

# The **Banking** Code

## **2007 Independent Review of the Banking Codes**

### **Recommendations of the Independent Reviewer and Response by the Code Sponsors**



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### Foreword

The independent review of the Banking Code that has recently been completed is the most comprehensive that has ever taken place. The Reviewer received 50 submissions from individuals, consumers groups, organisations, regulators and the Treasury, all of which underlines the importance that is given to this Code, its content and the standards that it seeks to articulate for the industry.

The sponsors to the Code are the British Bankers' Association, the Building Societies Association, and APACS – the UK payments association, and throughout the process they have sought to ensure that issues of principle and detail are all considered thoroughly.

A large majority of the recommendations that have been made by the Reviewer are accepted and will be included in the new Code. Amongst the new measures being adopted are:-

- More help for customers who may be heading towards financial difficulties
- Greater clarity of information on products, including pre-sale summary boxes for unsecured loans and savings accounts
- Prohibition of account closure solely because a customer has made a valid complaint
- Strengthened credit assessment practices
- Information on the forthcoming unclaimed assets (dormant accounts) schemes
- Greater certainty in cheque clearance
- Greater transparency of information for credit cards and credit card cheques.

Outside the Code, but clearly related to it, the industry is also funding a number of money advice charities in order that they can give help free of charge to individuals who get into difficulties.

In addition, there are three further areas worth special comment:

1. **Overarching fairness principle** – Many have requested that the Banking Code include an over arching principle of fairness to mirror the Treating Customers Fairly requirements of the Financial Services Authority. Amongst those who have made the proposal are consumer organisations, the Treasury and the FSA. It is also well recognised that the Code has been constructed with the intention of providing fairness for the customer. The Independent Code Reviewer has stated that memoranda of understanding are needed between the Banking Code Standards Board (BCSB), the Financial Services Authority and the Office of Fair Trading to give the BCSB the primary role in monitoring compliance. Once satisfactory Memoranda of Understanding have been completed and agreed, the Code sponsors are then in a position to address the inclusion of an overarching fairness objective.
2. **Interactions with the OFT** – Under the Consumer Credit Act and the Consumer Protection Regulations respectively, the OFT is responsible for credit licensing – with explicit requirements to ensure “responsible lending” - and has enforcement powers for “unfair commercial practices”. Both touch on existing areas of Banking Code regulation and therefore expose our members to the potential of double jeopardy. We therefore trust that the OFT is willing to work with the BCSB to recognise the Banking

Code as an “established means” under the OFT’s powers. We believe the OFT’s recognition of the new Code will underline its continuing importance as an exemplar of good lending practice with respect to the “unfair relationships” test.

3. **Northern Ireland Competition Commission recommendations** – the NICC made seven recommendations for changes to retail banking practice in Northern Ireland including transparency, ease of switching and clarity of communication. It has requested that some of these recommendations are included in the Banking Code for Northern Ireland. We are currently waiting for the Competition Commission to publish the necessary order which will implement these changes in Northern Ireland. Consideration will be given at that point to which of these recommendations should apply elsewhere in the UK.

#### Helping Customers Help Themselves

A number of respondents have asked that advice for customers is made available in a clearer manner in the Code. For example, customers need to know about guarding their PIN, understanding interest rates and how to complain. The Code has always contained these and other pointers but it may be helpful if they are drawn together in an additional Code section devoted to helping customers make the most of banking products and services. An open discussion will therefore take place with interested parties, including consumer organisations, to gather views on whether future editions of the Code should include such a section.

#### Format of the Code

The Code remains broadly in the same format as in the past. The sponsors have however given some consideration as to whether there are alternative layouts which would continue to provide clear standards for the subscribers to follow, but are more understandable for the customer. Such a changed format could, for example, fit more in line with the FSA’s more principles-based regulatory approach and then would be supported by comprehensive industry guidance.

In giving consideration to such a proposal the sponsors are in no way seeking any diminution of the rights or the protections of the customer nor the standards the industry needs to meet. The reason for making such a proposal for an alternative format is to demonstrate clearly our commitment to a user friendly code which meets the expectations of the customers.

Again, the sponsors recognise that a format change of this sort would be of interest to many and we would wish to take this forward through a consultation in conjunction with the BCSB and appropriate consumer experts.

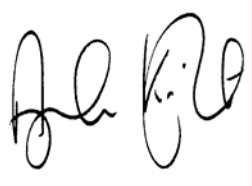
#### Interaction of the Banking Code with the wider regulatory environment

The Banking Code was introduced by the industry to cover areas that were not then formally regulated. Over the 15 years that it has been in existence, not only has it served this purpose well but it has also gained increasing status and recognition. There is a separate independent organisation which polices the Code (the BCSB) and complaints can be referred to the Financial Ombudsman Service and so benefit from those protections as well. Furthermore, it has become evident in this last Review that a range of interested parties all wish the Code now to cover more areas and to be more akin to FSA regulation than in the past. This impacts on the length of the Code, the breadth of the issues that it covers and the detail in which it describes the various actions that the industry has to take. Without delaying

the introduction of the new Code, this nevertheless brings to the fore a need to assess the longer-term interaction between the Banking Code, the BCSB and the FSA.

In conclusion

- Wherever possible the agreed recommendations of the Reviewer will be incorporated within the Code from March 2008. Any new provisions which require a longer implementation period due to forthcoming legislative changes or systems development will be implemented as soon as they are possible.
- In respect of the overarching principle of fairness and the unfair relationships, the necessary agreements between the three regulatory bodies of the BCSB, the FSA and the OFT are under negotiation and the sponsors await the outcome. Furthermore, an agreement is also required between the BCSB and Financial Ombudsman Service and again the industry awaits the outcome of these discussions.
- An open discussion will take place with the BCSB, subscribers and consumer experts to consider a further consultation on the appropriate future format for the Banking Code.
- An open discussion will take place on whether future volumes of the Code should include a section devoted to helping customers make the most of banking products and services.
- Code sponsors will work with stakeholders to consider the future role and interaction of the BCSB and the FSA in respect of the Banking Code.



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## Introduction

The Banking Code is 'sponsored' by the three main industry trade associations: the British Bankers' Association (BBA), The Building Societies Association (BSA) and APACS – the UK payments association. The Business Banking Code is sponsored by the BBA and APACS. These Codes set standards of best practice in dealing with personal and small business customers. They do not cover the commercial pricing of products and services.

This paper is the formal response of the Code sponsors to the independent review of the Banking Codes carried out between November 2006 and May 2007.

The review was carried out by Mike Young, an independent consultant. A three month formal consultation period invited views from all stakeholders and interested parties. The independent reviewer received 50 submissions and held a series of bilateral and roundtable meetings to explore stakeholders' views in more detail.

The independent reviewer's report was presented to the Code sponsors in May 2007. Each of the reviewer's recommendations is included in this document and the independent reviewer's report is publicly available on the Code sponsors' websites.

This paper outlines the changes that will be made to the Banking Codes as a result of the independent review. Also outlined are additional changes that we will make to the Codes to further improve the services that customers receive from Code subscribers.

## Executive Summary

We will be making a large number of additions to the Banking Codes. Where we have not been able to adopt a recommendation we give detailed explanation of the reasons and offer compromises where possible.

We will be making significant new additions to the Banking Code in the areas of credit assessment, financial difficulties and customer communications. These will deliver greater protections for customers and further clarity for the important information that customers require.

Among the new measures being adopted the Banking Code will deliver:

- Strengthened Credit Assessment processes allowing subscribers to make more informed decisions about a customer's ability to repay borrowing.
- A requirement to identify customers who may be heading towards financial difficulty and give them further information about how to tackle their situation.
- Further transparency for communications to customers about products and services.
- New requirements to add further customer protection in cases of branch closure or account closure.
- Additional protections for customers' using internet banking.

We will also be working with the BCSB and consumer groups to consider the introduction of a new Code section devoted to giving customers advice on how to make the most of banking products and services. This might include information on choosing products, protecting accounts and seeking help when it is needed.

## Recommendations and Responses

Below we list each of the independent reviewer's recommendations and the Sponsors' response. We explain the rationale for each of our decisions and where possible indicate the likely implementation period required to adopt each of the new measures.

### Fairness

**1. I recommend that Section 2 of both Codes is amended to read:**

**“We promise that we will act fairly and reasonably in all our dealings with you. Our key commitments to you are shown below:**

***[The existing key commitments]***

***[Add to end of existing six key commitments:]***

- We will lend responsibly.**
- We will help you to switch your current account between financial institutions subscribing to this Code.**

**The remainder of this Code sets minimum standards for fulfilling these commitments but at all times our promise to act fairly and reasonably is paramount. In return, we expect you to be fair and reasonable with us.”**

**2. I recommend that the inclusion of an Overarching Fairness Obligation in the Codes is conditional upon the agreement of public memoranda of understanding between the BCSB and the FSA and the OFT on their respective roles in compliance monitoring and enforcement.**

**3. I therefore recommend that the BCSB and the FOS negotiate a public memorandum of understanding on their respective roles and interactions.**

As outlined by the independent reviewer, this recommendation is dependent on satisfactory memoranda of understanding being reached between BCSB, FSA, OFT, and FOS. Once satisfactory memoranda have been completed and agreed, the Code Sponsors will be in a position to address the inclusion of an overarching fairness objective.

We will add the two further key commitments, as recommended, to reinforce our commitments to lend responsibly and to help customers switch current accounts.

## Credit Assessment

### **4. I recommend that the Banking Code Guidance Section 13 is amended to require all subscribers to share all positive data that may legally be shared.**

We agree to adopt a requirement for all Code subscribers to use and share positive data during the credit assessment process.

Sharing positive data will give lenders more information about a customer's financial circumstances and allow them to make a more informed decision about whether a customer can afford to repay any borrowing.

Positive data sharing will take place where we have a customer's consent to do so and where such sharing is regulated by the industry's principles of reciprocity. This requirement will not apply in customer segments such as private banking where data sharing is not appropriate.

### **5. I recommend that Section 13.1 of the Guidance should say that lenders are always required to consider Credit Reference Agency (CRA) data plus at least two of the five bulleted points below (as well as any other checks not listed that the subscriber feels are necessary to meet their commitment to lend responsibly). This recommendation should also apply before offers of credit limit increases.**

- **Customer's income and financial commitments.**
- **How they have handled their accounts with the subscriber in the past.**
- **Internal credit scoring techniques.**
- **Any security provided.**
- **Why they want to borrow and for how long.**

We agree to require all Code subscribers to use CRA data during the assessment of a personal customer's application for credit.

We have decided to go further than the independent reviewer's recommendation with regard to further areas to be considered during credit assessment. The reviewer recommended two of five additional considerations. We believe that this could potentially weaken the credit assessment process because it would allow lenders to look only at any security provided and the purpose of the borrowing.

We will therefore make a stronger addition to credit assessment by requiring that, in addition to CRA data, lenders must also consider at least one of three considerations which provide data on the customer's financial circumstances. These are: customer's income and financial commitments; how the customer has handled existing accounts; the lender's internal credit scoring techniques.

Therefore, all lending decisions under the 2008 Banking Code will be based on the use of CRA data (which will include positive data sharing) plus at least one or more additional points relating to a customer's financial circumstances and ability to repay. This requirement will not apply in customer segments such as private banking where data sharing is not appropriate.

- 6. I recommend that Section 13.1 of the Guidance is further amended to require that, where an applicant is in financial difficulties<sup>1</sup>, subscribers should always consider the customer's income and financial commitments and CRA data plus at least one of the four other bulleted points in recommendation 5 above.**

Subscribers have a duty to lend responsibly in all circumstances. If a lender feels it is appropriate to consider more explicit information on income and financial commitments it will do so. In view of the changes we will make to the credit assessment process under Recommendations 4 and 5, we do not believe that this recommendation would add to a lender's ability to determine whether a customer is likely to be able to repay their borrowing. Therefore we will not be accepting this recommendation.

- 7. Where a consolidation loan is being provided and the subscriber considers the customer to be in financial difficulties<sup>2</sup> the subscriber must use the consolidation loan to reduce or pay off existing in-house borrowing; and, where appropriate, use their best endeavours to see any remaining part of the loan is used to pay off external debts.**

We agree to require all subscribers to reduce or pay off existing in-house unsecured borrowing where the customer is in financial difficulties and the subscriber is aware that the new unsecured lending is for consolidation purposes. This requirement will apply where the existence of in-house borrowing is apparent to the subscriber via existing in-house systems. However we will allow for exceptional circumstances under which it would be to the customer's advantage to use the consolidation loan to address other external borrowing.

Where appropriate subscribers can use best endeavours to address external borrowing but it will often be difficult for a subscriber to ensure that customers address debts that are held elsewhere. Therefore we will not be making this a Code requirement.

- 8. The Guidance should make clear that, when they increase a customer's credit limit, subscribers must make clear on the first page<sup>3</sup> of any notice of the increased limit that the customer can decline the increase and explain how the customer can do this, which should be by any reasonable means.**

The independent reviewer's recommendation refers to credit card limits. We therefore agree to require all subscribers to communicate to customers clearly and transparently, in *close proximity* to notification of a credit card limit increase, that they can decline the increase and how to do so.

We will not prescribe that this communication must be on the first page of a notification because the first page may not be where the increased credit limit is communicated.

- 9. The Guidance should be amended to ban credit rejection simply on the grounds of reaching a certain age.**

We agree with the independent reviewer's aim to ensure that customers are not discriminated against simply because of their age. However, it is legitimate for a subscriber

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<sup>1</sup> = where the customer has said s/he is in difficulties; or where the lender believes the customer is in difficulties, taking into account factors listed in Guidance s 14.1 or CRA data, such as bureau scores or indebtedness indices.

<sup>2</sup> See footnote 1 above.

<sup>3</sup> In the case of screen based notification, it should be adjacent to the offer of the increase.

to determine whether it offers credit to customers based on their ability to repay or to adequately secure a facility. This could include consideration of the age of the customer and the term of the borrowing: elements of any responsible lending decision. Therefore, we will not be adopting this recommendation.

**10. Subscribers should be required to review a customer's credit limits in accordance with recommendations 5 or 6 above as soon as possible after they have transferred an outstanding balance to another provider.**

Often it is not possible for a lender to determine that a credit card balance has been transferred to another lender. For instance, a customer may simply be paying off an outstanding balance.

However to achieve the independent reviewer's aims we will amend the Code Guidance to clarify that subscribers should periodically review customers' credit card limits using CRA and internal data. Where the subscriber feels it is appropriate, the credit card limit should be reduced and notification given to the customer.

### **Financial Difficulties**

**11. The Guidance s 14.1 should be strengthened to make clear it requires lenders to use their systems for pro-active spotting of customers who may be getting into financial difficulties. Subscribers should then contact such customers to emphasise that, if they are in difficulties, a 'sympathetic and positive' approach will be taken and to provide details of independent, free money advice agencies. In such cases they should suspend automatic offers of credit limit increases and weed out such people from credit marketing lists.**

We agree to require subscribers proactively to contact customers who may be heading towards financial difficulty, where subscribers' existing systems indicate that this may be the case. Subscribers will outline their approach to financial difficulty and encourage the customer to contact the bank. Furthermore, subscribers will provide signposts to sources of free, independent money advice.

We will not be introducing new Code measures to suspend offers of credit limit increases. Subscribers' periodic reviews of credit card limits should prevent such offers being made where the customer's financial difficulties are evident to the credit card provider.

We will not be introducing new Code measures for credit marketing lists because this is already covered by the SCOR Principles of Reciprocity. These are a set of guidelines addressing issues on the sharing and use of data, which all subscribers comply with through their use of credit reference agencies. The guidelines encourage responsible lending by enabling the removal from marketing lists of those customers in or heading towards financial difficulty, where these circumstances are evident to the lender.

**12 Sponsors should work with advice agencies to develop an up-to-date information leaflet explaining borrowers' rights and responsibilities. It should explain clearly all the options available for coping with debt problems and their advantages and disadvantages; and where customers can get free, independent advice. Subscribers should be required to send that leaflet to all customers who get into difficulties. The**

**content would be mandatory, but the cover could be branded by individual subscribers.**

The Code sponsors agree to update the 'Dealing with Debt' leaflet and to work with appropriate advice agencies to do so. The leaflet will be available to customers free of charge on the sponsors' websites and subscribers can choose to stock the leaflet in branches or mail it to relevant customers.

However, we will not compel our members to send the leaflet to all customers in financial difficulty because under the Consumer Credit Act 2006 our subscribers will be required to send an information sheet to all customers whose borrowing is in arrears or under default. This information sheet will encourage customers to speak to their lender and will signpost sources of free, independent money advice. We do not therefore wish to duplicate this requirement and overload customers with similar information.

**13 The right of set-off must never be used to pay off non-priority debts to the detriment of either priority debts, as defined in the Guidance, or to the provision of reasonable day-to-day living expenses.**

This requirement already applies in the current Code Guidance where the subscriber and customer have agreed which debts are priorities.

However, we agree to clarify the Code Guidance for Section 14.3 to remind subscribers that set-off should not be used to pay off non-priority debts to the detriment of priority debts or reasonable day-to-day living expenses.

**14 Where the customer is in contact with the lender and is constructively negotiating (either directly or through a money adviser), then subscribers should always consider waiving or reducing recurring default charges and / or interest unless they have clear reason to believe that the customer can make regular sufficient repayments to cover them and to pay off a significant proportion of the capital.**

We agree that where a customer is in financial difficulties and is constructively cooperating with a subscriber to tackle the situation, we will require the subscriber to consider appropriate concessions relating to charges and interest.

The nature of any concessions granted will be assessed by subscribers on a case-by-case basis.

**15 Where debts are sold to others or cases are transferred to outside debt collectors, subscribers should ensure that the contract with the third party ensures that they do not request a new statement of income, expenditure and assets if such information has been provided to the subscriber in the last 12 months, unless the debtor fails to maintain the agreed repayments.**

We recognise that it can cause customers inconvenience to repeat the provision of this information, but it is in the customer's best interests for a debt collection agency to have the most up to date information about a customer's financial circumstances.

We will not therefore be adopting this recommendation but we will pass on the independent reviewer's concerns to the OFT so that it can consider them with regard to its Debt Collection Guidance which applies across the whole industry.

### **Basic Bank Accounts**

Code subscribers have made good progress in the provision of Basic Bank Accounts since their introduction in April 2003. Around 50,000 Basic accounts are opened each month and there are now over 2.4 million accounts in operation. Over a quarter of a million Basic accounts have been upgraded by customers to even more financially inclusive products.

Stakeholders agree that Code subscribers have made good progress in meeting their commitment to provide access to Basic Bank Accounts and work continues with the Financial Inclusion Taskforce, the Treasury and other organisations to consider ways of further stimulating demand for Basic Bank Accounts amongst those consumers who are hardest to reach.

Sponsors continue to work with the Banking Code Standards Board to ensure that subscribers are compliant with the Code's current requirements for Basic Bank Accounts.

**16 I recommend that the Code is amended to require subscribers offering Basic Bank Accounts (BBAs) not to reject applicants simply on the basis of a past bad debt record.**

15 of the 17 banks who offer BBAs will allow applicants with a bad debt record to open a Basic account. Therefore any customer whose application is rejected on the grounds of bad debt should usually be able to open a Basic account elsewhere. We will not be adopting this recommendation because banks must retain the right, on the grounds of credit risk, to determine access to a Basic account.

**17 I recommend that the Code is amended to require subscribers offering BBAs not to reject applicants simply because they are undischarged bankrupts.**

We recognise the independent reviewer's concern about access to Basic Bank Accounts for undischarged bankrupts. However, legal uncertainty remains about an account provider's liability to trustees of the bankruptcy.

In the absence of suitable case law or a change to the underlying legislation to resolve this uncertainty we are unable to adopt this recommendation.

**18 I recommend that applicants for a BBA who are rejected should receive a simple explanation of the reason for rejection.**

We agree with the independent reviewer that applicants should be helped to understand their position if their application is rejected. We will therefore require that subscribers explain the main reason why the application has been rejected if the customer asks the bank to do so.

However, this requirement will not apply in cases where the subscriber is prevented from doing so by a legal or regulatory obligation, such as suspicion that an application is fraudulent.

**19 Subscribers who offer BBAs should display a small window sticker in the windows of their branches and on their websites to show that information on BBAs is available there. The design of that sticker should be standard.**

With around 50,000 Basic Bank Accounts opened every month there is a high level of awareness of the availability of such accounts. Every branch which has front of house literature makes reference to the availability of BBAs and organisations such as the FSA have information leaflets about their availability and features.

The provision of window stickers would have operational and practical implications and would be unlikely to realise the customer benefits envisioned by the reviewer. We will not therefore be adopting this recommendation.

**20 The sponsors should reorder the Code and the Guidance to bring together all the information on BBAs into one section.**

We agree with the independent reviewer's desire for increased transparency in the Code on Basic Bank Accounts. We will therefore consider this recommendation with consumer experts during our future consultation on the format of the Code.

**21 The Guidance should also be amended to require that access to BBAs should be clear and transparent, without dissuasion and active 'upselling' of alternative products beyond the needs or wishes of the customer.**

The independent reviewer's aims are already covered by Section 3.1 of the current Code which prohibits dissuasion or active upselling of another product if a customer asks for a Basic Bank Account, or where a Basic Bank Account is assessed as being most suited to a customer's needs. Adoption of this recommendation is therefore not required.

## **Transparency**

**22 I recommend that the sponsors adopt the Competition Commission's remedies in both the Banking and Business Banking Codes and their supporting Guidance documents, except for the annual 'rights reminder', but with the inclusion of cheque clearance times in the pre- and post-sale information provided.**

In principle we believe that personal customers throughout the UK should receive the same information, where that information is appropriate. We therefore accept the aims of this recommendation and once a satisfactory Order is received implementing these remedies in Northern Ireland we will determine which are introduced in the rest of the UK under the Banking Code.

The Competition Commission's remedies concern customer communications for personal current accounts in Northern Ireland and are therefore not appropriate for direct read across to the Business Banking Code. Indeed the Competition Commission already agreed measures with banks in 2003 to address business banking through behavioural undertakings.

Until such time as the final Order is laid and we are able to review its requirements we are unable to comment on a possible timetable for implementation.

**23 I therefore recommend that the Codes require the provision of Summary Boxes on loan and savings accounts<sup>4</sup> both pre-and post-sale. Those Boxes should provide information directly (not signposted) on:**

**1.1. Savings accounts pre-sale:**

- **Access arrangements, including any penalties consequent upon withdrawals;**
- **Any bonus conditions, including showing rates with and without any bonuses;**
- **Tax status;**
- **Interest rates, including any interest rate guarantees and, if the product has a temporary fixed rate, what is the 'go to' maturity rate (expressed as the - current 'go to' rate if that is variable).**

**1.2. Savings accounts post-sale (excluding passbook operated accounts):**

- **Same as for pre-sale;**
- **On accounts where the rate is variable, Boxes should show the current interest rate, date of last change and the rate before the last change. Boxes should also show the current Bank of England (BoE) base rate, date of last change and the previous rate. On the first statement after either a BoE or account rate change, the first page of the statement to include a notice that rates have changed and referring customer to Summary Box for details.**

**1.3. Personal Loans pre-sale:**

- **Amount of loan available;**
- **Typical APR;**
- **The range of rates within which the product is usually offered;**
- **A standard illustrative example. This amount and length of loan used should be an industry average. The interest rate used should be the actual rate for that size and length of loan or, in the case of personal pricing, the rate at which, say, 66% of such loans are being charged. The example should show both the monthly and total repayments;**
- **Fees, including all application and arrangement fees;**
- **How interest is calculated;**
- **Repayment period and methods;**

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<sup>4</sup> Current account summary boxes will be required under recommendation 22 above.

\* N.B. The Independent Reviewer's footnote is incorrect. The Competition Commission remedies for Northern Ireland will not require the use of summary boxes.

- **Default charges;**
- **Early settlement information.**

#### **1.4. Loans post-sale:**

- **Fees;**
- **How interest is calculated;**
- **Default charges;**
- **Early settlement information.**

**In addition, the actual interest rate being charged should be shown on the face of the statement.**

Independent research in 2006 demonstrated that customers find pre-sale Summary Boxes most useful because they help customers compare products before purchase. We therefore agree to require Summary Boxes to be available to customers prior to the purchase of an unsecured loan or savings account.

The content and presentation of these Summary Boxes will be determined via reference to relevant legislative requirements such as the Consumer Credit Act 2006. Post sale Summary Boxes will not be required because they are of limited benefit to customers and would only be available on an infrequent basis for savings accounts and loans.

We will not require Summary Boxes to be available under the Business Code because the features of such products are usually individually negotiated between the customer and the bank so are not suitable to the provision of standard tariff information.

We will determine the format and content of these Summary Boxes prior to publication of the new Code. Our subscribers will then need to make systems changes to incorporate their use. We therefore aim to introduce these Summary Boxes by October 2008.

Further to the independent reviewer's recommendation we also agree in principle to require Summary Boxes to be used pre-sale for current accounts. However, we await finalisation of the pre-sale requirements under the Competition Commission's Northern Ireland remedies before we can make a firm commitment to the use of Summary Boxes.

The Northern Ireland remedies will also prescribe the information that must be presented to customers on current account statements. We will look to draw on these requirements to provide further transparency for all UK customers on their current account statements.

**24 The Banking Code Guidance should be amended to make it clear that if a subscriber wishes to change a customer's current account, it must obtain the customer's express consent to the change before doing so, if the new account will involve the payment of a regular fee that has not been charged before.**

We agree to amend the Banking Code to clarify that subscribers must obtain a customer's express consent before upgrading them from a free account to a fee-paying account.

If however a subscriber is making a wholesale change to its product offering it will not have to seek the customer's consent to do so. It must however give the customer 30 days advance notice of the change and allow the customer 60 days to switch or close the account without penalty – as already required under Section 6.4 of the Code.

**25 The sponsors should consider incorporating into the Banking Code the relevant parts of the UK Remittances Taskforce's charter on migrant remittances, once that has been finalised.**

Under adoption of the Payment Services Directive the FSA will become the UK regulator for remittance and other payment services. In 2009 an FSA Conduct of Business regime will set out the standards of service that remittance customers should receive.

In the meantime, Section 9 of the Banking Code outlines standards of service for customers transferring money abroad, including the costs and processes involved. In addition the Code provides remittance customers the added protections of the FSA complaint handling process and access to the Financial Ombudsman Service.

Therefore we will not be adopting the Taskforce's charter.

### **Interest Rate Changes**

**26 I therefore recommend that the Guidance is changed to make clear that the provision on monthly account statements of the interest rate information under recommendation 23 shall count as personal notification, so long as the first statement after a change in either the account interest rate or the Bank of England base rate clearly highlights on the first page that there has been a rate change and refers the customer to where the relevant information can be found on the statement.**

This recommendation is dependent on the adoption of a post-sale summary box for savings accounts under recommendation 23. As explained above we will not be requiring the use of a post-sale summary box.

However, personal notification of relevant rate changes for savings accounts, as currently required under the Code, provides clear benefits to customers and we wish to retain this important customer protection. Therefore we will still require Code subscribers to personally notify customers of relevant rate changes as required under Section 4.4 of the Code.

**27 The Guidance s 4.4 should be amended from “the newspapers we usually use” to “a broad range of newspapers”.**

Subscribers are currently required to be confident that the newspapers they use to notify customers of interest rate changes reflect the readership of their customers and are consistently used. This is outlined under Section 4.2 of the Guidance.

Therefore, we will amend the Guidance to clarify that the same approach is required under Section 4.4 of the Code.

**28 The Guidance s 4.4 should be amended to require subscribers offering a temporary bonus rate for a period of more than three months to alert customers to the end of that bonus period between three and four weeks before the period expires.**

We will amend the Guidance for Section 4.8 of the Code to remind subscribers that the terms of any bonus period must be clearly and transparently communicated to customers prior to opening a savings account and on completion of account opening.

We will not be accepting this recommendation because we believe the customer benefits would be marginal in comparison to the costs of such notification and the potential for these costs to be passed on to customers.

### **Credit Cards**

**29 The Guidance Section 10.12 should be clarified to make clear that the minimum payment should cover that month's interest and a proportion of the balance outstanding (which would include any account operating fees and charges but not annual PPI premiums). The principle should be that if there are no further transactions on the card then the minimum repayment required the following month should be smaller than in the current month (subject to rounding).**

We agree to clarify Section 10.12 of the Guidance to make it clear that the minimum repayment on a credit card should reduce month by month if there have been no further transactions on the card and the lower minimum payment threshold of the card has not been reached. The term 'transactions' includes any fees, charges or PPI premiums incurred on the card.

**30 That section should also make clear that short-term payment holidays can be offered, provided the terms are communicated very clearly to customers and that they are told that they can reject the holiday and make payments if they wish. Where a payment holiday is provided the minimum repayment afterwards should be sufficient to avoid negative amortisation over a period of 12 months from the start of the payment holiday (as defined in the current Guidance).**

The Independent Reviewer's aim in making this recommendation is an intention to clarify that credit card customers can be offered a payment holiday in appropriate circumstances, so long as the customer's subsequent payments are sufficient to avoid negative amortisation over the 12 month period from the start of the payment holiday i.e. the customer's repayments over 12 months are more than the interest added to the account.

We will therefore adopt recommendation 30 to clarify that payment holidays are possible for a credit card, as long as repayments over a 12 month period following the holiday are sufficient to avoid negative amortisation.

**31 The wording, "Sufficient details to enable the customer to pay on time" should be amended to add the words, "including by direct debit" at the end. Furthermore, any notice to a customer that they have missed one or more repayments should alert them to the possibility of paying by direct debit, as a means of avoiding such problems in the future.**

We agree that customers should be encouraged to consider ways of avoiding further missed payments and service charges. Direct debit is one of a number of ways in which such automated payments can be initiated.

Therefore, we will amend the Code Guidance to require subscribers to inform customers at account opening of the option of using automated payments in the future. We will also require subscribers to include in any notification sent to a customer after missing the first payment reference to the option of paying by automated payment to avoid missing future payments. Any further missed payments will be covered under forthcoming Consumer Credit Act 2006 requirements.

**32 The APACS Best Practice Guidelines should require the following five items to be highlighted in any marketing material and to appear on the first page of any letter (or equivalent) accompanying the issue of Credit Card Cheques (CCCs) and in the same font etc as the body of the letter:**

- **CCCs do not provide the same level of consumer protection as a normal CC purchase.**
- **The transaction fee per cheque.**
- **There is no interest free period.**
- **How to opt-out of receiving CCCs in the future.**
- **An alert to the Summary Box (eg “see important information overleaf”)**

We agree to amend Section 10.15 of the guidance to require subscribers to highlight the five items in any letter or equivalent which accompanies the issuance of CCCs.

We will require that this notification appears clearly and transparently in the ‘main body’ of any communication accompanying the issuance of CCCs, but not that it must appear on the first page. This is because the first page may not be the most appropriate place to communicate this information to the customer.

This requirement will not apply to marketing material because we do not believe that this important information would be given due regard by customers on promotional material.

In addition to this recommendation, we will advise customers of ways in which to safely destroy unwanted CCCs and supporting material.

We will also amend Section 10.15 of the Code to inform customers that further important information is contained in the Summary Box sent with all CCCs.

## **Legibility**

**33 I recommend that the sponsors work with specialists (such as the RNIB, amongst others) to create a set of guidelines that are reasonable and which can then be incorporated into the Guidance and cover all written communications (including for T&Cs, Summary Boxes etc).**

We agree with the independent reviewer's aim; however the Banking Code already includes a Key Commitment requiring subscribers to provide clear information. Banks are also required to comply with the requirements on information provision under the Disability Discrimination Act 2005.

In addition, the Code sponsors will work with written communications experts to produce stand alone best practice guidance identifying ways of optimising the legibility of written communications.

**34 I recommend that the Guidance requires subscribers to ensure that their UK web sites are either certified by a specialist independent organisation or have been tested with customers with a range of eyesight abilities and found to be legible.**

We agree with the independent reviewer's aim; however the Banking Code already includes a Key Commitment requiring subscribers to provide clear information. Banks are also required to comply with the requirements on information provision under the Disability Discrimination Act 2005.

In addition many subscribers already use web based certifications for their websites and provide 'Accessibility' pages which give customers advice on the processes available to improve the legibility of their browsers.

**35 The glossary in the Codes should be extended to include: Direct debit, Standing order, Overdraft (authorised and unauthorised), Buffer zone, Branch access, Debit card (including how 'online' cards differ from 'full' debit cards), Interest, Savings account, Current account, High Interest Current Account. The description of CCCs should also refer to the first three bullet points in recommendation 32.**

We agree with the independent reviewer's desire for increased transparency in the Code. We will therefore work with appropriate experts to determine how this can be achieved, including via an extended glossary if necessary.

**36 The Guidance Section 8 and Section 14 should emphasise the need to make communications with customers who are in financial difficulties especially clear and jargon-free.**

We agree with the independent reviewer's aim and believe that the Banking Code already includes such provisions. Subscribers are committed under Section 2 of the Code to communicate clearly with all customers.

Section 8 of the Guidance requires that all advertising and promotional material is clear, fair and not misleading.

Section 14 of the Guidance requires that information to customers in financial difficulties on procedures and systems is straightforward and in plain language.

We will review relevant sections of the Code Guidance to ensure that subscribers are sufficiently aware of their obligations but we do not believe that adoption of this recommendation is necessary.

**37 There should be a separate section in the Codes on branch closures.**

We agree with the independent reviewer's desire for increased transparency in the Code. We will therefore consider this recommendation with consumer experts during our future consultation on the format of the Code.

**38 The "last bank" provision should be dropped and subscribers should give 12 weeks notice of all closures and moves. The "material reduction" definition should be changed from a 50% reduction in opening hours to a 30% reduction and should include changing access to a branch to be only for a restricted group of customers. The Guidance should also make clear that the requirements cover where two branches merge, except where they are very close together (eg in the same or adjacent streets).**

We agree to adopt this recommendation. 12 weeks notice will apply where it is possible for the bank to give such notice i.e. where the subscriber is aware of the branch's closure at least 12 weeks before it happens.

We also agree to amend the "material reduction" definition from a 50% to a 30% reduction in opening hours or branch access.

**39 Notification of alternative facilities should include location of the nearest branch and the nearest ATM where free withdrawals can be made.**

We agree to adopt this recommendation and require subscribers who intend to close or move branch to notify their customers of the locations of the subscriber's nearest branch and their nearest free access ATM.

### **Vulnerable Customers**

**40 Sponsors should consider incorporating into the Code the MALG guidance on dealing with customers with mental health difficulties, once it is published. They should also consider updating the BBA's leaflet 'Banking for Mentally incapacitated customers' and make clear in the Code how copies can be obtained.**

We agree to consider the Money Advice Liaison Group guidance on mental health and debt following its publication in November 2007.

The BBA has replaced its 'Banking for Mentally Incapacitated Customers' leaflet with a new updated consumer publication entitled 'Banking for people who lack the capacity to make decisions'. This leaflet was launched in October 2007 and is available on the BBA website.

**41 I therefore recommend a change to the Code Section 10.5 to require subscribers to make all customers aware of alternatives to Chip and PIN cards for those unable to use them. The Guidance should make clear that all new customers are to be made aware and that in 2008 all existing customers should also be made aware of the alternative provision, in order to catch up. In making customers aware, subscribers should make clear that alternatives are only available where there is a real need.**

We agree to require subscribers to inform new card customers that alternatives to Chip and PIN are available where there is a real need.

APACS will also work with advice groups working with vulnerable customers to inform those customers of the alternatives to Chip and PIN.

## **Complaints**

**42 The Codes and Guidance Section 7.5 and Section 15 should make clear that subscribers should not close accounts simply because a customer has made a complaint, or exercised their rights under Code or in law, so long as the customer is also not acting in a manner that might normally lead to account closure (eg verbal/physical abuse or poor account management). Subscribers must never threaten to close accounts as a means of deterring customers from taking legitimate action.**

We agree to require that subscribers will not close an account, or threaten to do so, solely in response to a valid complaint made by a customer.

**43 The headings in Section 15 of the Codes should be changed to “Step 1 – Internal procedures” and “Step 2 - Financial Ombudsman Service”, to make it clearer the fact that complainants must do step 1 before step 2.**

We agree to clarify Section 15 of the Code to provide customers with clearer information on the complaints process.

**44 The Codes Section 15 should explain the differences in the roles of the BCSB and the FOS and this should be amplified in the Guidance.**

We agree to adopt this recommendation.

## **Risk Based Pricing and Credit Footprints**

**45 The Code Section 13 should make clear that, where someone is shopping around for quotations on risk-based priced products, the CRA searches done will not leave a credit application footprint on their record that other lenders can see. The Guidance to Section 13 should make clear that subscribers need to differentiate between someone who is only seeking a price quotation and someone who is actually applying for credit and to search appropriately.**

The sharing of positive data, as agreed under recommendation 4, will give lenders a more complete picture of a customer's credit worthiness and lessen the emphasis they place on credit footprints. We believe this will address the independent reviewer's concerns.

## **Card Misuse Liability**

**46 The advice to customers in the Codes Section 12 should be put into a separate box, perhaps headed “How you can protect yourself”, to make clear that it is advice and not standards binding on customers.**

We agree with the independent reviewer's aim and will further clarify this information. We will therefore consider this recommendation with consumer experts during our future consultation on the format of the Code.

**47 If subscribers regularly block cards that are used abroad, they should inform customers in any general information on using the card and advise customers who do want to use their card abroad what steps they need to take to avoid blocking.**

We recognise the inconvenience that customers face if their cards are blocked abroad. However, any advice that subscribers give their customers cannot ensure that such blocking does not take place due to necessary fraud and security controls.

However, we will require those subscribers who routinely block cards that are used abroad to inform customers of this possibility so that customers can consider alternative methods of payment.

In addition, APACS will continue to update its leaflet on using cards abroad and promote it during the summer holiday season.

### **Online Banking**

**48 The principle of limitation on liability in the Codes Section 12.11, 12.12 and 12.15 should be extended to online banking.**

We agree to amend Section 12 of the Code to provide appropriate protections for customers using online banking. The new Code will also include information for customers on the safeguards they can use to reduce the chances of being a victim of online fraud.

**49 The advice to customers in Section 12 should also address emerging methods of fraud, such as 'phishing' and identity theft.**

We agree to extend the advice under Section 12 of the Code to address emerging methods of fraud.

### **Matters Specific to the Business Banking Code**

**50 The sponsors should consider the Competition Commission's decision [on undertakings applying to small business banking], when it is made, and, if possible, align the Code requirements with the undertakings given by the eight banks, so long as those do not weaken the Code's requirements.**

The Competition Commission's findings on undertakings applying to small business banking are currently being reviewed by the OFT. Once the Competition Commission's proposals are made final we will work with the OFT and other small business representative bodies to consider appropriate amendments to the Business Banking Code.

**51 I recommend that Section 3 of the Code should require subscribers with Inter Bank Agency Agreements (IBAAs) to outline them to relevant small business customers at account opening stage. The commitment in Section 7.8 of the Code relating to IBAAs should remain. The Guidance Section 3 should make clear that a relevant small**

**business customer is one where, in the opinion of the subscriber, access to counter services is likely to be important.**

An IBAA is a discretionary agreement between two banks and determined on a case by case basis. At account opening stage it would not be possible to confirm that a business will be granted an IBAA, or what the fees and charges might be for such an arrangement.

This recommendation is therefore not appropriate for inclusion in the Business Banking Code.

## **Matters not affecting the content of the Code and Guidance**

### **52 The BCSB should consider how it might demonstrate more clearly the compliance monitoring work done and their general findings**

We will encourage the BCSB to consider this recommendation in accordance with its rules.

**53 I therefore recommend that Section 17.3 of the Codes are replaced by a clearer statement, ideally at the front of the Codes, that customers needing more information on any part of the Codes will find the Guidance useful and how they can get copies from subscribers or elsewhere. There should also be reference to the Guidance and how to get hold of it in the Code Flyer.**

We agree to adopt this recommendation and will consider how to further promote the availability of the Guidance document.

## **Additional Changes to the new Codes**

The 2008 Banking Codes will incorporate a number of further additions which the sponsors have committed to making during the review process. Each is outlined below, with our rationale for making the amendments.

### **54 Information on the forthcoming Unclaimed Assets scheme.**

In agreement with HM Treasury we will be giving information in the Code and Guidance documents on the features of the Unclaimed Assets scheme which is due to be launched in 2009.

This information will include signposts to relevant sources of further advice and guidance.

### **55 Helping customers make the most of their products and services**

We will be working with the BCSB and consumer groups to consider adding a new section to the Codes with advice for customers on the simple things they can do to make the most of their banking products and services. This section might include simple advice to help customers choose the right products; protect their accounts; and ask for assistance when they need it.

## **56 Incorporating the APACS Best Practice Guidelines for Credit Cards**

The first APACS Best Practice Guidelines (BPG) were implemented in March 2004 and concerned the use of Summary Boxes on all marketing materials. There are now 15 BPGs – including some not solely related to credit cards. These Guidelines exist to ensure customers are provided with clear and transparent information about credit card products and services.

All of APACS' Best Practice Guidelines are monitored by the BCSB. We will therefore include a complete list of these in the Banking Code Guidance.

## **57 Cheque clearance times**

From the 30<sup>th</sup> November 2007 the maximum time it can take for a cheque paid into a current account or Basic Bank Account to be cleared for interest, withdrawal, and fate will be 2, 4, and 6 days respectively. The timescales for clearing a cheque paid into a savings account are 2, 6 and 6 days.

This will provide a more transparent system for personal and business customers with added certainty as to whether the money is definitely theirs. These provisions will be incorporated in the Codes and Guidance.

## **58 LINK rules on ATM signage**

The LINK rules set out the minimum standards of transparent information that customers receive on ATM machines. We will be amending the Banking Code's requirements to bring them up to date with LINK's provisions.

## **59 Account name/number primacy**

APACS sought legal opinion on whether account name or account number should take primacy when payment instructions are carried out and subsequently produced guidance for our members on handling payments in cases of discrepancy.

We will include reference to the primacy issue under Section 9 (Running your account) of the Banking Code Guidance.

## **60 Changes to third party cheque writing**

In October 2006, and with the agreement of the FSA, our members began requesting more information to be provided by customers on cheques written to a third party. This additional information can be helpful in reducing the risk of cheque fraud.

Section 12.6 of the Code will be updated to reflect that cheques made out only to a financial institution without further detail might be declined in certain circumstances.

## **61 Updates to reflect current technology**

Developments in technology have meant banks and building societies can now offer services and products to customers that were not available when the Code was last revised in 2005. We will therefore be updating the Code documents to reflect these technologies where appropriate.

## **62 Updates to reflect legislative changes and requirements**

Since March 2005 there have been a number of changes in UK legislation and regulation that are referenced in the Codes and Guidance. We will ensure that any such references in the 2008 Codes and Guidance are relevant and clear to customers. For example, this will include changes to Section 15 of the Code outlining the FSA's complaint handling rules which changed on the 1<sup>st</sup> November 2007.