognize vulnerabilities, perform basic assessments of capacity, and adjust the delivery of information to the needs of individual consumers. Employees should be encouraged to ask additional questions on account opening or product sale to seniors to help identify cognitive difficulties, and to exercise patience, bring sensitivity to the issues, and have permission to scale the services that they offer to senior customers.

Employees should also be trained on how to respond if they notice a problem and encouraged to escalate issues to more senior staff with more advanced training.

Employees should be encouraged to help consumers to understand and utilize technologies, such as automating payments or using modern payment systems. For example, if a senior is bringing phone bills to the branch on a regular basis, an employee should be empowered to help the customer set up automated payments.

Senior customers, especially older seniors, may benefit from a dedicated specialist, perhaps with different compensation incentives and specialized training. Such a specialist may be made available in-branch or over the telephone. Such an arrangement may be more effective also more practical from a training perspective, and also offers the advantage of providing seniors with consistent assistance from the same representative. Consideration should also be given to taking advantage of the natural understanding of more mature employees.

QUESTION 5: WHAT ROLE, IF ANY, SHOULD BANK EMPLOYEES PLAY IN THE DELIVERY OF BANKING SERVICES TO SENIORS WHO MAY BE EXPERIENCING COGNITIVE DECLINE OR DEMENTIA? WHAT TYPES OF RESOURCES SHOULD BANKS PROVIDE BANK EMPLOYEES TO FULFILL THIS ROLE EFFECTIVELY?

Banks should develop protocols for asking senior consumers, especially older seniors, to identify a “trusted person” for all bank accounts and other products. Proposals for the establishment of such relationships and associated agreements relating to disclosure, etc… are well advanced in the securities industry and would be of great benefit for seniors in all areas of financial services.

Banking institutions and their employees should also be able to act reasonably on their concerns for a senior consumer without fear of legal or regulatory consequences. Banking regulators should create "safe harbour" protections in regulations, to relieve banks and their employees of liability if they breach regulations (for example, by temporarily refusing to act on a client's instruction) when they have good faith reason to believe that such a breach is in a senior's best interests. Banks should also consider providing for such exclusions of liability in their service agreements with their clients.

Banks should also make increased use of automated technologies to recognize unusual patterns of behaviour and trigger alerts and freezes of accounts, similar to those currently used for credit card accounts.

Banks may consider offering a monthly/quarterly "check in" or "check-up" for senior clients with a bank employee in-branch or over the phone to review recent activity in all accounts, verify such activity with the customer verbally, check continued appropriateness and answer any questions.

Technology and the changing nature of banking

QUESTION 6: WHEN CONDUCTING BANKING ACTIVITIES, WHAT ARE THE MOST SIGNIFICANT DIFFICULTIES SENIORS EXPERIENCE DUE TO THE CHANGING NATURE OF BANKING, INCLUDING ONLINE, TELEPHONE AND IN-PERSON SALES CHANNELS? HOW DO THESE TYPES OF CHALLENGES VARY AMONG DIFFERENT GROUPS OF SENIORS?

In our experience, seniors who are comfortable with technologies, such as online banking, are nevertheless more vulnerable than younger clients because they may not be as aware of the security measures that they need to take to protect their interests. For a variety of reasons, they are also more vulnerable to electronic frauds and security breaches because they are aware of the technological tool but not its associated risk.

As our society moves increasingly to technological solutions, seniors can also be impacted in other ways. For example, seniors who rely on mail to receive documents have been impacted by changes in mail delivery to many homes in Canada and may have challenges reporting problems in their account within the required 30 days.

QUESTION 7: GIVEN THE CHALLENGES RELATED TO THE IMPACT OF TECHNOLOGY ON THE NATURE OF BANKING IN LOCAL BANK BRANCHES (E.G. CLOSURE OF LOCAL BANK BRANCHES), WHAT ARE SOME POTENTIAL SOLUTIONS THAT COULD BE INCLUDED IN A VOLUNTARY CODE?

To minimize fraud risks, banks should consider asking for consumers' consent to safe limits, such as daily transfer limits or complete restrictions on transfers out of certain accounts. Banks should also consider establishing default account settings that restrict large transfers, wire transfers, and other major withdrawal transactions and require specific opt-in procedures to activate. At the time of opting-in, specific warnings and fraud identification tips can be delivered.

By default, fraud identification tips and warnings should be delivered at the time of all large transfers, especially for older seniors and if such transfers are atypical for the customer. Trusted person arrangements should also be triggered in such situations to increase the probability that fraud and abuse can be detected.

Where branches have closed, banks may consider a mobile senior specialist who is able to undertake in-home appointments, or a centralized "pop-up branches" in communities on certain days of each week in community centers or other public buildings. A dedicated seniors phone banking service might be another solution to this issue, with written confirmations of transactions sent following the interactions.

QUESTION 8: BANKS ARE SHIFTING THEIR SERVICES FROM BRICK-AND-MORTAR BRANCHES TO ONLINE BANKING. WHAT TYPES OF SUPPORTS OR TOOLS CAN BANKS PROVIDE SENIORS TO FACILITATE THEIR ACCESS TO, AND USE OF ONLINE BANKING?

Fundamentally, online banking may never be accessible to some seniors, and it is essential that alternatives are available, such as those suggested above. Such accessibility limitations may be a one-generation problem, though future technological shifts are likely to pose a continuous challenge for future generations of seniors as well.

For those seniors who may be able to access online banking services, education about risks and fraud is essential, and personal walk-through support, either in-branch, in-home or over the telephone should be considered as means to assist such seniors to use online banking safely and effectively.

Delivering banking services to seniors at risk of financial abuse and fraud

QUESTION 9: WHAT ADDITIONAL SKILLS, KNOWLEDGE AND OTHER SUPPORTS DO BANK EMPLOYEES NEED TO BE PREPARED TO DEAL WITH RISK OF FINANCIAL ABUSE? **QUESTION 10:** WHAT BEST PRACTICES COULD BANKS IMPLEMENT WHEN DELIVERING BANKING SERVICES TO SENIORS AT RISK OF FINANCIAL ABUSE AND FRAUD?

As described above, solutions that empower and encourage banks to protect their customers are essential. Such solutions include "trusted person" relationships, and legal and regulatory "safe harbour" exclusions of liability for employees and institutions that act reasonably and in good faith to protect their customers. Employees should be encouraged to discuss unusually large withdrawals or transfers with seniors and base protective measures on their observations.

Banks should also make increased use of automated technologies to recognize unusual patterns of behaviour and trigger alerts and freezes of accounts, similar to those currently used for credit card accounts.

Warnings and education about the risks of fraud should be delivered at key points in time for seniors, such as at the time of large transfers or at the time major assets are assigned as security for the loans of another person, to ensure that seniors are aware of the risks that might affect them.

Financial abuse by family members is of particular concern and can be especially difficult to address because it often presents more subtly than fraud. Where seniors are undertaking significant transactions with family members, such as guaranteeing a loan, co-borrowing or other high-risk activities, banks should require evidence of independent legal advice.

Other issues

QUESTION 11: WHAT OTHER ISSUES ARE CENTRAL IN THE DELIVERY OF BANKING SERVICES TO SENIORS? WHAT ARE THE CAUSES AND POTENTIAL SOLUTIONS?

In designing a code of conduct for seniors, there is a balance to be struck between the protection of seniors who may not fully understand the nature or extent of their own vulnerability or the risks that they are facing and considerations of their autonomy, privacy and freedom. To the extent that both considerations can be accommodated in a protective measure, they should be.

However, where compromises are required, we would suggest that policies should be scaled so that considerations of autonomy are given greater weight for younger clients, such as “near seniors”, while a greater emphasis on protection is mandated for “super senior” clients. For example, a protective measure may be “opt-in” for younger clients, but “opt-out” for older clients. Protections based on seniors’ own self identification may be most appropriate for younger clients, while standard default protections may be appropriate for older clients.

Ensuring that employee incentive structures are designed in a way that includes incentives for appropriate services to seniors is an important component of an overall senior’s code. It is our view that sales-driven modes of interaction can present unique difficulties for seniors, because they often need time, while salespeople need sales, creating an inherent tension that can reduce employees’ incentives to take the care and time some seniors may need to interact effectively with their financial institution. Even where alternative incentive structures are used, such as those that rely on client satisfaction measures like “net promoter scores”, seniors may also be systemically disadvantaged because they may be less able to participate in electronic surveys or other satisfaction measures and employees may be aware of this.

Another set of issues that are specifically relevant to seniors are those relating to customers who spend significant amounts of time travelling outside of Canada. Snowbirds and others may have difficulty accessing bank records or dealing with problems when out of country, posing unique challenges.

Effective redress mechanisms when problems arise is critical to quality services for seniors, especially for those who are most vulnerable and therefore least able to advocate on their own behalf. Seniors and their families should have confidence that if they encounter a problem, they will have access to impartial and effective dispute resolution services such as those provided by OBSI.

QUESTION 12: WHAT DO YOU CONSIDER THE MOST IMPORTANT ISSUES TO BE ADDRESSED BY THE VOLUNTARY CODE, IN ORDER TO IMPROVE THE DELIVERY OF BANKING SERVICES TO SENIORS? WHAT MEASURES DO YOU THINK SHOULD BE INCLUDED IN A VOLUNTARY CODE OF CONDUCT TO ADDRESS THESE ISSUES?

In our view, the most important issues to be addressed are the implementation of policies that provide protection for consumers through “trusted person” procedures, as well as protection for banks and employees who act in good faith to protect their senior clients, such as “safe harbour” provisions. It is also important to design and implement policies that give employees an incentive to provide tailored and considerate services to seniors and train them to do so effectively. Communication efforts should be tailored to providing relevant information to seniors at the right time, and effectively utilize automated warnings that are triggered by unusual transactions.

We would be pleased to provide further feedback to FCAC on this important project as it progresses.

Sincerely,

Sarah P. Bradley

Ombudsman & CEO