

Review of the Banking Codes 2004
Recommendations of the Independent Reviewer and initial Response on
behalf of subscribers to the Codes

November 2004

1 Introduction

The Banking Code is ‘sponsored’ by the three main industry trade associations, the British Bankers’ Association (BBA), The Building Societies Association (BSA) and the Association for Payment Clearing Services (APACS). The Business Banking Code is sponsored by the BBA and APACS. This paper is the formal response of the Code sponsors to Professor Kempson’s report, Independent Review of the Banking and Business Banking Codes.

The process of the Independent Review has been comprehensive and all-inclusive. Formal consultation responses were sought from stakeholders (legislators, regulators and consumer groups) in the first months of the year. These were augmented by meetings between sponsors and people who expressed an interest (and to whom the consultation was subsequently sent). Every consultation response was reviewed by Professor Kempson and the input formed her “knowledge base” for a full day round-table meeting in April with all respondents (about 60). This was followed by bilateral meetings with those respondents who wished to express their views personally.

A final round table in July led to Professor Kempson delivering her Report to the sponsors in September. We are agreeing with the great majority of her recommendations.

The new Codes will deliver:

- New commitment to make basic bank accounts more readily available to people who want one.
- Greater transparency of clearing cycles for electronic payments as well as for cheques, explaining when funds may be withdrawn.
- Best practice guidelines for credit card issuers covering
 - increases in credit limits;
 - restrictions on issuing credit card cheques;
 - Summary Boxes;
 - a “Health Warning” on statements for those making minimum repayments;
 - explanations of how payments are allocated.

- Explicit endorsement of the Common Financial Statement to help customers in financial difficulties.
- New commitments to help customers in the event of branch closures or reduced services.
- Better explanation for customers on how to be reunited with dormant accounts.

We have also agreed to look at a range of issues going into the future, in time for the next Review. These include:

- a clearer definition of what we mean by reasonable and sympathetic treatment of customers in financial difficulty – and we will agree this wording with the money advice sector.
- A review of what we do to help customers with mental health problems – to try and help them avoid inappropriate debt and to ensure they are sensitively treated if debt difficulties emerge.

Professor Kempson’s full report is available at www.bba.org.uk/.

Glossary

sponsors – trade associations for the institutions which subscribe to the Code. This is the “we” of the Response which follows. The sponsors represent the interests of the subscribers.

subscribers – 257 banks, building societies and some other financial institutions which “own” the Codes and agree the wording.

Independent Reviewer – Professor Elaine Kempson of Bristol University Personal Finance Unit under contract to the BBA on behalf of all sponsors

legislators – inclusive term for the Treasury and the Department of Trade and Industry

regulators – Financial Services Authority and the Office of Fair Trading.

BCSB. - the Banking Code Standards Board. An independent monitoring body with strong corporate governance and a team of field inspectors ensuring subscriber compliance (<http://www.bcsb.co.uk/>)

Recommendations and Responses

2.1 Re-ordering of the Codes

I recommend that section 1.1 of the Codes should include signposting to subsequent sections that apply to each of the main product types listed.

Agreed.

We expect this to be particularly useful to cardholders and savers.

I recommend that Section 10 of the Codes be renamed 'Cards' and should have two sections: one dealing with debit cards, the other with credit cards.

Agreed

The logic and simplicity are attractive (for both consumers and subscribers). We shall keep the Codes as simple as possible by:

1. Providing an additional section to cover both credit and debit cards where they have the same features.
2. Keeping the title "Cards and PINs" – the importance of PINs is increasing. The introduction of chip and PIN in 2004 will make this Section especially helpful to customers.

2.2 Key commitments

As a result of these discussions, I recommend that the key commitments be re-drafted along the following lines:

We promise that we will act fairly and reasonably in all our dealings with you and that we will meet all the commitments and standards in this Code, including:

- ***Ensuring 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 keep you informed about changes in the interest rates, charges or terms and conditions.***
- ***We will deal with things that go wrong quickly and sympathetically 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.***

The Banking Code and Banking Code Guidance for Subscribers set out how customers can expect to be treated fairly and reasonably by subscribers to the Banking Code. We therefore consider it of greater clarity for consumers to include in the Code the following :

"We promise that we will act fairly and reasonably in all our dealings by meeting all the

commitments and standards in this Code.” This will be followed by the six bullet points listed above as revised Key Commitments. We believe that to go further at this stage would pre-empt all the work currently being undertaken in relation to treating customers fairly.

We are working with the DTI in framing a new European Directive on Unfair Commercial Practices. We are also talking to the OFT about concepts of Consumer Detriment. We are actively working with the FSA on their Treating Customers Fairly programme which we believe is an important new approach to regulation.

As a further safeguard for consumers we have agreed to an interim review process where the Code does not deal with an issue of material consumer detriment. Details appear below.

I also recommend that the first paragraph in section 2 of the Guidance should be strengthened to indicate that where the meaning of a particular provision in the Codes is ambiguous, the key commitments provide clarification on how to interpret it.

In our Guidance to subscribers we will explain how the Key Commitments, the Codes and the Guidance work together and how the Key Commitments may aid clarification of the meaning of a particular Code provision.

We have worked hard in this and previous Code Reviews to remove ambiguity and believe that the Codes deal with the issues which the Codes can properly address. The following recommendation from the Independent Reviewer covers the existence of unforeseen or new circumstances.

Further, I recommend that, where an area of material consumer detriment is identified that is not covered at all in the Codes, this should automatically trigger an interim review. This review could be initiated by either the Code sponsors or the Banking Code Standards Board (acting on behalf of other stakeholders) and would be supervised by the Independent Reviewer, who would also arbitrate if there were any dispute about whether an interim review was needed (see also section 5 of this report).

Agreed.

Our record of consulting and dealing with new issues by adding to the Codes between formal reviews is proven. We will continue to work with BCSB to ensure that customers'

interests are protected and, where necessary, this will involve an interim review. Reference will be made to interim reviews in the Codes.

I also recommend that a new section is inserted into the body of the Codes that expands the key commitment regarding 'safe and reliable banking systems'.

Agreed.

Our industry is a world-leading provider with secure systems capable of high volumes. We help customers protect against known fraud and other threats to systems and will include the recommendation in our Codes.

Likewise, a section needs to be inserted that brings together and expands existing information on promotion of the Codes and staff training on them.

Agreed.

Since March 2003 Banking Code flyers have been sent to all existing current account customers and to all new customers from March 2002. This explains the Codes in brief and how to obtain copies.

2.3 Section 3 Helping you choose products and services which meet your needs

2.3.1 Access to basic bank accounts (Banking Code only - paragraph 3.1)

I recommend that the wording of the second bullet point in paragraph 3.1 should be amended to ensure that, where a bank offers a basic bank account, staff assess whether it is suited to the needs of a customer wanting to open a current account and, if so, offer them one. It should also give an undertaking to open one if a customer specifically requests it. The reworded Guidance should take account of the difficulties listed above.

Our provision of basic bank accounts to widen financial inclusion is part of the industry's response to a Government initiative. Other countries provide comparable services. There are 834,000 basic bank accounts (June 2004) which have been opened since the Universal Banking Service launched last year.

We are happy to agree to these proposals subject to some sensible commercial protections. If a bank knows of a history of fraud, or a customer has products in default, it will not be obliged to open a basic bank account.

I recommend that reference be made to the Post Office in paragraph 3.2 of the Banking Code and Guidance.

Agreed.

We are happy to refer to the Post Office in relation to basic bank accounts. We support a Universal Banking Service and its contribution to greater financial inclusion.

2.4 Section 4 Interest rates

2.4.1 Interest rate notifications (paragraphs 4.4 and 4.5)

2.4.2 Downgraded accounts (paragraph 4.8)

I recommend that the Guidance to paragraphs 4.4 and 4.5 of the Banking Code, relating to interest rate notifications, should be revised to reflect the outcome of the negotiations of the Unfair Terms in Consumer Contract Regulations. It is important that these negotiations are concluded as swiftly as possible – ideally in time for the outcome to be incorporated into the revised Guidance on the Codes, due for publication in March 2005. If this proves impossible, it should be published as separate Guidance, but no later than December 2005.

We share Professor Kempson's wish to conclude this discussion and continue to work with the regulators to try and achieve this. Subject to continuing progress we aim to meet the December 2005 deadline. Any required revisions will be implemented through an addendum to the Banking Code.

The provisions introduced in 2003 offer significant consumer protection. Our discussions with regulators will concentrate on identifying what further consumer detriment may be at stake and how this can be avoided.

Depending on the outcome of the negotiations, the Business Banking Code should either be revised in line with the Banking Code or, if more appropriate, ensure delivery channel neutrality in some other way.

The Unfair Terms in Consumer Contract Regulations apply only to personal customers and do not extend to business customers. Nevertheless we will use the results of our negotiations on personal accounts to inform the way in which we help business customers.

The provisions in the Banking Code dealing with Downgrading (4.8) should be left unchanged for the present as there is insufficient evidence to consider their effectiveness. This section should be considered in detail at the next review, or earlier through an interim review if there is evidence of consumer detriment.

Agreed. There was no evidence of customer detriment presented during the review process and we are not aware of any. We, along with other stakeholders, will keep this provision under review.

I recommend the next review should consider whether or not the downgraded account section should be extended to current accounts.

We feel this is sensible to ensure that the Banking Code continues to reflect changes in market conditions. We will keep this under review.

2.6 Section 9 Running your account - Consolidated Annual Summary Statements

I recommend that no further consideration be given to including Consolidated Annual Summary Statements within either the Banking Code or the Business Banking Code.

We welcome this finding based on evidence provided.

2.7 Section 13 Lending

Professor Kempson took much evidence on these issues. Our comments are linked to credit card business and will be reflected in the new section of the Codes.

2.7.1 Credit checking (paragraph 13.1)

I recommend that the APACS guidelines on credit card limit increases are incorporated into both the Banking and Business Banking Code Guidance.

Agreed.

The industry suggested using APACS guidelines and we are pleased that the Independent Reviewer has agreed with this recommendation. We believe that this will most sensibly sit in the new section on cards (Section 10).

I recommend that the Guidance to the Codes is revised to reflect best practice on credit checks within the industry.

Agreed.–

The Code Guidance will reflect best practice on credit checks in the industry when making lending decisions. We are aware that subscribers go beyond the minimum checks currently listed in s13.1 and feel it is sensible to reflect actual practice in the Codes.

In doing so, it should be borne in mind that it is inadequate only to check past performance on a credit card before raising the credit limit.

We agree that this should be borne in mind and the industry is leading work on improvements to data sharing across the industry. Once this work is finalised the Codes' Guidance will be revised to take account of these initiatives which may help to address the Reviewer's concern with regard to making external checks prior to raising the credit limit. We anticipate this being part of the next review.

The APACS best practice guidelines specify the need for issuers to take an active approach to responsible lending, including making appropriate checks before increasing a customer's credit limit. An increase will generally not be offered if the account falls below the issuers' credit scoring threshold, which is calculated according to a range of data and not just a check of past performance.

It should also refer to the Office of Fair Trading guidance on non-status lending.

Agreed.

We will make specific reference to these guidelines which relate "only to secured loans for non-commercial purposes" in Section 2 of the Guidance for Subscribers.

The Guidance should also recommend that consumer enquiries about products with risk-based pricing should be supported by enquiry checks with credit reference bureaux, not a full credit search.

We support the principle behind this recommendation but feel that it cannot be implemented within the timescale of this review as it overlaps with the Consumer Credit Act Agreement Regulations. The industry will meet with representatives from Credit Reference Agencies to discuss the best way forward once the new Regulations are in place.

2.7.3 Financial difficulties (Banking Code paragraphs 13.10 to 13.12; Business Banking Code paragraphs 13.13 to 13.16)

I recommend that the Codes should make specific reference to subscribers accepting the Common Financial Statement (and other similar statements such as that used by the Consumer Credit Counselling Service (CCCS)).

Agreed.

We welcome this recommendation as it reflects current industry best practice for personal customers (but not for business accounts).

The Common Financial Statement (CFS) is the result of an initiative from members of the BBA (one of the Codes' sponsors) together with the Money Advice Trust. The CFS helps debtors with many creditors to propose a debt management plan through a recognised money adviser. It uses agreed standards of living expenditure and analyses customers' cash position each month to allow agreed repayments to all creditors. It promotes the concept of priority debts (notably for housing, thus protecting home ownership).

I recommend that the Codes should include a commitment to use best endeavours to ensure that third parties comply with paragraph 13.10 of the Banking Code (13.13 of the Business Banking Code) if a debt is sold or its management transferred to them. The Guidance should require subscribers to have a 'due diligence' process when selecting third parties for debt management or debt sale. This should include compliance with the Data Protection Act 1998, Consumer Credit Act 1974, Office of Fair Trading guidance on debt collection and debt management, and code of the Credit Services Association.

Agreed.

We believe the proposal for a "due diligence" process is very helpful and will develop a definition in the Guidance.

When customers stop making repayments, despite all efforts by the lender, there may come a time when the debt is sold to a specialist firm which is not bound by the Banking Code. As Professor Kempson observed to us, problems can be seen when debts are sold on again by non-subscribers.

Code subscribers will apply the due diligence proposed in making the sale, but there may come a point when the subscriber cannot ensure that the third party will ensure compliance with the Code by a firm which buys from the third party. Subscribers are well aware of damage to their reputation if poor practice follows. This means it is in their interests, as well as a Code requirement, to select suitable firms with which to do business.

The Guidance should also indicate that subscribers should pass to third parties who collect debts on their behalf details of any previous negotiations and current arrangements for repayment of the money owed.

It is in the industry's and customers' interests to pass on relevant details to third party debt managers. This recommendation builds upon current industry best practice. This does not apply when debts are sold.

I recommend that Code sponsors work with the national money advice associations listed in the Codes, and any other interested parties, to redraft the Guidance so that it clarifies what is meant by acting 'sympathetically and positively'. I recognise that this will take time, but it should be completed by the time of the next review of the Codes.

We will be pleased to work as recommended. Sensible understandings between the industry, its customers in financial difficulty and their advisers are essential. We believe the CFS and the way it is seen to work will be the test for all parties.

I also recommend that the Guidance should indicate that subscribers will take steps to ensure that negative amortisation does not occur (i.e. outstanding balances do not increase as a result of interest and default charges) on any account while a customer adheres to an agreed repayment plan that is based on the Common Financial Statement (or an agreed equivalent) and has been set up through a money adviser. In practical terms this will mean suspending, or reducing, interest and default charges where agreed repayments do not cover them.

We understand the reason for this recommendation and proposals under a CFS (or an agreed equivalent) through a money adviser is the best way to propose a mitigation, or even forgiveness of interest and charges. On a case-by-case basis subscribers will consider these proposals and make arrangements individually taking into account current circumstances of the customer, that may be reviewed in the future.

I recommend that Code sponsors work with the national money advice associations listed in the Codes to agree guidance on the most appropriate ways for subscribers to assist people who have diagnosed mental health problems that impair their ability to handle money. This will take time and should be incorporated into the Guidance on the Codes when agreement has been reached.

Subscribers have become aware that this is a greater problem than had been previously understood. We will undertake the work suggested and look for a practical approach

within the constraints of legislation and the inevitable difficulties associated with identifying the problems for any individual.

I recommend that the Guidance is amended either to omit specific reference to payments being ‘in line with the amount outstanding to each creditor’ or to include other generally accepted ways of achieving equitable distribution.

We believe that the existing wording covers the greatest number of cases in the fairest way for creditors. It is always open for alternative means of calculation to be suggested and this can be agreed on a case-by-case basis. We shall look to make this clearer in the wording of the Guidance.

I recommend that a new section should be included in the Business Banking Code bringing together existing information on business failure. The proposed wording of this should be sent for comment to small business representatives, the DTI Small Business Service and other interested parties.

Agreed.

We will do as recommended and the suggestion to consult other stakeholders is helpful.

I agree with the recommendation of Code sponsors (endorsed by others) that section 12 of the Codes should include a paragraph on the importance of customers who are in financial difficulty contacting their lender and responding to communications from them.

Agreed.

This was a recommendation by Code sponsors, which we are pleased has been taken up by the Reviewer.

2.8 Business Banking Code

I recommend that the two Codes should continue to be revised in parallel and kept as similar as possible.

We agree with this principle.

I recommend that the Business Code be renamed the Small Business Banking Code.

We are not aware that the name of the Business Banking Code has created any confusion as to what it covers. The Business Code covers clubs, charities as well as

business customers. Accordingly we do not propose to change the name of the Business Banking Code.

I also recommend that the Business Banking Code continues to cover small businesses with a turnover of up to £1 million. But this should be kept under review and changed should there be an alteration to the remit of the Financial Ombudsman Service.

Agreed.

Symmetry with FOS is welcomed.

3 Areas requiring more substantial revision

3.1 Credit cards

3.1.1 Summary Boxes

I recommend that the APACS guidelines for Summary Boxes should be incorporated into the Guidance on the Codes and that reference be made to the use of Summary Boxes to draw attention to key features of credit cards in Section 6 Terms and Conditions and Section 8 Advertising and Marketing and the new Section 10 on Cards.

Agreed.

The industry put forward this recommendation and we are pleased that the Reviewer has taken it up. The industry will go further than the recommendation and make this a commitment within the Code so it is clear to consumers that a summary box should be available. The Guidelines are currently being updated to reflect consumer feedback and the need for Summary Boxes to comply with the revised Consumer Credit Act advertising regulations.

I also recommend that further research be undertaken into the level of consumer demand for including Summary Boxes on credit card statements, the form that they might take, where they are best placed and whether or not they need to be included on every statement. I understand that this is already being taken forward by APACS and the outcome should inform the revision to the Codes.

Agreed.

Any Summary Box that may be proposed for statements would be different from that currently used with application forms and we need to ensure that these would be a good fit with the existing information presented on statements, including monthly interest

rates, as well as the additional information on payment allocation which is to be included on statements.

3.1.4 Minimum payments on credit cards (paragraph 9.2)

I recommend that a plain English version of this statement is included in the explanatory note to existing paragraph 9.2 in the Guidance to the Banking Code (9.3 in the Business Banking Code).

Agreed.

We support this proposal.

I recommend that a new paragraph be inserted into Section 10 of the Codes, giving a commitment that the minimum payment on a credit card will always cover at least the interest payable and (if appropriate) that month's proportion of any fees that are still to be paid. The Guidance will require careful wording to take account of people who settle an annual fee in a single payment.

We respect the reasoning behind the proposal although running account fees are not currently a feature of the design of most card products (and where they do exist are usually low). We believe it would be disproportionate to revise the Code in the way set out above. Systems costs for most providers would be substantial with a purely notional benefit to one or two consumers, whilst causing potential irritation to others, for example those with inactive accounts.

We believe the Reviewer's principal concern is to protect vulnerable consumers from negative amortisation on accounts with annual fees. We will redraft the Code to ensure that minimum payments level continue to be set at a level sufficient to repay the interest and a proportion of capital on all accounts. The Guidance will refer to the need to avoid negative amortisation on an annual basis, and we will also amend the Financial Difficulties Section, by adding 'annual fees' to the list of charges that should be considered in cases of financial difficulty. Where an annual charge causes problems for those in financial difficulty, cases will be reviewed on an individual basis.

The introduction of the new Health Warning on minimum repayments will also help to address the issue of over-indebtedness and encourage responsible borrowing.

3.1.5 Allocation of payments

I recommend that Section 10 of the Codes should give an undertaking to include this information on the front of credit card statements.

We agree that a brief generic summary should be made available on statements but believe that providers should be able to choose on which side of the statement to print it. Some subscribers already provide the information on the back of statements and we would like to preserve this approach for them and others.

The Guidance should make clear that this information could be included in a Summary Box, if one is placed on the statement.

We support this. The way in which payments are allocated is already a key feature of the Summary Box.

3.1.6 Unsolicited credit card cheques

I recommend that the APACS Best Practice Guidelines on credit card cheques should be incorporated into the Guidance on Section 10 of the Codes. The groups for whom these cheques are not suitable should be made explicit in the Guidance and include people at the credit limit on their cards, who are in default, or who have made only the minimum payment on their cards for the past three months. The Guidance should also prohibit the sending of cheques with pre-completed amounts.

Agreed.

The Guidance will include an abbreviated version of the APACS *Guidelines*, with reference in the Guidance to the full APACS *Guidelines* being available on the APACS website – a link will be given for online versions of the Codes. An abbreviated version will be needed in order to keep the Guidance Notes to a reasonable length. All issuers agree to a need for responsible practices, which will exclude those in financial difficulties. We will redraft the Guidance to stipulate that the following consumers should not be issued credit card cheques:

- customers who are late paying or over-limit;
- customers with limited scope to borrow more or are at their limit;
- customers who have opted out of receiving cheques;
- customers where there are fraudulent activities or lost / stolen procedures on the account.

We respect the intent with regard to cardholders making minimum repayments. Making minimum payments is not necessarily a sign of distressed borrowing. For example, many cardholders making minimum repayments will be taking advantage of 0% offers where such a payment pattern is prudent to maximise the benefit of the offer, or making minimum repayments by direct debit to ensure that they do not incur any default charges for missing a payment. We will consider how best to address this point in drafting.

We support the prohibition on sending unsolicited pre-completed cheques to consumers.

3.1.8 Recurring transaction authorities

I recommend that Code sponsors investigate ways of dealing with situations where merchants fail to act on requests to cancel recurring transactions. This should be completed by the time of the next Code review, at the latest. Code Guidance should include reference to the provisions on recurring transactions in the APACS Code of Best Practice on merchant responsibilities.

This work is being undertaken at international Card Scheme (i.e. Visa and MasterCard) level on what is a global, rather than just UK, issue. APACS will monitor this situation closely and report back to the Independent Reviewer within the timescale indicated. The APACS Code of Best Practice on merchant responsibilities will be incorporated into the Business Banking Code.

3.1.9 Interest charges on disputed transactions

I recommend that a commitment be included in Section 10 to refund any interest incurred on any unauthorised transaction.

Agreed.

We support this. In practice most issuers already refund any interest incurred, unless we suspect the customer has acted fraudulently or without reasonable care under Sections 12.4 and 12.9 of the current Banking Code.

3.2 Summary Boxes for products other than credit cards

I recommend that, before the next Code review, Code sponsors should commission further research into the possible content of Summary Boxes for other products, such as unsecured loans, current accounts, and savings account.

Agreed.

We note the recommendation and will do the research.

3.3 Clearing cycle

3.3.1 Transparency of the clearing cycle

I recommend that paragraph 9.4 of the Codes and its accompanying Guidance be revised to provide an explanation of the clearing process for standing orders and

telephone and Internet payments, rather than a commitment to do so. This should include a reference to clearing normally taking three days, with a commitment to tell customers 'if extra days are added to this'. It should also include a commitment to tell new customers when they can draw on cheques that they pay into their account. The Guidance should include a reference to the new APACS booklet on the cheque clearing cycle and the one on BACS payments that is in preparation.

Agreed.

We support this.

3.3.2 Payment of interest on 'float'

I recommend that the Office of Fair Trading explore this issue further and that the outcome is subsequently incorporated into the Code, if appropriate.

We agree with the recommendation and do not feel this to be a suitable matter for the Codes.

3.4 Account switching and small businesses

3.4.2 Charges for account-switching

I recommend that a new paragraph should be added to Section 7 of both the Banking Code and the Business Banking Code giving a commitment not to make any additional charges for either closing or switching an account. The corresponding paragraph of the Guidance should indicate that this includes additional charges to close standing orders or direct debit payments. It will be essential to ensure that this does not conflict with the Undertakings from individual banks to the Competition Commission.

Agreed.

As the recommendation makes clear, some Banks have given formal undertakings to the OFT whose contents are confidential and form a legally binding requirement. In wording the Code as recommended we will consult subscribers to ensure that there are no unintentional conflicts.

3.4.3 Penalty charges for terminating a loan at the same time as switching a current account

I recommend that the Business Banking Code Guidance on not making charges for account switching should also make clear that it also refers to any charges, other than early settlement fees, for loans. Again, it is essential to ensure that this does not conflict with the Undertakings from individual banks to the Competition Commission.

Agreed.

Again as the recommendation makes clear, some Banks have given formal Undertakings to the OFT whose contents are confidential and form a legally binding requirement. In wording the Business Banking Code we will consult subscribers to ensure that there are no unintentional conflicts. We shall also make clear that any unavoidable money market costs involved in closing a loan early will be passed on to the customer. When this does occur we shall make this transparent for the customer.

3.4.4 Legal/valuation charges for transfer of security

I recommend that a new commitment is inserted in Section 7 of the Business Banking Code to tell customers the bank's policy on paying legal/valuation charges for transfer of any security they hold on behalf of a business customer.

We will be happy to make the adjustment. Again we must avoid any conflict with undertakings already given to the OFT.

3.4.5 Portable credit histories

I recommend that paragraph 7.2 of the Business Banking Code, dealing with credit histories, remains unchanged.

Noted.

3.4.7 Not requiring customers to hold a current account to obtain a deposit account or loan

I propose that paragraph 7.1 of the Business Banking Code includes a commitment not to require customers to hold a current account to obtain a deposit account or loan.

Agreed.

We are happy to do this although again, some banks have given formal Undertakings to the OFT regarding this specific issue whose content are confidential and form a strong legally binding requirement. In wording the Business Banking Code we will consult subscribers to ensure that there are no unintentional conflicts. We will make clear that if

a “feeder” account is necessary from which to make repayments this is legitimate. There will be occasions when a negotiation with a customer involves a competitive quote for all their banking business. In those circumstances the customer will accept or decline the “package” which involves a full current account service.

3.5 Branch closures

I recommend a number of changes to paragraph 7.6. First, the radius for the extended notification for closure of last branches should be reduced to one mile in urban areas and no more than four miles in rural ones, with the Guidance making it clear that this distance is by road, not as the crow flies.

Agreed.

We accept this recommendation and note the point about road miles.

Secondly, the Guidance should make it clear that ‘closure’ includes replacing all counter services with automated provision.

This is a rare circumstance and there is room for further debate on the need for such an approach. However we are happy to agree in today’s market and may wish to look at the matter more closely at the next review.

Thirdly, the Guidance should make it clear that telling people ‘how we will continue to provide banking services to you’ should be specific to provision in the locality of the branch, not just a generic statement of the channels through which banking services are provided.

Agreed.

We will discuss how this should be worded to avoid imposing unnecessary levels of detailed information on customers. We understand the principle and will put the wording in the Guidance.

Fourthly, there should be a commitment to give notice of any substantial reduction in opening hours, with substantial being defined as a 50% reduction or more. The Guidance on these notifications should mirror the provisions for branch closures.

Agreed.

We will include this provision.

Finally, the Business Banking Code should also include a commitment to tell small businesses affected by closures about Inter-Bank Agency Agreements where these exist.

Agreed.

We will include wording to cover this.

3.6 Relationship between legislation, FSA rules and the Banking Codes

I recommend that reference be made to the Child Trust Fund legislation in the Guidance to Section 3.3 of the Banking Code. A new paragraph should be inserted after paragraph 6.2 in the Banking Code stating that subscribers comply with the Distance Marketing Directive and explaining briefly what rights it confers. The Guidance should include a reference to the FSA rules.

Agreed.

We will do this in a way which satisfies the FSA and the Treasury as well as our subscribers and the BCSB. The arrangements reflect the welcome acceptance by our legislators and regulators that monitoring of the Directive will be best achieved through the audit work of Code enforcement. Consumers will have all the protection of FSA Rules but the additional comfort of knowing that if they do business with subscribers they will also enjoy oversight by the BCSB.

If necessary, the wording of the Code and Guidance should be revised to take account of the Credit Advertising and Form and Content of Agreements Regulations that will be introduced in October 2004.

Agreed.

We are studying these Regulations and will ensure compliance.

Code sponsors should also investigate whether it is appropriate to refer to the FSA financial promotion rules regarding the marketing of structured capital at risk products.

We will refer to these rules if appropriate .

4 Less extensive revisions

In addition to the issues covered above, submissions to the review have also proposed changes to a large number of other sections of the Code. My recommendations are listed below under the section of the Code to which they apply.

4.1 Section 3 Helping you choose...

Paragraph 3.2 (Business Banking Code only) should be revised to include a commitment to tell people how they can get information on Inter-Bank Agency Arrangements, including the charges made for them.

In line with the recommendation in s3.5 relating to branch closures, the Code will be drafted to commit the bank to tell its business customers about Inter-Bank Agency Arrangements when it plans to close the branch.

4.2 Section 5 Charges

Paragraph 5.2 (Business Banking Code only) should include a reference to the Business Account Finder on the BBA's website.

Agreed

Paragraph 5.3 (5.4 in the Business Banking Code) on changes to charges needs to be revised to bring it into line with Paragraph 6.4 changes to terms and conditions.

Agreed

Paragraph 5.4 There are errors in the Guidance in Table 5 on p24. The heading of column 3 should refer to section 5.4 not 5.5 and the heading of column 4 should refer to section 5.5 not 5.6.

Noted

Paragraphs 5.7 and 5.8 (Business Code only) were inserted in the 2003 edition of the Code. Consultation identified no problems and no need for further revision.

Noted

4.3 Section 6 Terms and conditions

Paragraph 6.1 and the accompanying Guidance should refer to the requirements of the Distance Marketing Directive.

Agreed

Paragraph 6.2 and the accompanying Guidance should refer to terms and conditions also being legible. I have considered whether or not this should refer to a minimum point size, but decided this alone would not be sufficient as

legibility also depends on the font used, the contrast between text and background, word spacing and line length. One possibility is for the Guidance to say that the text should be easy to read by someone with normal or corrected eyesight.

We have had numerous discussions with legislators, regulators and other stakeholders on this issue. The Report avoids the simplistic route of prescribing a font size. The approach is pragmatic and we will draft the Guidance around these principles.

4.4 Section 7 Changing your account

Paragraph 7.5 Closing your account. The Codes should indicate the type of circumstances that are not considered 'normal' – the Guidance currently refers to fraud and being threatening or abusive to staff.

Agreed.

We shall clarify the Code in the way suggested using the current wording in the Guidance.

4.5 Section 8 Advertising and marketing

Paragraphs 8.1 and 8.2 The Guidance should make reference to the provisions in the Consumer Credit (Advertisement) Regulations 2004 and ensure that advertising and marketing do not encourage irresponsible borrowing.

Agreed.

Paragraph 8.6 Insurance: The Guidance on this paragraph should include a reference to the FSA Conduct of Business Rules on General Insurance.

Agreed

4.6 Section 9 Running your account

A new section should be inserted on sponsors' dormant accounts schemes, explaining that the money in such accounts remains the property of the account holder and giving a commitment to tell customers how to access the money in their dormant accounts. It should also refer to Section 16 giving details of how customers can obtain tracing forms. The Guidance should refer to the BBA, BSA and NS&I dormant account schemes.

Agreed for the Personal Banking code.

Paragraph 9.2 Statements: The paragraph excluding fixed-rate fixed-term loans from annual statements creates problems for consumers and leads to complaints

to the Financial Ombudsman Service that would not otherwise arise. This exclusion should be removed as soon as the necessary systems can be put in place, and ideally ahead of the new Consumer Credit Act, which will not come into force until 2006 at the earliest.

We are working closely with subscribers and legislators on the Consumer Credit Act Review where the White Paper refers to “regular” statements. We will need to clarify that “annual” will pass this test and ensure that the codes are aligned with this aspect of the Consumer Credit Act.

Paragraph 9.6 (9.12 Business Banking Code) The Guidance on this paragraph needs to be expanded, to include information that needs to be given to consumers about the Direct Debit Guarantee and telling subscribers where they can obtain further information about it.

Agreed

Paragraph 9.11 should be revised to require greater transparency on exchange rates and fees relating to overseas transactions. The Guidance should also be revised to cover currency accounts.

We believe that information for larger transactions where rates can be booked is wholly transparent. We will see how the Codes can help make customer expectations clearer when transferring smaller amounts of money abroad.

Currency Accounts are held in small numbers and their status in the Codes is ambiguous. We shall review them and their status in the new Code.

4.7 Section 12

A new sub-section should be inserted dealing with dormant accounts, alerting customers to the fact that they should tell the providers of their accounts when they move home and referring to Section 16 giving details of how customers can obtain tracing forms.

Agreed.

A new sub-section should be inserted dealing specifically with online banking.

Agreed.

This reflects the growing use of these services and the expected future increase. It is right that we explain how customers can protect online accounts.

In the Business Banking Code only, reference should be made to the APACS Card Watch website and how to report credit card fraud.

Agreed.

4.8 Section 13 Lending

Paragraph 13.1 of the Business Banking Code should include a commitment to tell customers about the Small Firms Loan Guarantee scheme if the subscriber is a member of the scheme and if it is appropriate to the lending needs of the customer.

It is unusual to mention the promotion of an isolated product but we wish to support the appropriate use of this scheme (of which not all subscribers are members). We shall do as suggested but stop short of imposing a requirement to tell all customers without adequate capital or security about the scheme.

We will ask subscribers to explain the scheme when they identify customers with good business proposals enjoying sound prospects for repaying a loan but are short of capital and security. No records of such explanations will be kept.

4.9 Section 16 Further information

Reference needs to be made in this section to:

- ***The Financial Services Compensation Scheme***
- ***Dormant account schemes operated by the BBA, BSA and NS&I***
- ***The APACS Card Watch website***

Agreed.

5 Future Code reviews

I recommend provisionally that formal reviews should be held every three years, but only if two safeguards are in place:

Firstly, there should be a fast-track procedure for Code amendments between the formal reviews. These interim reviews should deal with areas of material consumer detriment not adequately covered by the Code, be initiated by either the BCSB or Code sponsors and be overseen by the Independent Reviewer, who will also arbitrate if there is any dispute about the need for an interim review.

We support the recommendation and the concept of an interim review process designed to cope with unforeseen and material customer detriment. We shall word the Code accordingly to ensure that the stability of the self-regulatory environment is preserved.

Secondly, the final decision on the time-frame for reviews should be made in November 2005, following consultation with stakeholders through the Independent Reviewer.

The two-year review period was recommended by the Julius Report and, having completed the second review, the proposal is an excellent way for stakeholders and the industry to consider the future.

The sponsors October 2004

Ends.