

The Banking Code

Introduction

1. This appendix outlines how the Banking Code (the Code) affects quality of service and arrangements for switching. The Code¹ is a voluntary code of practice which has been adopted by all major banks and building societies, including all banks active in Northern Ireland.² It is intended to set standards of good banking practice, but also allow competition to work to encourage higher standards for the benefit of customers. The Code is sponsored by the British Bankers' Association (BBA), the Building Societies Association (BSA) and APACS³ but is also subject to influence from the Government and consumer bodies during consultation on changes. It was established in 1991 and is now in its seventh edition, which came into effect in March 2005. The independent Banking Code Standards Board (BCSB) monitors the banks' performance and enforces the Code.
2. The Code sets minimum standards for how banks should treat their customers and for the information they should provide to them. It covers a wide range of subjects, including: changes to interest rates and charges; terms and conditions; guidance on lending money to customers; how customers should be informed about changes to their accounts; and arrangements for switching accounts. The Code applies to personal current accounts (PCAs); basic bank accounts; credit, debit and cheque guarantee cards; loans; overdrafts; savings and deposit accounts (including cash ISAs); payment services; and foreign exchange services. It does not cover investments, pensions, general insurance or mortgages.

¹See www.bankingcode.org.uk/pdfdocs/BankingCodeFlyer010305.pdf.

²Although the Post Office does not currently subscribe to the Code, it is negotiating to become a subscriber.

³Formerly the Association for Payment Clearing Services.

3. The Code requires banks to make copies of it available to customers at each branch.
4. While the Code expresses general principles of good conduct with clarity, it leaves considerable scope for differences of view about how banks should interpret each requirement. Over 50 pages of additional guidance are therefore provided in *The Banking Code Guidance for Subscribers* (the Guidance),⁴ which is freely available on the BCSB website as ‘an aid to understanding and implementing the new version of the Code’. In addition to clarifying the interpretation of the Code, the Guidance highlights areas that are also covered by formal FSA Conduct of Business Rules (or by other regulatory provisions, see Appendix 2.1).

Provisions of the Banking Code

5. Extensive extracts from the main sections of the Code most relevant to PCAs are included in a working paper on the Code on our website. The paper also includes some comments from the recommendations of the BCSB at the most recent review of the Code in 2004 and responses to the review from other bodies. In this appendix we describe only the points directly relevant to our inquiry.

Section 2 of the Banking Code: key commitments

6. Six key commitments, which are intended to summarize the main areas covered by the Code, are set out in its Section 2:

We promise that we will act fairly and reasonably in all our dealings with you by meeting all the commitments and standards in this Code. The key commitments are shown below.

⁴See www.bankingcode.org.uk/pdfdocs/Banking%20Code%20Guidance%20March%202005%20FINAL.pdf. Banks and building societies committed to observing the code are referred to as subscribers.

- *We will make sure that our advertising and promotional literature is clear and not misleading and that you are given clear information about our products and services.*
- *When you have chosen an account or service, we will give you clear information about how it works, the terms and conditions and the interest rates which apply to it.*
- *We will help you use your account or service by sending you regular statements (where appropriate) and we will keep you informed about changes to the interest rates, charges or terms and conditions.*
- *We will deal quickly and sympathetically with things that go wrong and consider all cases of financial difficulty sympathetically and positively.*
- *We will treat all your personal information as private and confidential, and operate secure and reliable banking and payment systems.*
- *We will publicise this Code, have copies available and make sure that our staff are trained to put it into practice.*

Amplification in the Guidance

7. The Guidance says that the BCSB will monitor compliance with these commitments and that they will be used to help the Financial Ombudsman Service (FOS) come to decisions. 'Act fairly' is to be interpreted in the light of the Unfair Terms in Consumer Contracts Regulations 1999 (see Appendix 2.1) and the Data Protection Principles set out in Part 1 of Schedule 1 to the Data Protection Act 1998. 'Fairness' and 'reasonableness' are also to be considered in the context of other relevant legislation and case law.
8. The Guidance requires that customers should be given a balanced view of products so that they have an accurate understanding of the financial implications.

Subscribers to the Code are expected to comply, where appropriate, with such other codes of practice as:

- the BBA/BSA Code of Conduct for the Advertising of Interest Bearing Accounts;
- the BBA Guide to Bankers' References;
- the BBA Ten Pledges from Banks to Personal Customers on Dormant Accounts;
- the British Code of Advertising, Sales Promotion and Direct Marketing;
- the Television and Radio Advertising Standards Codes;
- the Guide to Credit Scoring 2000;
- the BBA Guidance: Implementing Part III of the Disability Discrimination Act;
- the BBA/Royal National Institute of the Blind (RNIB) Guidance: Accessible E-Banking; and
- OFT Guidance on Non-Status Lending.

9. The Guidance says that 'dealing quickly' with things that go wrong (see paragraph 6) is likely to include handling customers' complaints quickly; telling them how to take complaints forward if they are still not satisfied; and cancelling any bank charges applied as a result of the bank's error. 'Quickly' means as soon as they arise and as swiftly as possible, in accordance with the standards set by the FSA.
10. The Guidance specifies that all new customers should receive a copy of the 'flyer' setting out the main features of the Code when they open their account. All PCA customers should receive a copy of the flyer each time the Code is revised.

Section 3 of the Code: helping you to choose products and services which meet your needs

11. Under this section each bank undertakes (among other things) to provide clear information explaining the key features of the services and products that customers are interested in; to offer customers a basic bank account, where it provides one and

it suits their needs; and to tell customers what information is needed to prove their identities.

12. The Guidance stresses the emphasis should be on informed choice by the customer, rather than advice by the bank. 'Key features' (see paragraph 11) should include information on additional charges. It also gives examples of information that might be provided to customers opening PCAs, including:
- how to stop payments;
 - how direct debits and standing orders work;
 - how the clearing cycle works, including when cash will be available for withdrawal and when funds will start earning interest;
 - the handling of out-of-date cheques and unpaid cheques;
 - the availability of overdrafts;
 - where customers can find information about interest rates;
 - whether a check will be made with credit reference agencies and what this involves; and
 - whether the bank may pass the customer's account details to credit reference agencies.

Section 4 of the Code: interest rates

13. Under this section each bank undertakes to inform customers about interest rates through telephone helplines; websites; and notices and staff in branches. They must also give new customers information on the interest rates that apply to their accounts, tell them when interest will be charged or paid and how it will be calculated. Customers must also be informed about how to find out about changes to interest rates.

Section 5 of the Code: charges

14. Under this section each bank undertakes to give new customers details of any charges for the day-to-day operation of their accounts. Customers can also find out about these charges through telephone helplines, websites and by asking staff. If charges are increased or new charges introduced, customers must be told personally⁵ at least 30 days before the change takes effect. Before a bank takes interest or charges for standard account services it must give customers at least 14 days' notice of how much will be taken. Banks are also required to provide a message on cash machine screens that tells customers the amount (if any) they will be charged for the transaction and who is making the charge.
15. The Guidance says that PCA customers should be informed about the following charges when they open an account:
- standard charges and additional interest for unauthorized borrowing;
 - charges for 'bounced' cheques, standing orders and direct debits;
 - charges for using branch counters;
 - regular account fees;
 - usage fees for arranged overdrafts;
 - charges for processing cheques, standing orders, direct debits or UK debit card transactions; and
 - charges for unpaid cheques.
16. The Guidance says that, when they request the relevant service, customers should be informed about any charges for: bankers' drafts; duplicate statements; stopped cheques; special presentations; real-time payments; and foreign exchange services.

⁵Personal notification can be by any one of a variety of methods: for example, by letter, statement insert, e-mail or secure internet messaging.

Fourteen days' prior notification is required before charging the following: usage fees for arranged overdrafts; debit interest; and charges for such standard account services as processing cheques, standing orders, direct debits; and UK debit card transactions.

Section 6 of the Code: terms and conditions

17. Under this section each bank undertakes to provide customers with any relevant terms and conditions for the product they have asked for. All written terms and conditions must be fair and the customers' rights and responsibilities must be set out clearly, legibly and in plain language. New customers must also be told how the bank will let them know about changes to terms and conditions.
18. If any change is to a customer's disadvantage, the bank must tell him or her about it personally at least 30 days before the change is made. At any time up to 60 days from the date of the notice, a customer can, without notice, switch his or her account or close it without having to pay any extra charges or any interest for doing so. Any other changes can be made immediately, subject to the customer being informed within 30 days. If a major change or many minor changes have been made in any year, the bank must give customers a copy of the new terms and conditions or a summary of the changes.
19. The Guidance requires that all terms and conditions should be clear and intelligible and should be fair under the requirements of the Unfair Terms in Consumer Contracts Regulations (see Appendix 2.1).
20. In the 2004 review, the BCSB recommended that the review should consider requiring a summary box of key points to be incorporated prominently in terms and conditions and/or promotional materials. These points would include such matters as:

how quickly items are cleared for fate;⁶ whether overdrafts are permitted; interest rates; and a list of all types of charge levied with the location where the tariff may be examined. It also recommended that the Code should mandate a minimum upper case print height of, say, 2.1mm, for the terms and conditions supplied to customers.

Section 7 of the Code: changing your account

21. Under this section each bank undertakes to allow customers who are unhappy about their choice of current account to cancel it within a 14 day 'cooling-off period'. The Guidance requires that no additional charges should be made when an account is closed within this 14-day period.⁷

22. When a customer decides to move his or her current account to another bank, the 'old' bank must provide the 'new' bank with information about standing orders and direct debits within three working days of a request to do this. When asked, banks must close or move PCAs without charge. The new bank must tell the customer how the process for transferring the PCA will work; who is responsible for each step in the process; how long the transfer is likely to take; what information the old bank will pass to the new bank; and what features the new account will have so that it can be compared with the customer's old account.

23. Banks must give a customer what he or she needs to operate a new PCA within ten working days of approving the application. Any bank charges paid as a result of mistakes or unnecessary delays by the banks must be cancelled.

⁶That is when a customer is permitted to withdraw the money credited to the account.

⁷It is acceptable to charge a fee if a facility such as an overdraft has been used, but additional charges to close the account should not be made.

24. The Guidance requires that once the customer's new bank has received details of direct debits and standing orders from the old bank, these must be sent to the customer for checking. Where the customer wants the new bank to transfer the balance from their account with the old bank to their new account, the new bank should give the old bank sufficient notice (usually at least five working days before the transfer date) and the old bank must use its best endeavours to close the account on the transfer date and transfer the balance as requested.
25. When banks plan to close a branch they must tell customers at least eight weeks beforehand, and 12 weeks beforehand if the branch is the last bank or building society branch within a 1-mile radius (or 4 miles in rural areas).
26. The BCSB told us that it had carried out research into the effectiveness of the switching provisions. It had asked 50 researchers to switch their PCAs and monitored what happened. There had been a good quality of service, resulting in a high degree of satisfaction. Based on this research, the BCSB believed that any concerns about switching were more likely to concern customer perception of problems or customer inertia than genuine problems experienced in switching accounts.

Section 8 of the Code: advertising and marketing

27. Under this section each bank undertakes to ensure that all advertising and promotional material is clear, fair, reasonable and not misleading. It also regulates the ways in which banks can market products to customers and the use they may make of customer data for marketing purposes.
28. The Guidance also draws attention to the requirements of various industry codes of practice, the FSA Handbook, and legislation, including the Consumer Credit Act 1974

and the Advertising Regulations made under it and introduced in 2004. The use of 'casual and random' marketing approaches is discouraged.

Section 9 of the Code: running your account

29. Under this section each bank undertakes to protect customers by observing minimum standards in operating PCAs and in communicating with customers about their PCAs.

Section 10 of the Code: cards and PINs

30. Under this section each bank undertakes to abide by the standards it sets for the way that banks operate card transactions and market cards.

Section 11 of the Code: your personal information

31. Under this section each bank undertakes to abide by the standards it sets for the protection of the confidentiality of customers' personal information.

Section 12 of the Code: protecting your accounts

32. Under this section and the associated part of the Guidance each bank undertakes to abide by standards of good practice for the safe and secure operation of accounts in some detail.

Section 13 of the Code: lending

33. Under this section each bank undertakes to assess whether a customer is likely to be able to repay before lending any money or increasing an overdraft limit. Banks must also explain the main reason to a customer if they are unable to offer a loan or an overdraft. This section also sets out rules for the sharing of customer information with credit reference agencies.

34. The Guidance says that the assessment of the customer's ability to repay should include assessing at least one of the following four points:

- the customer's income and financial commitments;
- how they have handled their finances;
- information from credit reference agencies and (with the customer's consent) others, such as lenders, the customer's employer and landlord; and
- credit assessment techniques.

The bank can also take account of:

- any security provided; and
- information provided by the customer to prove their identity and/or explain why they want to borrow the money.

Section 14 of the Code: financial difficulties—how we can help

35. Under this section each bank undertakes to consider cases of financial difficulty sympathetically and positively, to contact customers to discuss the matter concerned and to do all they can to help customers to overcome their difficulties. Banks should also, with the customer's cooperation, jointly develop a plan for dealing with the financial difficulties.

Section 15 of the Code: complaints

36. Under this section each bank undertakes to tell customers how to make a complaint, and what to do if they are not happy with the outcome. A written acknowledgement must be sent within five working days of receiving a complaint. Within four weeks, the bank must write to the customer again with its final response, or to explain why it needs more time to respond. The bank's final or other response must be sent within eight weeks. The bank must display a notice explaining that it is covered by the FOS, both on its website and in all its branches.

Section 16 of the Code: monitoring

37. Under this section each bank undertakes to have a 'Code Compliance Officer' and auditing procedures to make sure it observes the Code. This officer is likely also to be the contact person dealing with the BCSB.
38. The monitoring and enforcement role of the BCSB is discussed in paragraphs 41 to 44 below.

Section 17 of the Code: getting help

39. Section 17 advises customers who have any enquiries about the Code to contact the British Bankers' Association, The Building Societies Association, APACS or the BCSB. It also requires banks to make copies of the Code available to all their personal customers and to display notices in all their branches and on their websites explaining how copies of the Code may be obtained.

The role of the Banking Code Standards Board

40. The BCSB was set up in 1999. Its directors include a majority of independent members as well as representatives of the financial institutions. Its role includes:
- assisting banks in interpreting the Code;
 - monitoring and enforcing the Code;
 - taking disciplinary action where there are material breaches of the Code;
 - advocating changes when the Code is revised; and
 - promoting awareness of the Code.
41. The BCSB relies on four main sources of information in monitoring compliance with the Code. First, it receives a comprehensive annual self-certification questionnaire from the Chief Executive of each subscriber. Secondly, BCSB relationship managers with practical banking experience carry out monitoring visits to each subscriber,

lasting between one day and several weeks—the bank concerned must be given ten days' notice of a monitoring visit. Thirdly, mystery shoppers are used to test whether the treatment customers receive is in line with the Code. Finally, all information received from customers contacting the BCSB helpdesk is logged in a database that is used in a risk analysis process. This dictates how often BCSB staff visit the bank concerned.

42. In some cases these visits lead to disciplinary action. Whether the BCSB takes action over a breach of the Code depends on its seriousness. The Code's compliance policy specifies that the BCSB will launch a formal investigation, with a view to disciplinary action, only where it suspects a 'material breach' of the Code. This would typically be a breach that had affected a large number of customers, had been systematic, had continued for a long period or was suspected of being deliberate. The BCSB applies a balance-of-probabilities test in assessing the evidence. Where there is a non-material breach, the BCSB requires the bank or building society concerned to put the mistake right as quickly as possible and to keep a record of each breach that had taken place.

43. Its compliance policy sets out the powers that the BCSB can apply in the event of material breaches. These include issuing a warning or a reprimand; 'naming and shaming' the institution concerned in the media; issuing 'directions as to future conduct'; making recommendations to remedy past conduct; recommending compensation for customers affected by breaches; and cancelling or suspending a subscriber's registration. The BSCB may also inform the FSA if it is concerned about possible breaches of certain obligations under the FSA Handbook or under HM Treasury regulations.

44. The BCSB does not in general take action on individual complaints—resolving complaints is the responsibility of the FOS. It is, however, interested in hearing about breaches of the Code from customers.

Reviewing the Code

The Julius review

45. In response to the Cruickshank Report (Cruickshank, see Appendix 2.3), the Government asked a group chaired by Dr DeAnne Julius to review the operation of the Code (together with the Business Banking Code and the Mortgage Code) in 2001. The group concluded that the voluntary codes had generally been effective in raising standards and spreading best practice and that benefits had been delivered to customers. The group commented that many respondents to their consultation exercise felt the Code, while not perfect, was an exemplar of self-regulation. Service standards in banking could be effectively dealt with by voluntary regulation through consumer codes of conduct. It thought that the codes could not, however, be expected to prevent or solve all customer complaints.
46. The group found considerable concern among consumers about problems, and perceived problems, of switching PCA providers. These centred mainly on the 'hassle factor' of changing payment instructions and the fear that things would go wrong.⁸ The group also found evidence that consumers were not being adequately informed about the Code. They also lacked the clearly presented information about their accounts needed to enable them to compare alternative products.
47. Better consumer education was needed in some areas and statutory regulation in others. The group felt that it was both unrealistic and unwise to aim to define an optimal code or the optimal set of regulatory interventions. Instead they aimed to

identify where changes could be made that would shift the incentives facing customers, banks and monitoring bodies in ways that would foster more effective competition and provide greater customer benefits. The codes should then continue to be updated.

48. The Julius Review recommended the following improvements:

- making account switching easier by introducing portable credit histories and a ‘five-day start—five-week finish’ standard for switching accounts;
- providing each customer with a consolidated annual summary statement (CASS) showing the total charges paid and interest paid on their accounts for each tax year;
- making the codes available in three formats: a leaflet distributed biennially to customers; the full code; and guidance notes. These should be readily available to anyone;
- providing more information on compliance with the Code by the earlier publishing of aggregate compliance data and the eventual publication of individual compliance data;
- requiring all providers of banking services to sign up to the relevant codes;
- revising the Guidance to spell out key practices that are consistent with the Code principles on the treatment of people in financial difficulties; and
- strengthening the processes for revising the Code by introducing independent reviews every two years.

49. The BCSB and the banks felt that portable credit histories would be too costly and that existing credit checks were adequate. They accepted the ‘five-day start’ proposal for switching but felt that the ‘five-week finish’ proposal was too simplistic. The banks agreed to work towards this target but felt that it could not be met in some

⁸Cruickshank had previously found that one in seven of people who switched PCA providers had encountered problems.

circumstances. The BCSB and the banks opposed the proposal for the publication of individual banks' compliance data. The BCSB supported the proposal for providing each customer with an annual CASS (see paragraph 48); this proposal was, however, opposed by the banks. All the other recommendations were either accepted or referred for further consideration in the forthcoming review of the Code (see paragraph 50).

Regular reviews

50. The Code has been reviewed and updated every two years since publication of the Julius report. Professor Kempson of Bristol University's Personal Finance Research Centre reviewed the Code in 2002 and 2004. These reviews resulted in the Code including more detail on specific service levels. In particular the 2002 review introduced a new standard for account switching. Following the 2004 review, changes designed to make basic bank accounts more readily available were adopted and the help to be given to customers in financial difficulty was clarified. The resulting version of the Code came into effect in March 2005. Professor Kempson also recommended that the Code sponsors should commission research into the possible content of 'summary boxes', showing key terms and conditions, for various products, including PCAs. Subject to the results of this research, summary boxes might be included in pre-contract promotional material and possibly in bank statements. In view of the pressure of time involved in such frequent reviews, Professor Kempson recommended that the next one should take place after three years, commencing in 2007. As part of the review process, interested parties, including the Government and consumer bodies, are consulted and the BCSB comments on any problems it has encountered.

51. The Guidance says that the 2005 edition of the Code 'includes more detail on specific service levels'. In particular the help to be given to customers in financial

difficulty has been clarified. An internal HBOS strategy paper also commented that significant revisions to the code were proposed in 2005.

Treatment of customer complaints

52. A customer who feels that a bank has failed to comply with the Code is expected first to complain to the bank concerned. If the bank is unable to resolve the complaint to the customer's satisfaction immediately, it should provide the customer with details of its complaints procedure. A customer who is not satisfied with the bank's final written response to a complaint can take the case to the FOS, which can provide a mediation service.