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## **Consumer vulnerability and complaint handling: challenges, opportunities and dispute system design**

### **Abstract**

Effectively designed complaint handling systems play a key role in enabling vulnerable consumers to complain and obtain redress. This article examines current research into consumer vulnerability, highlighting its multidimensional and expansive nature. Contemporary understandings of consumer vulnerability recognise that the interaction between a wide range of market and consumer characteristics can combine to place any individual at risk of vulnerability. While this broad definition of consumer vulnerability reflects the complex reality of consumers' experiences, it poses a key challenge for designers of complaint handling systems: how can they identify and respond to an issue which can potentially affect everyone?

Drawing on current research and practice in the UK and Australia, the article analyses the impact of consumer vulnerability on third party dispute resolution schemes and considers the role these complaint handling organisations can play in supporting their complainants. Third party complaint handling organisations, including a range of Alternative Dispute Resolution services such as ombudsman organisations, can play a key role in increasing access to justice for vulnerable consumer groups and provide specific assistance for individual complainants during the process.

It is an opportune time to review whether the needs of consumers at risk of vulnerability are being met within complaint processes and the extent to which third party complaint handlers support those who are most vulnerable to seek redress. Empowering vulnerable consumers to complain presents specific challenges. The article discusses the application of a new model of consumer dispute system design to show how complaint handling organisations can meet the needs of the most vulnerable consumers throughout the process.

### **Key words**

Consumer vulnerability, vulnerable complainants, complaint handling, dispute system design (DSD), Alternative Dispute Resolution (ADR), third party complaint handlers

### **Introduction**

The article focuses on the implications of consumer vulnerability for complaint management processes in Australia and the UK. Over the past decade, consumer vulnerability has been recognised as an important characteristic and a barometer which provides an insight into the extent to which

markets meet social needs and contribute to social welfare. The government, some consumer organisations and regulators believe that empowered consumers, including the vulnerable, are essential to the success of competitive markets (Brennan and Coppack, 2008). Third party ADR schemes are one of the means through which policymakers have sought to empower consumers *vis a vis* service providers, recognising the limited accessibility of the courts and the need to provide quicker, less formal, and easier to use processes for consumer disputes (Hodges *et al.*, 2012). However, the challenges faced by third party ADR schemes in identifying, supporting, and working with vulnerable consumers remains an underexplored area of research, policy, and practice. This article seeks to make a contribution to existing understandings by (a) discussing the evolving concept of consumer vulnerability (b) identifying the challenges faced by practitioners as a result of the current expansive definition of consumer vulnerability and (c) drawing on an established model for dispute system design (DSD) (Gill *et al.*, 2016; Williams and Gill, 2016) to explore how ADR bodies can respond to these challenges. It will argue that definitions of vulnerability increasingly recognise the transitory and multidimensional nature of vulnerability. As a result designing complaint handling systems which meet the needs of vulnerable consumers will benefit other consumers too. To address this the article is in three parts: the first part deals with contextual issues; the second part reviews the literature on consumer vulnerability; and the third part discusses how ADR bodies can meet the challenges of consumer vulnerability.

## **Part I: Context**

It is not clear how many people may be classified as ‘vulnerable’ within the complaint handling sector. Estimates of complaint activity in countries such as Australia suggest that more than 8 million formal complaints are made per year (Sourdin, 2016). In the UK 18.7 million problems with goods and services were experienced in 2014 (Business, Innovation and Skills (BIS), 2014). Official statistics suggest that a significant proportion of these consumers may be vulnerable. In the UK over 11 million people report a limiting long term illness (Department for Work and Pensions and the Office for Disability Issues, 2014), 1.5 million people have some form of learning disability, one in four will experience at least one mental health disorder (Financial Conduct Authority, 2015) and over 1.5 million people in the UK are over the age of 85 (Age UK, 2016). Large scale population studies in both the United States and Australia suggest that up to 20 per cent of the population may have a personality disorder which may make some people more vulnerable (Sourdin and Wallace, 2014). As will be discussed, not all people in these groups will be vulnerable but some may be more susceptible than the general population.

Complaint handlers may typically be at first tier (within the organisation supplying the goods or services) or at second tier (within ombudsman and other alternative dispute resolution services). For the purposes of this article we have referred to those at second tier as third party complaint handlers.

The focus of this article is on third party complaint handlers, independent of the organisations that have caused the dissatisfaction, and includes a range of alternative dispute resolution (ADR) services including adjudication schemes and ombudsman organisations. Drawing on a British Standard on Inclusive Service Provision, BS18477 (British Standards Institution, 2010), a number of UK regulators and complaint handlers have been, or are in the process of, reviewing their approach to consumer vulnerability including the energy regulator, Ofgem (2013), the Legal Services Consumer Panel (2014), the Financial Conduct Authority (2015) and the Financial Ombudsman Service (2015). Consumer vulnerability and ADR are also key areas of interest in Europe: the Unfair Commercial Practices Directive 2005/29/EC protects not only ‘average’ consumers but those who are ‘vulnerable’, and the Directive on Consumer Alternative Dispute Resolution (2013/11/EU) requires member states to ensure that ADR mechanisms are available to resolve all consumer disputes. In the context where less than half of EU consumers (44 per cent) find it easy to resolve disputes with sellers through ADR (European Commission, 2013), the European Parliament has called on Member States to ensure that their provision of ADR makes it possible for vulnerable consumers to have effective access to justice (European Parliament, 2011). In Australia, the Competition and Consumer Commission (ACCC) compliance and enforcement policy sets out the principles adopted, outlining enforcement powers, functions, priorities, strategies and regime (Australian Competition and Consumer Commission, 2015) with a focus on conduct detrimentally affecting disadvantaged or vulnerable consumer groups.

Challenges exist in relation to meeting the needs of those who may be vulnerable. As markets become increasingly complex, more people are likely to become vulnerable (Cartwright, 2007; Pavia and Mason, 2014.). As efforts to improve the accessibility of complaint systems gather pace, more vulnerable consumers may be expected to use third party complaint handling organisations. Recently, ombudsman organisations, particularly in Australia and the UK, have also started to pay attention to the issue of unreasonable complainant conduct and it appears that there is evidence that some of this is associated with querulent individuals who may also be suffering from some form of mental health disorder (Mullen and Lester, 2006). This presents some very difficult challenges for dispute resolution schemes both in terms of the disproportionate burden of handling these complaints but also because there are real reputational risks to failing to respond effectively, particularly where the complainants may be perceived to be vulnerable (Hibbert *et al.*, 2012). These developments suggest that additional frameworks, models, strategies, policies and processes are required to assist organisations to meet the needs of vulnerable consumers.

## **Part II Consumer vulnerability – reaching a more holistic definition**

### *Defining consumer vulnerability*

Over the past thirty years, researchers, commentators and policy makers have proposed varying definitions of what it means to be a ‘vulnerable consumer’ (Baker *et al.*, 2005). Despite this attention there is no settled definition of what constitutes ‘vulnerability’. Early approaches tended to focus heavily on the personal characteristics and circumstances of particular groups of consumers and there is a high degree of consistency in the literature in the US, Europe and Australia on the categories associated with potential vulnerability which include (1) age (2) low income (3) those who do not work (4) long term disabled (5) those with lower educational attainment (6) rural dwellers and (7) ethnic minorities (Clifton *et al.*, 2013).

There now appears to be broad agreement, which has moved the debate beyond individual traits, highlighting firstly the multi-dimensional nature of vulnerability (Baker *et al.*, 2005; Ofgem, 2013; Hamilton *et al.*, 2015; ); secondly that consumer vulnerability is dynamic and transient (Baker *et al.*, 2005; British Standards Institution, 2010; Financial Conduct Authority, 2015; George *et al.*, 2015; Hamilton *et al.*, 2015 ); thirdly that all of us have the potential to be vulnerable when placed in a consumption situation over which one has little control (Baker *et al.*, 2005; Shultz and Holbrook, 2009; British Standards Institution, 2010; Harrison and Chalmers, 2013; Pavia and Mason, 2014; Financial Conduct Authority, 2015); and finally the impact of the market on consumer vulnerability (Consumer Affairs Victoria, 2004; Baker *et al.*, 2005; Cartwright, 2007; Australian Productivity Commission, 2008; Shultz and Holbrook, 2009; British Standards Institution, 2010; Ofgem 2013, Pavia and Mason, 2014; Financial Conduct Authority, 2015; George *et al.*, 2015;). According to Baker *et al.* (2005), and supported by Ofgem (2013), vulnerability is very much about the *situation* that the person is in at that particular time and not *who* is the individual. These arguments suggest that vulnerability could be viewed as a spectrum with the transitory view helpful in reinforcing the point that ‘any individual might experience vulnerability at one point in time’ (Harrison and Chalmers, 2013 p 454). Recent EU research highlighted that almost 75% of consumers will at one time or another exhibit at least one dimension of vulnerability (European Commission, 2016).

### *Relationship between disadvantage and vulnerability*

One of the key questions to be considered is the relationship with disadvantage. Baker *et al.* (2005) have suggested that vulnerability is not the same as disadvantage as actual vulnerability occurs as a result of the interaction between an individual’s circumstances and the market. For instance, in markets where the quality of services is hard to ascertain and communicate to consumers, such as legal services, many will be vulnerable, despite not being disadvantaged by their personal characteristics. By contrast, for simple purchases, it is conceivable that someone who might be described as disadvantaged would not be particularly vulnerable; many low income consumers are

very astute with learned strategies that reduce future susceptibility in a repeat situation (Australian Productivity Commission, 2008). Commuri and Ekici (2008) have criticised Baker *et al.*'s approach for being too willing to abandon a 'class based' approach, arguing that there is merit in recognising that certain characteristics do make certain groups more vulnerable, and therefore provides a helpful construct for policy makers to use as a pre-emptive tool to tackle consumer vulnerability.

Pavia and Mason (2014), while supporting Baker *et al.*'s construct of vulnerability, also point out that some types of vulnerability, particularly those relating to disability, and may be permanent and more challenging. In Australia, the Government's Productivity Commission (AGPC 2008) have recognised the continued importance of individual traits to consumer detriment suggesting policymakers and organisations need to consider both vulnerability *and* disadvantage (Australian Government Productivity Commission, 2008). They argue that tackling disadvantage is typically harder for policy makers to address since it is often persistent.

A proactive and broader approach to identifying those at risk of vulnerability is evident in the UK in the British Standard on Inclusive Service, BS18477 (British Standards Institution, 2010) which proposes that organisations should identify 'risk factors' which can make consumers more susceptible to detriment and encourages them to proactively take action to address them. The standard identifies ten common risk factors which include age, disability or other impairment, mental health issues, low income, sudden change in circumstances and the complexity of the product. Although the take up of the standard by first tier organisations has been slow (Citizens Advice 2015) this approach has been broadly supported in the UK by a number of regulators and third party complaint handlers to inform their approach (George *et al.*, 2015). The British Standards Institution's (BSI) approach is illustrative of the more complex and multi-dimensional definitions of consumer vulnerability, and highlights the changeability of the status of the consumer, on the basis of their own changing needs in combination with the particular situation with which they are faced. This approach sits on the spectrum which defines consumer vulnerability as 'transitory' at one extreme, and 'persistent' at the other.

In summary, the debate regarding the definition of vulnerability is ongoing. In the context of complaint handling, we embrace a view of consumer vulnerability which highlights both its persistent nature for certain classes of consumer and its multidimensional and potentially transitory nature. We define consumer vulnerability as the interaction of personal predicaments, individual characteristics, and external conditions, within a consumer context, that negatively affects that person's consumption/citizen experience or experience of the complaint handling processes or systems to which they are exposed. The next section considers how the challenges posed for third party complaint handlers in relation to vulnerable complainants may be addressed through effective dispute system design.

## **Part 111 Supporting vulnerable complainants to use ADR schemes: applying lessons from dispute system design**

The first challenge faced by third party complaint handlers is encouraging those at risk of vulnerability to complain. As noted in the context section above, there is a fairly deep pool of problems that do not result in complaints due to consumer vulnerability, with those most in need of redress least likely to know about and make use of third party complaint schemes. The second challenge is how to support those vulnerable complainants. To explore how the challenges may be addressed, the article will draw on a dispute system design (DSD) model (Gill *et al.*, 2016; Williams and Gill, 2016) which suggests a systematic five-step approach to the task of designing ADR schemes.

Step 1 involves research and analysis to understand contextual factors, such as the scope and seriousness of likely consumer detriment in the market for which the ADR scheme is being designed. Step 2 involves goal-setting and prioritising the various goals such as inclusivity or accessibility. Steps 3 and 4 relate to substantive design choices. Step 3 considers the design of overall dispute systems, considering features of institutional design such as jurisdiction and governance arrangements. Step 4 considers the more granular issues around process design and the choices that are required in terms of specific dispute resolution practices. The final step in the model (not discussed in this article) is evaluation, where outcomes feed back into the continual re-design of consumer dispute resolution (CDR) mechanisms.

This five step model is supplemented by a range of factors discussed by Sourdin (2016), including the broader influence of tradition, the political context, the role of institutions, power and ideology (see Burton, 1990 and Tillett, 1991 among others). A dominating rights-based discourse may, for example, mean that processes that foster more interest-based and reflective approaches are viewed as dissonant or 'out of step' (Glendon, 1991). Other relevant factors in terms of individual diagnosis are articulated in the early work of Galtung (1971). Galtung suggests that a systemic approach involves first diagnosing the situation, considering the sources of any conflict and then responding to these wider approaches to conflict, which might include relying on data mining to prevent recurring issues from arising. The second stage could involve exploring the conflict attitudes of the participants that represent a subjective approach to conflict. This article incorporates such perspectives into the overall model suggested by Gill *et al.* (2016) and uses this framework to highlight design choices that CDR mechanisms can make to meet the needs of consumers at risk of vulnerability.

*Step 1: Research and analysis*

In the first step, identification of the problems faced by vulnerable complainants is critical. This may include identifying the number of consumers at risk, what the disputes concern, the amount of detriment, how disputes are being processed and the nature of current and anticipated problems. Views of stakeholders should be obtained, including any legal requirements and attention should be paid to both contextual and cultural factors (Gill *et al.*, 2016).

The first challenge relates to encouraging vulnerable consumers to complain. It is generally assumed that vulnerable consumers are less likely to complain with some researchers arguing that social demographics are not necessarily a good guide to explain differences in customer complaint behaviour (Singh, 1990; Phau and Baird, 2008; Garrett and Tourmanoff, 2010). Others including Ennew and Schoefer (2003) reviewed the literature on complaining and non-complaining and identified that customers who do not complain are more likely to be at lower socio-economic levels, may be part of a disadvantaged group, and may have submissive personality factors. In the field of legal needs research, Coumarelos *et al.*'s (2012) extensive review across a number of jurisdictions demonstrated that disadvantaged groups are less likely to take action, appear to lack legal knowledge and have difficulty solving their problems without advice.

Secondly, while complaining to third parties is low across all sectors (UK research for the Department of Business, Innovation and Skills (BIS, 2014) suggest just 6 per cent make a complaint to a third party) it is also assumed that rates are even lower for the most vulnerable consumers. Existing research on third party complaint handlers tends to focus on ombudsman organisations and is inconclusive. Van Roosbroek & Van de Walle (2008) and Hertogh (2013) highlight the very narrow middle class demographic which uses ombudsman schemes in the Netherlands and Belgium. Reviewing the UK's Financial Ombudsman Service in 2008, Lord Hunt QC accused the organisation of being 'a middle class service for middle class people' (Hunt 2008, p.2) although there is evidence that their demographic of complaints has changed in recent years (Financial Ombudsman Service, 2015). Creutzfeldt's (2016) recent research into 14 ADR schemes in the UK, Germany and France found that complainants were predominantly male, over 50 and well educated. On the other hand the Australian Government's Productivity Commission (2008) concluded that ombudsmen schemes were effective in promoting access to justice and were highly accessible compared to other forms of dispute resolution though more could be done to improve access for disadvantaged consumers. Research for the Energy Regulator Ofgem in the UK also found that there were few differences in the profile of consumers who escalated complaints to the ombudsman than those who did not (George *et al.*, 2015).

Finally research also suggests that disadvantaged consumers who do take action are more likely to seek advice on how to tackle their problem (Balmer *et al.*, 2010) and that legal problems tend to cluster together and coexist with other social, economic and health issues (Buck and Curran, 2009; Saunders, 2011). Legal needs research found that that there was a strong association between



experiencing legal problems and long term illness / disability, particularly mental illness (Coumarelos *et al.*, 2013).

These findings would appear to have major implications for many third party complaint handlers in designing effective complaint mechanisms which meet the needs of all consumers. Trusted intermediaries play an essential role in supporting vulnerable consumers in disputes (Felstiner *et al.*, 1980; Sandefur, 2007; Australian Government Productivity Commission, 2014; Local Government Ombudsman/Parliamentary and Health Service Ombudsman, 2014; Financial Conduct Authority, 2015; Stearn, 2016). Third party complaint handlers therefore need to work effectively with these organisations. In some cases those intermediaries may be commercial businesses – in the UK Claims Management Companies have potentially changed the demographic of complainants contacting the Financial Ombudsman Service by actively seeking out unmet need in a client group which is likely to include vulnerable consumers. Excellent referral mechanisms are also likely to be needed to support vulnerable consumers in relation to the multiple issues that may arise (Stearn, 2012; Financial Conduct Authority, 2015 and Local Government Ombudsman/Parliamentary and Health Service Ombudsman, 2015).

#### *Step 2: Goals*

Having clear goals and objectives informs subsequent system design choices and allows competing goals to be ranked and prioritised. Typical goals in relation to Consumer Dispute Resolution (CDR) relate to improving efficiency; increasing access to justice; improving consumer confidence and ensuring appropriate procedural and quality safeguards are in place to secure consumer and business trust (Gill *et al.*, 2016). Scheme goals or objectives may target vulnerable consumer groups if the market in which the scheme operates is known to unduly impact on certain classes of consumer. Third party complaint handlers are likely to face a large number of conflicting pressures and need to be clear about their priorities and the extent to which widening access to justice is a core goal for the scheme. In the UK, some third party complaint handling schemes are in competition with each other to secure the participation of businesses: as a result, maintaining a low cost base is likely to dominate their goal setting, perhaps at the expense of widening access measures.

Gill and Hirst (2016), examining consumer ombudsmen in the United Kingdom, suggested that some aspects were still considered to be ‘added value’ and not necessarily part of the routine services provided by those organisations. These include providing advice and support to complainants which other research suggests is particularly important to disadvantaged consumers (Balmer *et al.*, 2010). The key issue here relates to the cost associated with more proactive approaches to identifying and catering for consumer vulnerability. Other contextual factors relate to the difficult position in which many ADR providers find themselves, sandwiched between regulators and businesses. Gilad (2008) has referred to this as the ‘domain’ of ADR schemes and suggested that they have to tread a fine line

in terms of finding their legitimate sphere of action. For example, an ADR scheme with strong goals around consumer vulnerability may advertise to ensure that particular at risk individuals are aware of their service, but this may be seen as an ‘ambulance chasing’ approach by businesses. The context surrounding the ADR scheme and the relative strength of the pressures they face from their business and regulatory environment is therefore likely to play a key role in the extent to which goals around consumer vulnerability can be prioritised in practice.

### Step 3: *System design issues*

A number of system design choices directly impact on the ability of a complaint handling body to tackle vulnerability, particularly choices relating to jurisdiction, governance, funding, accessibility and dispute design philosophy. A key issue from the perspective of user-friendliness is the breadth of the jurisdiction of the ADR body. Narrow jurisdictions and statutory limitations on access are likely to be seen as impediments that may be particularly off-putting for complainants. A classic example of this is the requirement for complaints about central government in the UK to be made via a Member of Parliament, viewed by critics as a significant barrier to accessibility (Public Administration Select Committee, 2013). Recent research into groups of complainants who are dissatisfied with the performance of ombudsman schemes in the UK has suggested that the remits of some ombudsman schemes are too narrow, failing to address consumer concerns (Creutzfeldt and Gill, 2015). When setting the jurisdiction of a scheme, a careful balance must be struck between defining the issues that it is appropriate for the scheme to deal with, and avoiding measures which will deter consumer complaints.

Ensuring consumer representation on the boards of ADR organisations (or their advisory/ audit committees), seeking regular consumer feedback from users to inform organisational policy, and commissioning research to better understand particular sections of their client base will inform and strengthen governance. Programmes of consumer engagement are likely to be especially important and there are recent examples of innovative practice within the UK ADR community. The Local Government Ombudsman, for example, runs an advisory group composed of senior staff, former complainants and consumer advice organisations, which is used as a sounding board for organisational practices and developments. Recent work has included auditing decision letters to assess clarity and accessibility for consumers. Similarly, the Scottish Legal Complaints Commission’s Consumer Panel is an advisory body which assists the Commission to understand fully, and take account of, the interests of consumers in its policy and process developments and decisions and provides the Commission with feedback, from a consumer perspective, on the effectiveness of policies and practices (Scottish Legal Complaints Commission, 2016). The Panel recently commented on the Commission’s new three year strategy and saw their comments reflected in the final strategy, including that the needs of diverse consumers must be taken into account.

Outreach work is organised to engage with those groups who have not traditionally made much use of third party complaint handlers to strengthen accessibility (Australian Government Productivity Commission, 2014). A recent report into the Parliamentary and Health Service Ombudsman in the UK called for ‘enhanced outreach work, to ensure that disadvantaged and marginalised individuals and communities are encouraged to see themselves as part of the ombudsman's natural constituency and not outsiders’ (O’Brien, 2015 p279). Schemes can also expect a higher than average proportion of people seeking assistance will have a disability, multiple issues and present late with their complaints (Coumarelos *et al.*, 2012).

In relation to dispute resolution philosophy, adopting an inquisitorial rather than an adversarial approach enables complaint handlers to redress the balance of power between the organisation and the consumer (Gill *et al.*, 2016). Gilad’s (2010) research into the UK’s Financial Ombudsman Service found evidence that the scheme provided an effective redress mechanism for those at risk of vulnerability. She argued that the fair and reasonable test, used by a number of Ombuds schemes, was sufficiently wide to ensure that vulnerable circumstances of the particular complainant were taken into account while the absence of precedent also helped to ensure that repeat players were not advantaged (Gilad, 2010). This suggests that schemes which adopt strict legal criteria as opposed to a fair and reasonable or maladministration perspective may be less able to cater for the needs of vulnerable consumers. Dispute resolution philosophy also raises questions over whether a rights based or interest based approach should be adopted. While the latter are often considered to be less intimidating for consumers and more flexible, there is a danger that consensual dispute resolution (such as mediation, where outcomes cannot be imposed by the third party) does not do enough to give confidence to consumers that the power imbalance between them and an organisation will be redressed. Providing evidence of effectiveness and making clear the powers of the scheme to redress power imbalances may therefore be an essential part of ADR schemes' work to reach vulnerable and less engaged consumers. This also implies that high profile strategies to publicise cases and demonstrate the potential value of raising complaints may be required. Hertogh (2013), looking at public ombudsman schemes in the Netherlands and Belgium, suggests that those who are least likely to have faith in government are least likely to complain to ombudsmen.

#### *Step 4: Process design choices*

The choices for designers relate to process type, process architecture, the use of technology, the scheme’s powers, scope and decision maker attributes. Typical decisions to be made here include whether to use predominantly evaluative, adjudicative or facilitative processes, whether to use a single or multiple stage process, the extent to which technology and Online Dispute Resolution (ODR) can be used to support complaint handling, and choices relating to the qualifications and skills of the complaint handlers. There are mechanisms that can be used to assist in respect of process choice.

Processes can include the use of a risk assessment matrix (Sourdin, 2016) to assess the risk, severity and complexity of the complaint and ensure that complaints are appropriately escalated and handled. Arguably this could include capacity to deal with vulnerable consumer matters more effectively. Simplicity and transparency of process, the need for informality (no rules of evidence, no precedent) and a desire to avoid emphasising organisationally produced documentation over consumer accounts will all help to meet the needs of vulnerable consumers (Lens, 2007). Where a choice of process is offered schemes need to try to keep them as simple as possible and provide clear information to the consumer about what the choices entail. Even the best designed processes are likely to be difficult for certain categories of vulnerability – especially where distress is significant, so there may be a need for external and independent support to be provided. The Patient Advice and Support Service (PASS) provided by Citizens Advice Scotland is an interesting model, recognising the particular likelihood of vulnerability in health settings, the severity of the power imbalance and the technical complexity of issues (Citizens Advice Scotland, 2016).

The extent to which technology may facilitate vulnerable consumers to complain remains unclear. Complaint handling organisations, such as ‘Resolver’ in the UK, or ‘Guided Resolution’ in Australia, provide online information about consumer rights tailored to the type of enquiry or organisation, empowering people to have a better understanding of the legitimacy of their complaint. There are some encouraging signs. While online and mobile technologies will not meet the needs of all vulnerable consumer groups, research on the, soon to be defunct, Dutch online interactive dispute resolution platform, Rechtwijzer.nl, found that low income and low education consumers were frequent visitors to the tool (Bickel *et al.*, 2015). Others have argued that vulnerable consumers are likely to need more guidance and support rather than less (Future Foundation, 2014). In the UK 18% of consumers do not have access to or the required skills to use technology and this figure is likely to be higher for vulnerable consumers (Ministry of Justice, 2016). The UK’s Financial Ombudsman Service reported that 47% of complainants over the age of 65 could not access the internet (Financial Ombudsman Service, 2015).

In terms of decision maker attributes, an ability to demonstrate empathy and approachability is key. To respond to the individual’s situation, the organisation needs to have good disclosure practices although individuals are often reluctant to share information about vulnerability. Effective complaints procedures should provide opportunities to identify clues that a person is vulnerable and not place the onus on the consumer to self disclose (Citizens Advice, 2015). Practice examples from the UK refer to the use of speech analytics to detect vulnerability (Financial Conduct Authority, 2015) while the UK’s Financial Ombudsman Service suggested that simply starting each conversation with the statement ‘is there anything we can do to make it easier for you to talk to us and for us to talk to you?’ can make a big impact (Citizens Advice, 2015 p60). Research in the water industry in the UK found that consumers in vulnerable circumstances felt that there were few attempts to understand their

individual circumstances and that the tone and content of communications were often inappropriate (Accent, 2012). Chalmer's (2016) model of ethical fairness in communication in the finance industry highlights the need for good communication and an understanding that fairness involves going beyond managerialist/ proceduralist understandings. Gilad (2008) too has referred to the importance of treating consumers with respect and dignity. The literature on justice suggests that these aspects of process could be particularly important where consumers are vulnerable. Halstead *et al.*'s (2007) qualitative research found that 'disadvantaged' consumers were particularly sensitive to issues relating to respect and dignity, focusing heavily on interactional fairness when judging services.

In the context of skills required to deal with complaints, the authors note that recent developments in the complaint handling sector have increasingly focussed on the professionalisation of those who work in the sector (Sourdin, 2016). The development of complaint professional certification schemes (Australian Centre for Justice Innovation and SOCAP, 2015; Ombudsman Association, 2016) are directed at enhancing complaint handling skills more generally and, in respect of specific issues, arising in relation to both vulnerability and unreasonable behaviours.

### *Challenging behaviour*

Recently ombudsman and other third party complaint handling organisations, in Australia and the UK, have increasingly focussed on the issue of unreasonable complainant conduct and its cost to complaint handling organisations. Studies have suggested that between 1 and 5% of complainants exhibited unreasonably persistent behaviour (Mullen and Lester, 2006; New South Wales Ombudsman, 2012) yet accounted for 15 – 30 per cent of resources. Guidelines have been published to provide advice for the management of unreasonable complainant behaviour and most of these suggest that the focus needs to be on the conduct of the complainant, rather than on the complainant as a 'difficult' person (New South Wales Ombudsman 2012; Skilling *et al.*, 2012). Complaint handling organisations are increasingly adopting 'unacceptable action' policies. What distinguishes these approaches are the factors which differentiate the focus of the mental health professional compared to that of the complaint handler (Commonwealth Ombudsman, 2009). It is interesting to consider this medical context in relation to complaint handling, where psychiatrists have identified certain behaviours that complaint handlers often see. Lester *et al.* (2004) found that in a study of unusually persistent complainants, behaviours were consistent with the psychiatric diagnosis of 'querulence'. Eddy (2006) also defines 'high conflict people' in legal disputes, with reference to personality disorders described in the Diagnostic and Statistical Manual of the American Psychiatric Association. The Commonwealth Ombudsman (2009) manual uses the term 'unreasonable complainant conduct', which is the same language used in the Ombudsman legislation which allows a finding to be made that an agency/business's conduct is or was unreasonable. Applying the same reasoning to complainants allows the Ombudsman to more precisely define and manage the problem. Among the

techniques suggested in that manual and, common to many others, are separating the people from the problem and using clear communication. Approaches that can assist in this area, include better process explanations, early triage into specialised complaint handling approaches, having clear policies and frameworks and specialised skills to support those that may have ‘obsessive and unreasonable’ behaviours (Sourdin and Wallace, 2014).

## **Conclusion**

Issues relating to consumer vulnerability pose challenges for complaint handlers who are trying to meet their needs. A threshold issue is that vulnerable consumers tend not to complain. Complaint handlers have a role in alleviating vulnerability by improving the accessibility of redress and maximising consumer participation. Once vulnerable consumers are ‘in’ the system they may pose specific challenges requiring more time and support. Complaint systems should be designed not just to facilitate access in the first place but to meet needs when vulnerable consumers complain.

In reviewing the literature on consumer vulnerability and complaint handling, the paper has sought to make three main contributions. Firstly, this article has reviewed the context of consumer vulnerability in relation to third party complaint handling. In both the UK and Australia complaints are rising in both the public and private sectors. Official statistics in both countries reveal a substantial number of people may be classified in a category where a high proportion are disadvantaged, resulting in higher susceptibility to vulnerability. Risk factors for vulnerability and detriment include age, disability or other impairment, mental health issues, low income, sudden change in circumstances and complexity of the product or service. Secondly, the article has critiqued consumer vulnerability in the UK and Australia and has given a holistic definition to inform the development of processes of dispute system design. While acknowledging the consensus of several academics that there are situations where all consumers may be at risk of vulnerability, others view it as a multidimensional concept, as one focused on individual characteristics or where markets impact on consumers to make them vulnerable. Vulnerability may be viewed along a spectrum from persistent to transitory. The level of resources available to organisations is likely to influence the extent to which they can address the needs of vulnerable complainants.

Thirdly, we have discussed the challenges of consumer vulnerability for third party complaint handling bodies and considered how they can be met. Drawing from good practice, the article has proposed solutions which will embed consumer vulnerability in the processes of dispute system design. Approaches include providing sensitive support for vulnerable complainants with tailored, individualised processes and developing processes for access to information, advice and support to help vulnerable consumers make complaints effectively. A broad definition of consumer vulnerability reflects the complex reality of consumers’ experiences but also poses a key challenge for designers of complaint handling systems in terms of how can they identify and respond to an issue which can

potentially affect everyone? We have sought to argue therefore that adopting an inclusive approach to dispute design is good for all consumers and not just those perceived as being vulnerable.

Building on the findings of this article, further research is needed to better understand the needs of ‘silent sufferers’, the training needs of staff (for example to avoid stereotyping complainants) and to assess organisation websites for accessibility. While the focus of this article has been on third party complaint handlers, there is also considerable scope for research at first tier to understand, engage and empower a greater range of consumers to complain and drive organisations to raise standards, learn from complaints and improve services.

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