

Appraisal of the Legal Framework for Resolution of Bank Customer Complaints 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 networks to deliver a wide range of value added products and services. 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. The researchers examined the legal framework for resolution of bank customer complaints in Nigeria. The research adopted the doctrinal methodology with a mixture of comparative, analytical and historical approach which was used to evaluate different resolution options available to a bank customer. The sources of data include both the primary and secondary sources. The major sources of data include legislations, case laws and subsidiary legislation made by the Central Bank of Nigeria. The CBN Consumer Protection Regulation failed to state the timeline within which complaints escalated to the CBN Consumer Protection Department may be resolved. The researchers 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 research also recommended the 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 in justice delivery.

1. Introduction

The proper definition of a bank has been statutorily scarce in Nigeria¹. The Banks and other Financial Institutions Act merely defined a bank as a bank licensed under the Act². The same Act however defined banking business as the business of receiving deposits on current account, savings deposit account or other similar account, paying or collecting cheques drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether such business are conducted digitally, virtually or electronically only or such other businesses as the governor may, by order published in the Gazette, designate as banking business.³

The traditional role of banks consists of financial intermediation, provision of an efficient payment system and an agency for implementation of government monetary policies⁴. As the supplier of credit, which promotes economic growth, the banking sector remains an important

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¹ O Awoyale, 'The Concept of E-banking in the 21st Century Nigeria: A Promising Future' [2021] 4 (2) *University of Lagos Law Review* 241.

² Banks and Other Financial Institutions Act 2020, s 131.

³ *ibid*.

⁴ N M Enya 'Examination of the Law Relating to the Protection of Bank Deposits, Liquidation and Winding Up of Banks in Nigeria' [2017] 17 *Judicial Tribune* 108.

NWANKWOR & NWABACHILI: *Appraisal of the Legal Framework for Resolution of Bank Customer Complaints in Nigeria*

sector of the modern economy.⁵ Stability in the banking system of a country is a *sine qua non* to the stability of the overall economy.⁶ Like the nervous system is to the human body, the financial system of the banking industry is a part of the nervous system of countries' economies.⁷ While the financial system serves as the nervous system, the banking industry is the nucleus of the financial system.⁸ The system matters most to the citizens and the overall economy.⁹ The Nigeria banking industry is the backbone of Nigeria's economy in the 21st century. It is the most vibrant, reliable and effective sector of the Nation's economy after the petroleum industry.¹⁰

Banks generally play crucial roles in the economic development of countries. Banks, through the intermediation mechanisms, provide the much needed funds for development mobilizing investible funds from the surplus spending units for onward lending to the deficit spending units, thereby ensuring that investments programs that hitherto would not have been are pursued for economic developments.¹¹ In view of the fundamental functions/ importance of banks in economic developments the soundness of banks is important not only to the domestic governments but to the international community. Banks are perceived to be the most hazardous economic institution known to man. They are intrinsically fragile and subject of human resolve under stress and temptation. Banks borrow from depositors with a promise to repay in full upon demand, and they mostly invest those deposits in longer term loans. If depositors all suddenly decide to withdraw their money at once as their contract with the bank entitles them to, the bank cannot meet the demand for funds. It will fail.¹²

The banking system is based on confidence and the failure of even a small bank can have significant and far reaching effects on the economy. Bank failure could cause damage not just to depositors, but much more widely across the economy. Banks are needed, after all not just for intermediation between lenders and borrowers but also to oil the economy. Unsound banking practices can have widespread repercussions, to the point of threatening the financial structure of the economy. If the banking system collapses, the infrastructure for making and receiving payments collapses too, and the rest of the economy will follow closely behind.¹³

The Central Bank of Nigeria (CBN) in collaboration with the Nigeria Deposit Insurance Corporation (NDIC) regulates and ensures sanity and efficiency in the banking sector. The

⁵ A Soyibi, S O Alashi and M K Ahmed 'A Positive and Normative Analysis of Banks Supervision in Nigeria' [2004] *Africa Economic Research Paper* 145.

⁶ J O Sanusi 'Supervision of Banking Industry in Nigeria: An Operators Viewpoint' [1994] 32 (3) *Central Bank of Nigeria Economic and Financial Review* 338.

⁷ S L Sanusi 'Banking Reform and its Impact on the Nigeria Economy' [2012] 2 (2) *Central Bank of Nigeria Journal of Applied statistics* 15.

⁸ O G Olanrewaju, A G Aremo and A O Oladipo, 'Banking Sector Reforms and Output Growth of Manufacturing Sector in Nigeria (1970-2011)' [2015] 7 (8) *Journal of Economics and International Finance* 183

⁹ S L Sanusi 'Nigeria Banking Industry: What Went Wrong and the Way Forward' (Paper Delivered at Annual Convocation Ceremony of Bayero University Kano held on 3rd January 2010).

¹⁰ B I S Bensisheich, Y A Dunoma and M A Lawan 'An Examination of Laws Regulating Banking Industry in Nigeria: Review of the Banks and Other Financial Institutions Act, 2007' [2017] 68 *Journal of Law, Policy and Globalization* 1.

¹¹ N E Akujuobi, G I Anyanwu and C K Eke 'Regulatory Framework and Bank Operations in Nigeria: A Vecon Approach' [2021] 16 (1) *International Journal of Development and Management Review* 149.

¹² J A Olorunshola, 'Financial System Regulation in Nigeria: Theoretical Framework and Institutional Arrangements' (Paper presented at CBN Seminar on Issues in financial Institutions Surveillance in Nigeria <<https://www.cbn.gov.ng/OUT/PUBLICATIONS/GUIDELINES/PIN/2004/SURVEILLANCE.PDF.html>> accessed 1 August 2022).

¹³ *ibid.*

supervision and examination of the banks are premised on the legal authority given by the provisions of the Banks and Other Financial Institutions Act.¹⁴ The Banks and Other Financial Institutions Act empower the Governor of the Central Bank of Nigeria to make Guidelines and Regulations to regulate the conduct of banks.¹⁵ The Nigeria Deposit Insurance Corporation insures the deposit liabilities of Nigeria banks.¹⁶ The Central Bank of Nigeria operates through several departments including the consumer protection department.¹⁷

Banking products and services are offered to the bank customers who are the ultimate consumers of banking products and services. The relationship subsisting between the banker and customer is basically contractual and fundamentally that of debtor and creditor.¹⁸ It shares a major characteristic of any contractual transaction which exist between- principal and agent; bailor and bailee; buyer and seller; hirer and hiree and debtor/creditor relationship.¹⁹ The special relationship between the banker and the customer make the bank customers who are the consumers vulnerable and in need of consumer protection policies and laws. Consumer protection is the concept designed to protect consumers from unscrupulous producers and service provides. It denotes the attempt by government to provide regulatory framework to protect and enforce the rights of people who pay for goods and services.²⁰ Therefore, the law of consumer protection has a twofold purpose. On one hand, it protects the interest, rights and safety of end-users of products and services, on the other hand, to the extent it derives from and relates to contractual transactions, consumer protection can be said to be a means by which private law relationship are regulated.²¹ The need for consumer protection in the banking industry is further necessitated by the introduction of electronic banking and the fact that hundreds of consumer complaints are made daily by the bank consumers.

Every consumer of financial services in Nigeria has, to a large extent, the discretion as to how to make his complaints and enforce his statutory and common law remedies. He may even, as in most cases decline to so enforce.²² However, the basis of liability would determine the mechanism by which the consumer may enforce his remedies. The means for enforcement of consumer rights can be administrative or judicial. In administrative channel, the consumer may report or complain to the internal dispute resolution mechanism of the bank, the Central Bank consumer protection Department or the Federal Competition and Consumer Protection Tribunal. Judicial enforcement involves an action in court of law which may basically be in form or criminal or civil proceedings. The civil proceedings on its part may be in form of an action for breach of common law duties owed by banker to customer, action for breach of contract or an action for negligence under the law of torts.

¹⁴ Akujuobi, Anyanwu and Eke (n 13) 152.

¹⁵ Banks and Other Financial Institutions Act 2020, s 56.

¹⁶ Nigeria Deposit Insurance Corporation Act 2006, s16.

¹⁷ The Consumer Protection Department was established in April 2012. See CBN press Release: CBN Creates two new Departments to Enhance Operations available at www.cbnbank.org accessed 30th August 2022.

¹⁸ K G Muhammad, 'An Appraisal of the Relationship between Banker and Customer in Nigeria' [2015] 7 (4) *European Journal of business and management* 230.

¹⁹ J E Ighoroje and O B Oshiobugie 'An Evaluation of Banker-Customer Relationship in Nigeria Deposit Money Banks' [2015] 4 (5) *Global Journal of Interdisciplinary Social Science* 1.

²⁰ K B Bello, J B A Suleiman and I Danjuma 'Perspectives in Consumerism and Consumer Protection Act in Nigeria' [2012] 4 (10) *European Journal of Business and Management*.

²¹ *ibid*.

²² J Nwobike 'Legal Regime for the Protection of Consumers of Financial Services in Nigeria' <<http://www.jnclawfirm.com .articles.php>>accessed 10 August 2022.orm www.

2. 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 (BOFIA) 1991²³ 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 Bank.²⁴

The objectives of the Regulations are to protect consumers:

- a) From unfair and exploitative practices by institutions in their dealings with the consumer;
- b) From unethical and predatory practices that undermine consumer confidence in the use of financial products and services.
- c) Against the provisions of inadequate and misleading information and/or failure to disclose material information;
- d) By ensuring access to complaints redress mechanisms that are free, fair, timely, transparent, accessible and independent and
- e) By encouraging transparency of information in their dealings with consumers.²⁵

The regulations shall apply to all institutions, licensed and/or 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 Nigeria.²⁶

2.1 Internal Dispute Resolution of Banks

The CBN Consumer Protection Regulation 2019 provides that resolution of e-bank customer dispute shall be the responsibility of the bank involved. The consumer complaints shall first be lodged with the institution i.e. banks for timely resolution and redress.²⁷ The banks shall provide multiple dedicated channels to receive and handle consumer complaints including verbal complaints. The channels may include letters, emails, telephone lines, social media and digital software platforms.²⁸

The banks are required to establish an Internal Dispute Resolution (IDR) structures and processes for the effective management of consumer complaints.²⁹ Banks licensed by the Central Bank of Nigeria are to designate a unit for complaint handling independent of other products or business functions taking into consideration, the nature and complexities of their business.³⁰

Section 6.3.2 of the Central Bank of Nigeria Consumer Protection Regulation 2019 provides that:

“Upon the receipt of a complaint, communicate to the consumer within 24 hours, an acknowledgment containing:

²³ Now the Banks and Other Financial Institutions Act 2020.

²⁴ See the introduction to the Consumer Protection Regulation 2019.

²⁵ CBN Consumer Protection Regulation 2019, s 1.

²⁶ CBN Consumer Protection Regulation 2019, s 2.

²⁷ Consumer Protection Regulation 2019, s 6.1.

²⁸ *ibid*, s 6.2.

²⁹ *ibid*, s 6.3.

³⁰ *ibid* 6.3.4.

- a) A Unique identification or tracking number
- b) Contact details of the complaint desk
- c) Expected resolution timeline
- d) Escalation options, and
- e) An assurance that the complaint is being addressed.”

The consumer complaints shall be resolved within the time specified in the timeline for complaints resolution contained in Annexure D to the Regulation.³¹ Complaints with respect to ATM Card activation or deactivation, ATM functionality, Card Pin issues, ATM fraud (Domestic), internet banking fraud, non-functional ATM or POS, POS receipt/slip issues, trapped cards, ATM dispense error, mobile banking issues, charges on non-receipt of transaction alerts, password reset issues, account unblock, login issues, online transaction limit, OTP generation issues, failed transaction (WEB/POS), other POS issues, internet banking funds transfer failure shall be resolved by the bank’s internal dispute resolution department within three (3) working days.³²

The institution or bank has a duty to refund identified excess charges, non-payment or underpayment of interests on deposits, unauthorized debits, e.t.c along with interest as provided in the extant monetary, credit, foreign trade and exchange policy Guidelines or any regulation issued by the Central Bank of Nigeria,³³ the bank shall also issue a letter of apology to the complainant where the above applies.³⁴ The bank shall also remit established refunds and interest thereon to the complainants account within the prescribed timeline for complaint resolution by institutions contained in Annexure D.³⁵

After resolution of the compliant, the institution shall send a Summary Resolution Communication (SRC) for resolved complaints to the complainant by the next business day conveying the following:

- a) The basis for the decision(s) ;
- b) The right of appeal available to the complainant for second level review by the institution.
- c) The right of escalation to the CBN or other Alternative Dispute Resolution (ADR) avenues where the complainant is not satisfied with the decision arrived at.³⁶

Where a complainant is dissatisfied with the decision communicated by the institution/bank, the complaint shall within 30 days from the date of the receipt of the Summary Resolution Communication (SRC), request in writing for a 2nd level review.³⁷ Upon receipt of a request for 2nd level review, the institution shall review, resolve and communicate decision(s) within the timeline for complaints resolution by institutions as contained in Annexure D for second level review.³⁸

It is important to note that the Consumer Protection Regulation of the Central Bank of Nigeria failed or omitted to state the composition of the 2nd level review panel/members. However, it

³¹ *ibid* s 6.3.6.

³² See Annexure D to the Consumer Protection Regulation 2019.

³³ Consumer Protection Regulation 2019, s 6.3.6.

³⁴ *ibid* s 6.3.8.

³⁵ *ibid* s 6.3.10.

³⁶ Consumer Protection Regulation 2019, s 6.3.11.

³⁷ *ibid* s 6.3.13.

³⁸ *ibid*, s 6.3.14.

NWANKWOR & NWABACHILI: *Appraisal of the Legal Framework for Resolution of Bank Customer Complaints in Nigeria*

is suggested that the staff of the bank who should undertake the 2nd level review should be different from these who initially handled the complaint in the first instance. The members of the 2nd level review should as well be senior or executive officers of the bank. This will give the consumers of the financial services the necessary confidence to explore the second internal dispute resolution option offered by the regulation.

The consumer complaint shall in the 2nd level review be resolved within the timeline stated in Annexure D of the Regulation. Complaints with respect to ATM card activation or deactivation, ATM functionality, card PIN issues, ATM domestic fraud, internet banking fraud, non-functional ATM or POS, POS receipts/slip issues, trapped cards, ATM dispense errors, mobile banking issues, charges on non-receipt of transaction alerts, password reset issues, account unblock, login issues, online transaction limit, OTP generation issues, failed transaction (web/POS), other POS issues, internet banking funds transfer failure shall be resolved by the banks within (2) two working days in the 2nd level review.³⁹ After exhaustion of the 2nd level review opportunity an aggrieved complainant may approach the consumer protection department of the Central Bank with his complaint.

2.2 Complaint to the Consumer Protection Department of the Central Bank of Nigeria

The Board of the Central Bank of Nigeria created the Consumer Protection Department of the Central Bank of Nigeria in April 2012 as part of their internal reforms.⁴⁰ The department was created in furtherance of one of the CBN's core mandate to "promote a sound financial system in Nigeria as enshrined in the Central Bank Act."⁴¹ The Consumer Protection Department of the Central Bank of Nigeria basically performs three primary functions namely:

- a) Complaints management: this involves resolving consumer complaints against financial institutions under the purview of CBN,
- b) Market conduct and Development: this involves consumer complaints against financial institutions in relation to their customers.
- c) Consumer Education/financial Literacy: This is to promote and disseminate financial education and awareness amongst consumers and protect consumers for the enhancement of their economic well-being.⁴²

Consumer complaints must first be lodged with the consumer's financial institution.⁴³ Section 6.4.1 of the CBN Consumer Protection Regulation provides as follows:

'A complaint shall only be escalated to the CBN:

- a) If the complainant has exhausted the institutions Internal Dispute Resolution (IDR) process.
- b) If an institution fails to acknowledge the complaint within 3 days.
- c) Within 90 days from the date of the receipt of a decision from an institution.
- d) If it is not undergoing the process of resolution or already considered and resolved by a recognized ADR channel.
- e) If it is not under litigation or already adjudicated upon by a court of law, except where the aspect before the court is distinct from the matter brought to the CBN or where the court is dealing with the criminal aspect of the matter.

³⁹ See Annexure D to the Consumer Protection Regulation 2019.

⁴⁰ See CBN Press Release: CBN creates two department to enhance operations available at, www.cbnbank.org. accessed 30th August 2022.

⁴¹ Central Bank of Nigeria Act, 2007.

⁴² See FAQ of the Consumer Protection Department of the Central Bank of Nigeria, Available at ww.cbn.gov.ng/Devfin/c.p.c.FAQ 5.

⁴³ Consumer Protection Regulation 2019, s 6.1.

- f) Provided that the provisions of clauses 6.4.1 d and clauses 6.4.1 e shall not fetter the powers of the CBN over regulatory issues.⁴⁴

The implication of the above is that if an Alternative Dispute Resolution (ADR) process or litigation in respect of the same consumer complaint is ongoing, the CBN Consumer Protection Department will not entertain the complaint. However it does not include criminal cases, for instance a fraud involving an (ATM) Automated Teller Machine will be dealt by the Consumer Protection Department even while the criminal trial is ongoing. Complaints to the department shall be in writing and addressed to the director, Consumer Protection Department, Central Bank of Nigeria Abuja or sent via an e-mail to cpd@cbn.gov.ng attaching all documentary evidence.⁴⁵ The Consumer Protection Department could receive petitions from law enforcement agencies like police, EFCC etc or where matters are referred to it by the courts.⁴⁶ One major flaw of the dispute resolution mechanism at the Consumer Protection Department of the Central Bank of Nigeria is that there is no timeline for the resolution of disputes by the department. The Consumer Protection Regulation failed to provide a timeline for dispute resolution at the Central Bank. The Regulation⁴⁷ also failed to provide detailed framework or mechanism for the consumer protection department to use in the resolution of disputes. Dispute resolution before the department depends on the nature of the dispute and the complexity of the dispute and justice delayed is justice denied. The consumer protection Regulation 2019 should be amended so as to include a timeline for resolution of dispute at the CBN just like it provided in the internal dispute resolution of banks.

3. Dispute Resolution by the Federal Competition and Consumer Protection Tribunal

The Federal Competition and Consumer Protection Act 2018 came into effect on the 30th day of January 2019.⁴⁸ The Act⁴⁹ repealed the Consumer Protection Council Act.⁵⁰ The objectives of the Federal Competition and Consumer Protection Act are to:-

- a) Promote and maintain competitive markets in the Nigerian economy,
- b) Promote economic efficiency
- c) Protect and promote the interest and welfare of consumers by providing consumers with wider variety of quality products at competitive prices
- d) Prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria; and
- e) Contribute to the sustainable development of the Nigerian economy.

The Act⁵¹ established the Competition and Consumer Protection tribunal.⁵² The tribunal shall adjudicate over conducts prohibited under the Federal Competition and Consumer Protection Act.⁵³ The chairman of the tribunal shall be a legal practitioner with not less than 10 years post

⁴⁴ *ibid*, s 6.4.1.

⁴⁵ See FAQ of the Consumer Protection Department of the Central Bank of Nigeria (n.24).

⁴⁶ *ibid*.

⁴⁷ Consumer Protection Regulation 2019.

⁴⁸ See Commencement Section of the Federal Competition and Consumer Protection Act, 2018.

⁴⁹ Federal Competition and Consumer Protection Act.

⁵⁰ Cap C25 LFN 2004.

⁵¹ Federal Competition and Consumer Protection Act 2018.

⁵² *ibid* s 39(11).

⁵³ *ibid* s 39(2).

call and cognate experience in the field of competition, consumer protection or commercial and industrial law.⁵⁴

It is to be noted that from the commencement of the Federal Competition and Consumer Protection Act on the 30th day of January 2019, the Act applied to complaints by e-banking customers of banks in Nigeria up till the 12th day of December 2020 when the Banks and Other Financial Institutions Act 2020 came into effect. The Banks and Other Financial Institution Act, 2020 limited the jurisdiction of the tribunal to banks and banking product/services. Section 65(1) of the Act⁵⁵ provides:

- 1) The provisions of the Federal Competition and Consumer Protection Act shall not apply to-
 - a) Any function, act, financial product, or financial services issued or undertaking, and transaction howsoever described by a bank or other financial institutions licensed by the Band; and
 - b) The bank, the governor or other executive offices or staff of the bank.

From the foregoing, the Federal Competition and Consumer Protection Tribunal no longer have the jurisdiction to entertain electronic banking consumer complaints in Nigeria. Administratively, the handling of banks customers' complaints and its resolution can only be done in Nigeria by exploring the internal dispute resolution of the financial institution concerned and through the Consumer Protection Department of the Central Bank of Nigeria. However, the option of dispute resolution using the alternative dispute resolution (ADR) mechanism is still applicable in Nigeria.

4. Judicial Enforcement of E-Banking Customer Rights

The judiciary is generally seen as the hope of the common man and the safe sanatorium for the legally injured.⁵⁶ In the power relation between the consumer and the producer, the consumer is seen as a weeping child, the common man. He therefore looks up to the courts for protection from the antics and vagaries of unscrupulous businessmen, who would usually resort to sharp and unfair trade practices to maximize profits at the consumer's expense.⁵⁷ The incidences of the supply of deficient and adulterated goods, coupled with provision of shoddy services in the market place have assumed an alarming situation in Nigeria.⁵⁸

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 civil or criminal enforcement of consumer's right in Nigeria.

The bulk of the remedies available to the consumer are enforced in the court system. Depending on the nature of the claim, the consumer will have to file his claim either at the Magistrate Court, High Court or Federal High Court.⁵⁹ The jurisdiction of these courts is specified in the

⁵⁴ *ibid* s 40(1).

⁵⁵ *ibid* s 65(1).

⁵⁶ C A Oputa 'Quod Vadis-Nigeria Supreme Court: Judicial Activisms or Judicial Rascality' in Towards Functional Justices: Seminar Papers of Justice CA Oputa, ed by C Okeke (Ibadan: Gold press Ltd, 2007) 368.

⁵⁷ E E Ekanem 'Institutional Framework for Consumers Protection in Nigeria' [2011] (2) (1) *International Journal of Advanced Legal Studies and Government* 37.

⁵⁸ F Money , *Law of consumer protection* (Ibadan: Spectrum books Ltd 2003) 1

⁵⁹ J Nwobike (n. 22) 29.

Constitution⁶⁰ and in the Magistrate Court laws⁶¹ of each State of the Federation. The civil enforcement may be in form of an action for negligence. It may also take the form 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.

4. Actions for Breach of Common Law Duty Owed to Customers by Bankers.

Common law has predominantly influenced the rules of the Nigeria banking industry with regards to duties owed by the banker to its customers. The obligation of the bank include the duty to keep multiple accounts separate, duty to report forged cheques to customer, duty to give notice before closing account, duty to collect cash and other instruments on customers behalf, duty to keep customers statement of accounts accurate, duty to give notice for repayment of overdraft, duty to make payment only with customer's authority and duty to exercise duty of care and professional diligence.

The obligations of a bank to the customer exist because of their relationship as banker and customer and also because of the custom of the bankers.⁶² In other words, most of the banking practices in Nigeria in Nigeria as regards banker customer relationship evolved from the common law of England. In *Nigeria Tobacco Co Ltd v Agunanne*,⁶³ the Supreme Court of Nigeria defined common law as follows:

The common law is distinguishable from any law enacted by the legislature, it is a body of principle and rules of action relating to the government and security of persons and property which derive their authority solely from usages and customs of immemorial antiquity and from the judgments and decrees of the courts recognizing, affirming and enforcing such usages and custom. As defined by an American court, "it consist of those principles, usage and rules of action applicable to Government and security of person and property which do not rest for their authority upon any express and positive declaration of the will of the legislature."⁶⁴

The common law of England are applicable in Nigeria especially in the banking industry and has dominated the present day traditions and usages in the banking subsector especially in relationship between the banker and customer. In *B.J Export & Chemical Co. Ltd v Kaduna Refining & Petro-Chemical Co Ltd*⁶⁵ the Court of Appeal held:

I am consequently of the opinion that where our laws are silent, the common law principle can be resorted to especially in transaction that are peculiar to that System and alien to our system or way of life e.g arbitration, banking and petroleum contract as in the present case.

An aggrieved customer whose banker breached any of the common law duties owed to the customer may institute an action for breach of the duty. The customer may be entitled to damages upon the proof of his case. The customer need not rely on breach of contract.

⁶⁰ The Constitution of the Federal Republic of Nigeria 1999, s 249 established the Federal High Court while s. 270 established the State High Court. The High Court of the Federal Capital Territory Abuja is established by CFRN 1999, s 255.

⁶¹ See for instance the Magistrate Court law of Anambra State.

⁶² K I Igweike, *Law of Banking and Negotiable Instrument*, 4th ed (Onitsha: Africana First Publishers Ltd 2008).
⁶³ (1995) LPELR-2034 SC.

⁶⁴ *Bishop v U.S.D.C Tex*; 334f supp. 415, 118.

⁶⁵ (2002) LPELR – 12175 (CA).

5. Enforcement of Consumer Rights under the Law of Negligence

An electronic banking customer may enforce his consumer rights by an action in tort for negligence. The term “negligence” was defined by Lord Alderson B in *Blyth v Birmingham Waterworks Ltd*⁶⁶ as “the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.”⁶⁷ A similar definition was proffered by Akpata JSC in *Odinaka & Anor v Moghalu*,⁶⁸ His Lordship stated “Negligence generally is the omission or failure to do something which a reasonable man, under similar circumstances would do or the doing of something which a reasonable and prudent man would not do.”⁶⁹ The Court of Appeal in *Ivory Paper Mills Ltd v Bureau Veritas B.V*⁷⁰ on the meaning of Negligence held:

“The definition of “negligence” which has been most frequently quoted and even adopted by the courts of our land is that given by Alderson B in *Blyth v Birmingham Waterworks Ltd*⁷¹, where he observed:

“Negligence is the omission to do something which a reasonable man guided upon those consideration which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do” As I have said the above diction of Alderson was given approved by the courts of our land see *Akinrinmade v Lawal* [1996] 2 NWLR (pt 429) 218. It seems to me that the proposition which the plethora of the word “negligence” suggest, and which can properly be deduced from them is that whenever one person is by circumstance placed in such a position with regard to another that every one of ordinary sense who thinks, and must think, as a reasonable man, would at once recognize that if he does not use ordinary care and skill in his conduct with regard to those circumstances, he would by his conduct, inflict injury or danger of it to the person or property of the other, then in such circumstance, a duty arises to use ordinary care and skill to obviate such danger. This in my view is a summary of the concept of “who is my neighbor” as expounded in the well know case of *M’a Lister (or Donoghue v. Stevenson)*. It is for this reason, bearing in mind the above dictum, that I said that duty can possibly arise independently of a contact once the occurrence of danger is reasonable foreseeable.⁷²

In effect negligence can be defined as a breach of a legal duty of care which results in damages to the claimant.⁷³ In *Donoghue v Stevenson*,⁷⁴ the *locus classicus* on negligence, the House of Lords invented three ingredients of negligence, which a plaintiff must establish thus; that the defendant owed him a duty of care, that there was a breach of the duty of care and that the breach caused him injury or damage. These three ingredients have since been assimilated in the corpus of Nigeria Jurisprudence.⁷⁵ Therefore, an aggrieved e-bank customer whose right as a customer has been infringed upon may successfully institute an action for negligence upon the proof of the above stated ingredients for negligence. The ingredients for the tort of negligence shall be discussed hereunder.

⁶⁶ (1856) 11 Exch. 781.

⁶⁷ *ibid* at 784.

⁶⁸ [1992] 4 NWLR (pt 233) 1.S.C.

⁶⁹ *ibid* at P. 15.

⁷⁰ (2002) LPELR – 12221 (CA).

⁷¹ (1856) LR 11 Exch.781.

⁷² *ibid* at P. 23-25.

⁷³ F Monye (n.58) 155.

⁷⁴ (1932) AC 562, [2002]12 WRN 10.

⁷⁵ *Polaris Bank Ltd v Atogun* (2020) LPELR -50353 (CA); *Mothercat Nig Ltd & Anor v Akpan* (2019) LPELR. 47158(CA).

6.1 Conclusion

A bank customer/consumer whose rights have been infringed may seek redress. The customer/consumer has the discretion as to how to enforce his rights. He may even choose not to do so especially where the monetary value involved is small. The bank 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.

6.2 Recommendations

From the above examination of the framework for bank customer complaint resolution in Nigeria, the following recommendations are hereby made.

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.

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 in justice delivery.

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.