

THE CONSUMER FINANCE PODCAST – YOUR PROBLEMS COME ON TWO LEGS: MANAGING CONSUMER COMPLAINTS

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[CHRIS WILLIS]

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-practice leader of Troutman Pepper's Consumer Financial Services Regulatory Group. And today we have a great episode for you all about complaint management called, "Your Problems Come on Two Legs." But before we jump into that topic, let me remind you to visit and subscribe to our blog, ConsumerFinancialServicesLawMonitor.com, where we have daily insights about everything going on in the consumer finance industry. And don't forget to check out our other podcasts. We have lots of them now. We have *FCRA Focus*, we have *The Crypto Exchange*, and we have *Unauthorized Access*, which is our privacy and data security podcast. And they're available on all popular podcast platforms. And if you like this podcast or any of our others, let us know. Leave us a review on your favorite podcast platform.

Today we're going to be talking about complaint management, and I'm joined by my partner, Alan Wingfield, but we also have a special guest, Tom Kline. Tom is a former franchise dealership owner with over 30 years of experience and is now a consultant who specializes in risk mitigation by preventing and solving dealership problems through risk transfer remedies, compliance, and dealership dispute resolution. Tom is the lead consultant and founder of Better Vantage Point and has worked with both publicly held and private dealerships. He speaks at national conferences and workshops and writes for six publications. And so, we're really glad to have you on the podcast today, Tom, thanks for coming.

[TOM KLINE]

Thanks for having me, it's great to be here.

[CHRIS WILLIS]

We're really interested in hearing what you and Alan have to say about complaint management, which is a topic that's been important for a while and is only increasing in importance, I think, with the current regulatory environment. And speaking of regulators, Alan, let me start with you. Can you just give the audience a bit of a thumbnail sketch about what regulators' expectations are for having a complaint management system and actually resolving customer issues that come in through it?

[ALAN WINGFIELD]

Thank you, Chris. It's easy to have questions about the actual value of a lot of the regulatory expectations of legal requirements in the consumer financial services space. For me, complaint management and the expectations there is not one of them. My message is, love your complaints. Love, love your complaints for the reasons we'll go through today. My practice is a

hybrid practice, helping companies both with litigation and trying to avoid disputes through compliance. And in my practice, I've seen a strong negative correlation between the quality and vigor of a company's complaint management efforts and the amount of money the company has to spend on disputes and regulatory problems. Simply put, the more effort on complaint management, the less the company spends on disputes. On the flip side, failure to respond to repeated complaints is a common theme for high dollar jury verdicts. One famous example is an Oregon jury verdict for over \$18 million for an individual consumer, and then the records showed that the company failed to respond to nine complaints made by the consumer. The jury did not like that, and most of that \$18 million was a punitive damage award.

Addressing your question more specifically, Chris, let's focus on the regulators. And this is an area where there's no statute or regulation that specifically requires most companies and most of our activities to engage in complaint management. But the regulators' expectations are so strong, it might as well be written down in a statute or regulation that you should have a complaint management system. We're used to looking to the Consumer Financial Protection Bureau as sort of the pied piper of financial regulators at the federal level. And it has an examination manual which is published, and that examination manual is very explicit and detailed. I'll read a couple quotes just to give you a flavor here.

The CFPB says, "To maintain legal compliance, an institution must develop and maintain a sound compliance management system." And it goes on to explain that one of the elements of the compliance management system is a, "consumer complaint response program." But it goes beyond the CFPB. The banking regulators for their depository institutions are subject to very specific and demanding expectation for complaint management, very much like what the CFPB's position is. So, while it's hard to find a statute or regulation saying you must do complaint management, the expectation is so clear and specific, as I said, it might as well be written down.

Okay, let's finish up our remarks by going through the basic elements of complaint management, at least according to the CFPB. First, the CFPB expects there to be written policies and procedures to govern complaint management. Second, the CFPB believes companies should use a very wide funnel to capture complaints. Don't just treat as complaints, complaints that are formally submitted in writing or through your call center, but also look to complaints coming from any directions, social media, Better Business Bureau, and certainly complaints that are funneled through regulators. All those should go to your system and be handled according to your policy procedures. Third, there ought to be complaint tracking, a log, a database that keeps track of the complaints in terms of both making sure they're being handled and responded appropriately according to your policy, but also to gather information about the complaint to be used for later analysis, as I'll discuss in a moment.

Another element, the fourth element, is an escalation procedure where not all complaints are treated the same, but complaints that pose specific bad messages to the company about the workings of its compliance processes or posing special risks to the company or special harm to consumers are all subject to being escalated to higher levels to be addressed commensurate with their seriousness. Another element of complaint management that the CFPB is looking for and other regulators, and I've got to really emphasize this one, this might be the most important of all. They're looking for resolution and corrective action in response to complaints. They want the consumer's complaints, if valid, to be addressed and remedied timely and appropriately.

This is a big point with sophisticated clients who, for example, are subject to complaints submitted to the CFPB. CFPB maintains, of course, a big database of complaints. And companies often have a goal of showing resolution of 100% of everything on that CFPB complaint register. And the reason being that regulators believe it's essential to take responsive and corrective action in response to complaints.

Another element of complaint management according to CFPB is conducting root cause analysis and monitoring complaints, trying to extract lessons learned from the complaints that arrived. The complaint tracking log I mentioned before will be indispensable in doing that. It will allow you to do trend analysis and analyze whether clusters or complaints around certain vendor relationships or business processes. Another key element, and the regulators are really looking for this as well, is you don't just monitor and do root cause analysis, but the lessons learned get reported up to management. Management needs to be involved in a compliance management system as well as complaint management, and for them to be able to do their job they need to know about what the complaint flow is telling the company about its compliance systems.

And finally, and also critically importantly, a company that is learning lessons from its complaints need to actually take action to fix issues identified by their complaint flow, the root cause analysis, the monitoring efforts. And I'm going to have to read you another quote from the CFPB here, tells you where they're coming from on this one: "When violations are brought to the attention of an institution's management and management allows those violations to remain unaddressed, such violations are of the highest supervisory concern." So, Chris, I feel like I started off by saying love your complaints, but I'll also add that if you don't love your complaints, they will hate you and the consequences can be quite severe. So back to you, Chris.

[CHRIS WILLIS]

Thanks a lot, Alan, and definitely agree with your comments about how important it is to pay attention to those and how they can really be a snake waiting to bite you if they're left unattended. But Tom, let me turn to you. Alan's given us a good background on the legal requirements and regulatory expectations associated with complaint handling. And you tell companies you have to do it because the regulators want you to. That gets people somewhat motivated, but there are other reasons to have a complaint management process too. So, based on your years of experience, what are the main benefits other than legal requirements to a company to have a good system of complaint management?

[TOM KLINE]

Great question, Chris. I guess I'll start back when Alan and I met, which was probably about 25 years ago. We were talking about a class action lawsuit that started from two ladies at church who were upset with a car dealership and they filed a class action, and that particular class action cost the dealership millions and millions of dollars. So, you never know where your problems are going to come from. As Alan said, echoing that you have to cast a wide net, you have to really be assertive in terms of making sure that you are considering where all the complaints are coming from. I guess the biggest impediment that companies have with handling their complaints is kind of a bad mindset or a bad paradigm where, and I hear this all the time, "We did nothing wrong." I'm giving you air quotes. "We did nothing wrong, so we don't want to

do this, because the customer's wrong. They don't understand, we don't owe them anything. The warranty says we don't have to. The terms of service say we don't have to," whatever the business is.

And the way I answer that with my clients, Chris, is I say that it doesn't matter, that you're a business, and that unless you're a nonprofit organization and you have to be right all the time, that, fix the problem, just fix it. Because I liken consumer problems to rotten fish. The longer that it goes on, the worse it smells. They never get better. They never smell better. So better to fix it now. And there's a notion in claims management that your first loss is your best loss. And what that means is that if you fix it now, it's going to be less expensive than if you push it off to the side, it comes back later, then you're going to have to get your lawyer involved, maybe you get your insurance company involved, and then it becomes expensive and messy.

[CHRIS WILLIS]

And it also seems to me, Tom, that in addition to avoiding losses, which is obviously one of the critical reasons to have a good complaint management process, there's also a customer experience and a customer retention benefit too. Could you speak briefly to that?

[TOM KLINE]

Sure, I'll give you two examples. Using auto dealers, 95% or statistics similar to that, of car buyers read reviews before they buy a car. They read the reviews of the dealerships. So, if you have a robust compliance system and customer management system where you are reaching out to those customers, and I don't just mean posting, "Dear Mr. Customer, I'm so sorry we upset you. If there's anything we can do to help you, please let us know." That's not good enough, comes across as insincere. And when potential buying customers see that, they see it's insincere. No customer expects the business to be perfect, but they do expect the business to respond. So, what I recommend to my clients and anybody who's listening, to all your listeners, is that you post something that says, "I'm sorry, let me see if I can reach out and help you."

You then pick up the phone, you reach out, you get the customer back into your business, you fix the problem, and then afterwards you ask the customer to update their review. "Can you please update your review? We want to make sure that everybody knows that we're good guys and we're trying to do the right thing." Don't ask them to change their review because then they'll feel manipulated. There's a big difference there. And I'm going to cite a good customer service problem which has never been fixed, is McDonald's. I don't know if you're like me, but every now and then I like to get a McDonald's ice cream cone. I don't eat McDonald's otherwise. Do you ever get an ice cream cone?

[CHRIS WILLIS]

Occasionally, yes.

[TOM KLINE]

Yes. And what happens? What happens when you walk in to get an ice cream cone, Chris?

[CHRIS WILLIS]

I feel like I'm always taking a chance about what I'm actually going to get.

[TOM KLINE]

And whether the machine is working, right?

[CHRIS WILLIS]

Oh, of course, yes.

[TOM KLINE]

Of course. And this is what you don't want to do. There's a website called McBroken, McBroken.com, McBroken. And it's a crowdsourcing website that shows you which ice cream machines are broken at which McDonald's location, McBroken.com. This is not what you want for your business. So crowdsourcing is a thing. Your customers, if they get upset enough, are going to do something about it. Don't think that because you're the business that they're just going to go away. With the power of the Internet and all the regulators, the AGs, the politicians, the CFPB, the Federal Trade Commission, there's just an unbelievable number of regulators that can come in and help you run your business. I wrote an article recently that you might be interested in, your listeners might be interested in, called "[Let the Government Be Your Customer Service Department!](#)" If you don't take care of your customers, and I can cite many examples of this, the government is going to come in and help you to take care of your customers.

[CHRIS WILLIS]

Yes, but they'll help you in a bit more forceful way than you might have done it internally, I suspect.

[TOM KLINE]

Exactly right.

[CHRIS WILLIS]

So, Tom, thanks for that. And now that we understand how important this is and what some of the consequences for not getting it right might be both on the business side and on the regulatory and legal side, can you give our listeners some key practical tips for successfully handling a consumer complaint?

[TOM KLINE]

I think the most important thing, Chris, is to bring the customer back into your business and make sure that they feel like you heard them. One of the techniques I use is I pull out a legal pad and I say to the customer, "I know you've told the whole story to other people on my team,

and I apologize, but I want to make sure that I hear everything you have to say. And that way I can fix everything or work on fixing everything in its totality." And I have the customer literally tell me everything that happened, everything that they went through, and I write it all down. And then at the end after you have six, seven, eight pages worth of notes, you go back, and you read the notes, and you tell their story back to them. And that lets them know that you heard them, that you listened, that you cared enough to take the time to write it down. That goes a long way in building trust with the customer, so they know that you're trying to help them.

[CHRIS WILLIS]

And that of course sounds pretty time-intensive for a business that has a lot of complaints. That suggests a significant amount of staffing associated with complaint management, would you agree?

[TOM KLINE]

I do. I think the most important thing about whoever is going to take care of these complaints is that they have to be empowered to fix them. The thing that happens, and I see this also, is that you have somebody who will bring the customer in, go through this kind of process, and it's really a three-step process if it's a complicated customer. But if that person isn't empowered to fix it and they say, "I have to go see my manager now to get this fixed," then you've lost the trust. Then it's gone, because then they feel like you've just jerked them around.

[CHRIS WILLIS]

Got it. And so, as I developed my regulatory practice and became aware of complaint management systems, the predominant method of companies receiving complaints was by mail or over the telephone. And I think a lot of people are still thinking a lot about complaints using that model. But we live, as you mentioned before, in a world where consumers have been significantly empowered by social media and the Internet, and complaints can come flowing through those channels as well. What would your advice be on having the best way of handling those social media or online complaints?

[TOM KLINE]

I have a list, for example, of 34, 35 websites, seven or eight of which you should look at daily - the simple ones, Google, Facebook, depending on your business, if you're a car dealer there's DealerRater and some of these others. There's Ripoff Report. Have somebody in your business go and look actively at those websites every single day. And if anybody wants this list, feel free to reach out and I'll be glad to send it to them. And then once a month you should go to the other ones. A good one there is Glassdoor, and I mention Glassdoor specifically because, as the title of this podcast is, problems come on two legs. The two legs includes both customers and employees. And I know we're focusing on the customer aspect, but somebody on the staff should be looking at Glassdoor monthly to make sure that if you've got disgruntled employees, that you've got a mechanism to pick those up also.

There should be one person at the store where all these complaints flow to, because if this person sees a complaint about one salesperson or an associate or whoever it is and there's

constant complaints about this person, you should use these complaints as operational, right? So that you go back and you retrain or correct the action of that potentially bad employee. Maybe they don't understand what they're doing, maybe they can't do their job, maybe they're over their head. Whatever it is, these complaints are just not complaints in and of itself, they should be used to help you improve your business.

[CHRIS WILLIS]

Yeah. Makes sense. So, Tom, I want to thank you for being on our podcast today. You've provided some terrific and very entertaining insights. I'm going to remember McBroken for a long time now that you mentioned that. And Alan, thank you for being on the podcast as well. And of course, thank you to our audience for listening in to this episode. Don't forget to visit our blog, ConsumerFinancialServicesLawMonitor.com, and hit that subscribe button so that you can get our daily updates on everything going on in the consumer finance world. And head over to troutman.com and add yourself to our consumer finance email list so that you can get our alerts and webinar invitations. And of course, stay tuned for a great new episode of this podcast every Thursday. Thank you all for listening

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